

Global Food and the Political Economy of Food Labeling: Case Studies

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Introduction

As a number of scholars have observed the development of a globalized food system increasingly reliant on sophisticated technology and liberalized market access and offering a wide array of food choices has not meant a food system without problems, risks and crises. Concerns about food security, price volatility and food safety have arisen along with a broader unease with the agri-industrial food model and its social and ecological consequences. This is reflected in increased attention to food issues, what Marsden et al (2009) call “food journalism” as well as the rise of global and local movements contesting this model. As they note “What seems to be clear is that however more sophisticated and globalized the food system becomes the more it seems to be liable to increased contestations, periodic risk and crises. (1)” Nowhere is this contestation more evident than in growing demands to know more about the provenance of food.

The global food system according to McMichael, can be characterized as a

corporate food regime’, organized around a politically constructed division of agricultural labour between Northern staple grains traded for Southern high-value products (meats, fruits and vegetables). The free trade rhetoric associated with the global rule (through states) of the World Trade Organisation suggests that this ordering represents the blossoming of a free trade regime, and yet the implicit rules (regarding agro-exporting) preserve farm subsidies for the Northern powers alone, while Southern states have been forced to reduce agricultural protections and import staple, and export high-value, foods (McMichael, 2009, 148)

This regime features industrial style food production that is export-intensive, monoculture with globally organized systems of production, where distribution and processing are dominated by large corporate entities of ever-increasing size and market dominance. The system’s impacts have included a changing role for the state in many countries vis-a-vis agriculture, a growing distance between food producers and eaters, rising food imports, new technologies and a growing discomfort (Blay-Palmer 2008) on the part of many food eaters with the nature of the food they are eating. Fueled by well-publicized food scares especially in Europe and North America deep concerns have emerged around the methods by which the food we eat is produced.

Movements have emerged in both the global north and south to challenge it and develop alternative food systems. In some areas of the North this has been manifested in a variety of food movements, many of them oriented around local food. In the global south a major challenge to the globalizing food regime has emerged from small scale peasant producers organized around the concept of food sovereignty framing an alternative to the existing food regime. One of the key demands of food sovereignty advocates is to reclaim control over food policy and local practices in both states and communities. The role of non-producer groups in building and supporting alternative food systems and challenging the prevailing export-oriented, agri-business industrial model of food production is less clear. However, the array of movements and activists seeking a right to know the provenance of food have contributed to politicizing food issues and highlighting the problems and contradictions in existing norms and food regulations. They have challenged key aspects of trade rules that have limited space at the national level for

policies which might be supportive of local food systems and food sovereignty. This paper examines struggles over the labeling of food in terms of issues such as country of origin or GMOs and uses cases to explore how despite powerful interests supporting limited labeling regulations growing demands on the part of an array of movements has created greater demands to know the provenance of food and generated disputes and growing challenges to trade rules. The paper begins with a discussion of the concept of provenance and the movements which have emerged and then looks at the rules and institutions at the global level that may limit the right to know the provenance of food in an effort to harmonize regulations and facilitate trade. Then using the case of GM food labeling it shows how a struggle has emerged over these standards. This is followed by case studies of country of origin labeling regulations included the US law mandating country of origin labeling (COOL) for meat which resulted in a dispute at the WTO; the struggle in the EU regulations on food labeling meat and food labeling issues which have emerged in the past decade in Australia and New Zealand. The paper looks at why differences emerged over country of origin labeling and pressures continue to provide consumers with more information about where and how their food is produced. The conclusion looks at why, even in countries that are major food exporters and champions of trade liberalization, growing demands and pressures from eaters to know more about provenance of their food have resulted in more regulation and limited harmonization.

The Provenance of Food, Food Movements and the Right to Know

The concept of provenance encompasses much more than just geographic origins. As Morgan, Marsden and Murdoch (2006) indicate the concept of food provenance includes

a spatial dimension (its place of origin), a social dimension (its methods of production and distribution), and a cultural dimension (its perceived qualities and reputation). The social dimension is particularly important because it helps consumers to deal with the ethical issues in globally dispersed food supply chains, including the employment conditions of food production workers; the welfare of animals farmed as food animals, such as battery hens and veal calves for example; the integrity of some food production methods, such as adding hormones to beef for instance; the environmental effects of certain production methods, such as the use of pesticides and the destruction of flora and fauna. To the extent that a new moral economy is beginning to emerge around food issues, this question of provenance assumes a central importance in food chain regulation. (Morgan et al, 3)

Issues of provenance are part of political struggles over food labeling policy and “whether consumers have the right, or even the need to know the spatial history of their food.” That struggle is set within the context of a global food system where actors seek to influence governance at the national, regional and global level including the major organizations setting and interpreting international standards and rules around trade, agriculture and food labeling, that is, the World Trade Organization and the Codex Alimentarius.

Those challenging this system include the peasant movement Via Campesina (Demarais) which initially articulated the concept of food sovereignty in 1996 and

subsequently elaborated it further through a number of international and meetings and networks to include:

The right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems. It puts those who produce, distribute and consume food at the heart of food systems and policies rather than the demands of markets and corporations.... Food sovereignty prioritises local and national economies and markets ..

In addition an array of organizations and movements have emerged from smaller farmers, to nutritionists, public health activists, environmentalists, local food groups and consumer movements. Many of these use the language and framing of food sovereignty and demand the right to know more about the provenance of food. These movements have not been without critics however, especially those that focus on local food and ethical consuming based on third-party certification and labeling for fair trade or environmental sustainability. Guthman (2006) argues there are contradictory and troubling aspects of relying on market mechanisms and individual consumer initiatives to build an alternative food system to that of neo-liberalism. The growing popularity of local food and local food movements, de Lind (2011) claims, may lead to ignoring broader issues of participatory democracy and empowerment and, in the case of locavores, emphasizing consumption and personal behavior as the route to transformation of the system. While valid concerns I argue that struggles over the right to know the provenance of our food can play a role in bridging the distance between producers and food eaters a distance which food movements recognize. The reality is that the “right to know” despite the echoes of neo-liberalism is a frame that resonates broadly with food eaters, especially in the global North where small producers are so few in number (Kneen, 2010). As my cases show corporate agribusinesses, and American and Canadian governments, at various points, have tried to stop mandatory labeling and questioned whether consumers need to know the provenance of their food. Far from a technical issue, food labeling is a “key site of the quality battleground in the contemporary food chain” (Morgan et al, 2006:3). Within this battleground spaces have emerged where new knowledge and awareness about the food system can be generated and smaller producers can engage with food eaters. In addition these struggles over labeling highlight for citizens the extent to which international rules and standards have limited national and local policy space to privilege local food and thus create more pressure to challenge these rules.

Global Governance of Food: The Codex and the WTO

The global governance of food involves many actors whose roles and influence have changed over time. The oldest of the current organizations is the Food and Agricultural Organization (FAO), established in 1945 as a specialized agency of the UN with a limited mandate which later expanded to encompass food security and development as a result of food crises in the 1970s and 2008 and World Food Summits. The evolution of the FAO’s and other organizations’ roles in global food governance is tied to the development of an increasingly globalized corporate food regime (Holt-Giménez and Shattuck) where International Financial Institutions including the World Bank and the IMF also played roles. In the context of debt relief and aid they were able to impose a series of structural adjustment policies lowering tariffs

and reducing the role of states in the south in agriculture and food production. This led to less domestically-oriented food production in favour of more export-oriented monoculture which accorded with the preferences of the largest food exporters desiring market access to the south (eg the US and the EU) and large agrifood corporations wanting to organize their production on a global scale. These goals required a revision of the trade rules reflected the outcome of the Uruguay Round of trade negotiations which brought agriculture along with services, investment and intellectual property into the purview of the WTO. The 1994 Agreement on Agriculture (AoA) had three “pillars” of state commitments: increased market access, elimination of export subsidies and ending domestic subsidies that were trade distorting. The 2001 WTO Doha ministerial incorporated these into the broader negotiations. But developing countries became more wary as their initial opening of markets combined with little movement of the large Northern countries on their subsidies led to dumping in their markets with low cost imports destroying local producers leading to growing dependence on food imports. While it is beyond the scope of this paper to discuss the WTO agriculture negotiations recent impasses have revolved around trade-offs between offering increased market access for non-agricultural products (NAMA) a US/EU demand, and more reductions in EU/US subsidies, a demand of developing countries led by India and Brazil. In addition other countries are seeking to maintain special safeguard mechanisms (SSM) that protect vulnerable domestic producers against surges of imports.

The devastation that this version of liberalization has imposed on many peasants in the global south was a key factor in the development of movements like VC and their demand for food sovereignty. However the Uruguay agreement also included commitments requiring states to strengthen protection of intellectual property, which has implications for access to seeds and to limit non-tariff barriers to trade (usually state regulations) or face stronger WTO dispute settlement processes which could lead to trade costly trade retaliation.

These changes occurred alongside the extraordinary growth in the market power of agrifood corporations such as ADM, Cargill and Bunge. A handful of giant firms dominating both processing and retailing in many markets along with seeds in the case of Monsanto. For example, in the case of beef in the United States four firms control 83.5 % of the supply (Holt-Giménez and Shattuck, 111). Globalized food production dominated by corporate conglomerates, the rapidly increasing level of food imports and differing national food regulations made harmonizing standards an important part of the WTO and other trade agreements. This is reflected in WTO agreements on Sanitary and Phytosanitary (SPS) measures and Technical Barriers to Trade (TBT).

SPS measures deal with food safety while TBT measures include any state regulations adopted to deal with consumer safety, health or environmental protection, including product labeling. In keeping with trade liberalization WTO members are obligated to notify other members of new or changed regulations, avoid discrimination against foreign products, employ the least trade restrictive regulations possible and, in the case of food safety, base or justify regulations only on scientific grounds and, where available, relevant international standards. The standards of an existing body, the Codex Alimentarius, are referenced in the SPS and TBT agreements and serve as a benchmark and justification to the WTO for national measures to protect food safety. As a result the Codex Commission became a site of struggle around states’

rights to regulate food, food eaters' rights to know the provenance of food, and the extent to which such regulations could constitute unjustifiable barriers to trade. National rules which deviate (exceed) Codex standards in response to consumer or other domestic demands could become the subject of costly trade disputes and targets for WTO-authorized trade retaliation. On the other hand, as Buckingham points out:

Once international standards emerge, their employ is very difficult to challenge under the WTO dispute resolution mechanism. With a Codex standard on labeling, clearly WTO panels would be obliged to accept the standard once enacted into any national legislation. Such legislation would be a legitimate exception to WTO rules set up to facilitate international trade (Buckingham, 210)

Codex standards can reduce or expand the policy space for national food regulation and impact the eaters' access to information on the provenance of their food. As a result Codex rule-making processes have become more politicized, reflected in its growing state membership (181) and the increased involvement of trade officials, along with non-state actors, both corporations and non-governmental organizations (NGOs) (Veggeland and Borgen). The latter have sought to play a greater role in the standard setting process both through direct involvement in the work of the Codex and its committees and influencing the negotiating positions of state actors.

A joint body of the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) the Codex was founded in 1962 with a mandate to develop and harmonize food standards both "protecting the health of consumers and ensuring fair practices in the food trade" (WHO, 2005, 14) Committees carry out much of the work on functional issues (such as general principles, labeling, limits on pesticide or drug residues) commodity areas (such as milk and milk products or meat) and geographic regions. National chairs of Codex committees host the committee's work, that is, fund the secretariat and the costs of annual committee meetings. Canada has chaired and hosted the food labeling committee's work for many years. Decisions of the Codex committees and the Commission are normally made by consensus.

The reality however is that the work of the Codex is dominated by key actors who have a material interest in food standards and the resources and technical expertise to dominate the process. They include what Oxfam calls the food superpowers (Oxfam, 2011) including the United State and the European Union. The US is part of the Quad group which also includes Canada, Australia and New Zealand, all major Northern food exporters. Their delegates maintain contact and meet prior to Codex meetings to informally coordinate their position on issues which, in some cases as I outline below, are in opposition to the EU position. Other state actors often ally in the case of disputes with one side or the other. Often the food producing states of South America side with the Quad and countries dependent on EU market access with the EU.

The development of new food standards follows an 8 step process involving a proposal to develop a standard. Once developed the draft standard is circulated to member governments for comment and may be revised and ultimately adopted. Given the increasing demand for, and

complexity of, food production and standards and the small size of the Codex secretariat the process can take years.

Like other organizations in the UN system, the Codex process allows for input from non-states actors, especially food producers and processors, and is more transparent than the WTO. This openness has provided a direct channel for corporations and others to try to influence standards. By 2007 the number of International Non-Governmental Organizations (INGOs –the Codex term) represented at Codex meetings numbered 157. Observer’s numbers have increased even more rapidly than state membership and the Codex Committee on Food Labeling (CCFL) has followed a similar pattern. Moreover national delegations often include industry representatives and other organizations. In the 2008 committee meetings on labeling, for example, Canada’s delegation included the umbrella organization BIOTECCanada “Canada’s voice for biotechnology” represented by a Monsanto executive, along with representatives of Kraft, Nestle and Mead Johnson.

Consumer and environmental NGOs, despite limited resources, have also sought to influence regulations on food labeling. Consumers International, a federation of 220 member organizations in 115 countries, along with Friends of the Earth International and Greenpeace demanded labeling of foods produced with GMOs. These groups have used their capacity to access committee and commission meetings to report on, and try to influence the proceedings, either themselves, or as part of national delegations. Their reports on Codex activities are shared with other trans-national coalitions making the work of the Codex more known, along with the efforts of corporate actors such as biotechnology companies, to shape its standards. In terms of how food standards are developed the scope of risk assessment within the Codex has been restricted to human health. Given its limited resources, the Codex relies heavily on “independent experts” for scientific advice on. Determining what is independent disinterested scientific knowledge is not always easy, as Buse and Lee point out. The International Life Sciences Institute with links to the FAO and active in the Codex CCFL claims to be “a global network of scientists devoted to enhancing public health decision-making” (www.isli.org) but was founded in 1978 by various food and beverage firms including Coca-Cola and had links to the tobacco industry (Sell, 2007). That certain knowledge and rationales for setting and regulating food standards are acceptable within the Codex while others are not, is a reflection of power. Although the Codex does allow for “other legitimate factors” to enter the process at the risk management stage, these have been the subject of disputes within the Codex committee on General Principles. Where scientific uncertainty exists or social factors intervene, such as consumer or environmental concerns, the resulting differing national regulations could form the basis of trade disputes, as in the case of GM foods or hormones in beef. While this difference is often summarized in terms of European precautionary based regulation and US science, or risk-based regulation, it also has imbedded within it material interests of actors. An example of this was the long struggle in the Codex Committee on Food Labeling (CCFL) over mandatory labeling of foods “obtained through genetic modification” to use the Codex term. The following provides a brief discussion of this issue which I have dealt with at length elsewhere (Smythe, 2009) to illustrate the array of interests involved in struggles over food labeling and the way in which global standards can expand or limit national food policy space.

GM Food Labeling

The negotiating positions of state actors reflected their interests in GM commodities such as soybeans, maize, canola and cotton. Major producers include the United States, Canada, Argentina, Brazil and China. As early adopters of biotechnology the US and Canada became heavily invested in GM crops and food with close links between the biotechnology industry, government departments and regulatory agencies (Smythe, 2009). The Grocery Manufacturers of America estimate that over 70% of food on the shelves of US super markets contain GMOs. In contrast Europe was slower because of internal divisions to approve and develop these crops.

With Canadian and American support for this industry and its influence came limited national regulation based on “substantial equivalence” which assumed that if the GM product, in its components, were the same as those products already deemed safe, the product would, in its entirety, also be considered safe. Despite limited regulation and the pervasive presence of GM crops concerns among critics have persisted about their safety, environmental impacts, especially crop contamination, accidental releases and the growing stranglehold that strong intellectual property rules and market concentration have afforded biotechnology corporations over access to seeds. (Kollman and Prakash and Smythe, 2009)

Surveys show consumers want to know which foods contain GMOs and prefer mandatory labeling. Biotechnology and food industries’ influence, however resulted in voluntary labeling, which in practice has meant no labeling of GM food products. In contrast the European Union due to division among its members and public distrust of regulators place a moratorium on applications for any new GM products until mandatory labeling and traceability rules were put in place. On July 2, 2003 the European Parliament approved two laws requiring the labeling of GM products. As a result most food producers and retailers avoided using GM crops anticipating strong consumer resistance. Given the negative impact of the EU’s GM moratorium on food exports the US (June 2003) and then Canada (August 2003) launched a trade dispute at the WTO. Differing regulatory regimes, the potential for limited market access for GM products and existing and potential trade disputes meant that all had strong incentives to advance their interests through the Codex Commission.

This has been reflected in a number of struggles over various food standards. For example, the EU sought to block Codex standards in the case of bovine growth hormones when the emerging standard did not support the EU regulations banning them. When that effort failed, the EU became the subject of a WTO challenge over its ban on imports of US and Canadian beef produced using hormones. On the other hand, when US attempts to gain acceptance of synthetic hormones to increase milk production via a Codex standard failed, the basis of another trade challenge against the EU disappeared. A central issue in these cases has been scientific justification and the role of risk assessment and management.

In 1991 the Codex Commission recognized a need to address biotechnology and GM foods and CFL work on labeling began with a US-prepared paper discussed in the October 1994 session. Debate centered around whether labeling should be required only when there were health and safety concerns and whether it should be required if the foods in question did not differ substantively from traditional equivalents.

Consumer groups—in this case, Consumers International (CI) favoured a system of

comprehensive labeling based on the consumers' "right to know." Others argued in favour of labeling that indicated how food was produced in order to permit consumers to make choices based on values other than those of health and safety. An April 1997 set of Draft Guidelines based on previous work which would have limited labeling to GM foods that were not considered equivalent to traditional foods failed due to a lack of consensus.

In 1999, an alternative to the first set of draft guidelines had emerged that would allow for states to require that all foods containing GMOs be labeled. Consumers International supported this approach. In opposition, the United States and Argentina argued that labeling was unnecessary, given the equivalence of GM foods to conventional foods and should only be required when there were health and safety concerns (eg allergens) or if the foods differed substantively from traditional equivalents. The US and supportive industry associations claimed that labeling based on the methods of production would imply that GM foods were unsafe and deter consumers. The European Union opposed the US position.

In the absence of consensus the committee opted to create a working group whose revised draft included three labeling options but no consensus emerged and yet again another working group was established.

At subsequent meetings of the CCFL GM food labeling was a major issue. As it lost ground the US along with Canada argued for the committee to stop work on GM labeling. The United States continued into 2010, despite a new administration seemingly sympathetic to those calling for labeling, to argue, over the opposition of 80 US consumer, environmental and food activists groups (Consumers Union, 2010) that GM labeling was misleading and inappropriate (even for organic food) because of substantial equivalence. The US continued demanding that all Codex work on the issue stop. By 2010 the majority of country delegates favoured allowing countries to opt for mandatory labeling if they chose. In 2011 despite fierce US opposition a consensus had emerged that a compilation of existing texts on GM labeling which is permissive of countries opting for mandatory labeling would go forward and was approved by the full Codex Commission in July 2011.

The debate over GM labeling centered on the consumers' "right to know" how food is produced in order to make choices based on values not limited to health and safety and whether the right to know was a legitimate basis on which to require labeling. The question of what is a legitimate goal of regulation is key.

WTO dispute panels, as the case of the EU moratorium on approvals of GM products indicates, view regulations not based on "risk assessments satisfying the definition of the SPS Agreement" as being without sufficient scientific evidence. (WTO Panel Report,6) Legitimate exceptions to trade obligations can only be based on public health or safety concerns based on risk assessments supported by "sufficient scientific evidence". The SPS agreement does, along with Article 20 of the GATT, allow for a state's right to regulate "to protect human, animal or plant life or health but such measures must be "based on scientific principles and sufficient scientific evidence" and on international standards, guidelines or recommendations, where they exist" referencing bodies such as the Codex. The SPS, however, does not reference any broader societal or environmental concerns, nor does it recognize any justification that is not rooted in a particular scientifically-based type of risk assessment.

The Technical Barriers to Trade Agreement also covers labeling and seeks to ensure national standards do not create unnecessary obstacles to international trade:

Recognizing that no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices.(WTO, TBT)

In contrast to the SPS the protection of the environment is clearly referenced in the TBT Agreement. Measures undertaken, however, “shall not be more trade-restrictive than necessary to fulfill a legitimate objective.” Legitimate objectives are, “*inter alia*: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment.” Regulations are to be based, where they exist, on international standards, be the least trade restrictive alternative, be notified to affected states in a timely and transparent way and follow MFN and non-discrimination provisions of the WTO. Where there are no international standards there are obligations to notify members and allow sufficient time for comment before enacting measures. Neither agreement however, provides much guidance on how labeling measures enacted to achieve other social objectives might be viewed. While national security is a legitimate reason to label a consumer’s right to know may not be, especially as it relates to the process of production. Given the level of concern about food and its provenance it is not surprising that there is pressure on states to label for reasons going beyond those identified in either the SPS or the TBT.

The EU’s labeling regulations of 2003 are a case in point. Responding to growing concerns in the late 1990s about the implications of GM crops and consumer demands for tighter regulation and more information about their food after the BSE beef crisis, EU regulations sought to “ensure that accurate information is available to consumers to enable them to exercise their freedom of choice in an effective manner” (European Parliament and Council 2003). They enshrine the consumers’ right to know and “ensure that consumers are fully and reliably informed about GMOs and the product, food and feed produced therefrom so as to allow them to make an informed choice of product.” Tracing GM products is seen to be integral to effective monitoring of the impacts of such products on both human health and the environment. These regulations however, have remained a major trade irritant with the United States, Canada and other countries exporting GM crops. Despite pressure from the biotechnology and agricultural sectors and some members of Congress to launch another complaint against EU regulations uncertainty about its likely success based on the TBT obligations and the need for European cooperation to rescue the sinking Doha negotiations led to US restraint (Schramm, 96).

Country of Origin Labeling

Many foods especially in Europe were and are intimately connected and identified by place often a region, a locale, a *terroir*. Place is often closely identified with distinctive food products and their desirable qualities. Labeling the origin may be seen by food retailers, or even governments, as a marketing tool. Some food producers and distributors may want to label the place of origin to extract a price premium for their product from consumers. In the case of many food products that are interchangeable, however, sourcing is done globally based on price, and other qualities such as durability in the case of products shipped over long distances.

In those cases producers and distributors may choose not to indicate the origin. The current globalized and integrated food production system makes it difficult for consumers who are extremely far from sites of production and processing to identify or determine the place or method of production of food especially if it is highly processed. Consumers might desire such information if they wish to purchase food produced closer to home or if they harbor concerns about how food is produced in other countries or regions. Yet they are totally reliant on the information contained in the food label to know what they are eating and from where it comes. If requirements to label for geographic origin, such as country, are voluntary labeling of origin will be used by food retailers, or even governments, at their discretion as a marketing tool. They will label for origin only when it will advantage their product against competitors in the marketplace. Thus control over what is on the label, if voluntary, rests with corporate entities and is market based. Having the right to know where food comes from is obviously important for those eaters who wish to privilege the local, however it may be defined, in their food purchases. It may also provide a short hand means by which those who seek to advance certain values or lack confidence in national regulatory systems (for example to protect animal welfare or require labeling for GMOs) can avoid such products.

The WTO does permit the labeling of a product's origin under Article 9 referring to marks of origin. But labeling requirements are subject to WTO principles including nondiscrimination which requires that like products, be they domestic or foreign, be treated equally. As outlined above the SPS and TBT agreements accept only certain justifications for labeling. In the case of the Codex questions of origin and the requirement to label are covered in the General Guidelines on Labeling of Prepackaged Foods, section 4.5 which states:

4.5.1. The country of origin shall be declared if its omission would mislead or deceive the consumer.

4.5.2 When food undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for its purposes of labeling. (Codex 2008)

Beyond that the Codex has little to say. That might have changed had an attempt by the United Kingdom to have the CCFL engage in new work on COOL labeling been successful. Arising out of its experience with of Bovine Spongiform Encephalopathy (BSE or mad cow disease) and its creation of a separate food standards agency the UK in 2000 proposed that the CFL consider revising the Guideline given that consumers were demanding to know the origins of food. The CFL asked the UK, along with Malaysia and Switzerland to prepare a paper setting out issues and identifying areas where existing provisions were lacking, for example, in dealing with the sources of ingredients in processed food. After some discussion it was agreed to seek the approval of the Codex Commission to begin such work. Approval, however, was not forthcoming, rather the Commission encouraged the Committee to engage in further discussions which at the 2002 Halifax meeting ended in disagreement. Despite the looming passage of the 2002 US Farm Bill which had mandatory COOL requirements for meat the US argued that the provisions of the existing Codex Guidelines were sufficient. The US further:

expressed its concerns that modifications to the Codex *General Standard* would not provide additional benefits to consumers, and that there was no evidence that the revised

text was required based on food safety....The Delegation further pointed out that country origin labeling might infringe on the provisions of the TBT Agreement due to its implications on trade. (Codex Report, 2002,13)

In contrast the UK delegation argued that many countries had already begun introducing either voluntary or mandatory labeling and that consumers' demands for more information on country of origin especially for meat and meat products had been increasing. (Codex, 2002) Labeling would "provide consumers with the information needed to make a choice of products". Malaysia, Korea, Switzerland, India and Japan and Consumers International also supported work claiming many consumers were confused about the origins of their food.

Most large food exporting countries, especially in North and South America, along with New Zealand concurred with the US view that "expanded mandatory country of labeling requirements could create an unnecessary obstacle to trade with no legitimate or internationally recognized justification. (Codex, 2003, 6) The International Council of Grocery Manufacturers Associations (ICGMA) the International Frozen Food Association (IFFA) and the European association representing the food and drink industry also supported the US . Favouring continuing work were a number of European country members, the European Commission, Norway and Switzerland and the main consumer and public health NGOs (CI, IACFO and International Baby Food Action Network (IBFAN). Canada's position was one of satisfaction with the existing guidelines but willingness to modify wording so as to address concerns about misleading consumers. However, Canada rejected a proposed amendment which would have identified the country of origin for meat as the place of birth, rearing and slaughter arguing to maintain the existing definition based on the location where the last significant production operation occurred, thus permitting meat from Canadian animals shipped to the US for slaughter to be labeled as US meat. The CCFL reported their division to the Codex Commission which encouraged a further attempt in 2004 to find a consensus which failed and a decision was made to cease work on the issue. As a result the existing Codex standard remains a limited one where country of origin labeling requirements are only justified if omitting them would mislead the consumer. Despite US delegates' opposition to COOL the US was in fact in the midst of a struggle over labeling which broadened over time as food movements emerged.

Country of Origin Labeling Cases: Trade Protectionism or the Right to Know?

The absence of a standard mandating COOL at the Codex and the rules of the TBT agreement did not stop a number of countries from labeling. In fact this group included major food exporters that opposed mandatory COOL, but have faced pressure to label. The US is a major case in point. US regulations on the origin of goods go back to the Tariff Act of 1930, but the current issue dates from the Consumer Right to Know Act of 2001 introduced by South Dakota Democratic Senator Tim Johnson requiring beef, lamb, pork, fresh fruit and vegetables be labeled at final point of sale according to their country of origin. Similar bills were introduced by North Dakota and California Democrats in the House of Representatives. Bills passed both the House and Senate as part of the farm bill and the final compromise version contained a list of commodities including meat. Favoring COOL were not just smaller-scale livestock producers, but also small farmers, environmental and consumer organizations. The latter pointed

to several public opinion surveys which showed a desire on the part of the public for mandatory country of origin labels.

Food processors, retailers, meat packers and large agri-business, along with the Bush Administration and the US Department of Agriculture (USDA), opposed these labeling provisions and because of a two year phase- in in implementation were able to mobilize. Similar to the GM food labeling case US opponents of mandatory labeling had the advantage of close links to the Administration through the revolving doors of corporations and senior administrators and deep pockets for lobbying and campaign contributions. (Smith 2003, Food and Water Watch 2010). Twenty-one corporations and trade associations, such as the Grocery Manufacturers of America, spent over 29\$ million from 2000-2004 on lobbying Congress on a range of issues and 160 lobbyists worked to oppose COOL (Public Citizen, 2005, 2). In the same period, these organizations donated 12.6\$ million to Congressional campaigns. USDA and the food industry also exaggerated the costs for implementing COOL which they claimed would be passed on to consumers with little benefit, facts challenged by the General Accounting Office (GAO) in a 2003 study. Opponents effectively used the delay in implementation to organize sympathetic members of Congress to pass an appropriations bill for the USDA which further delayed implementation until 2007. This allowed opponents from outside the US to provide comments in opposition, including the Canadian government, Canadian livestock producers and meat processors.

The United States notified the WTO's TBT Committee of the measures on June 26, 2007 just as the clock on delaying COOL ran out. It justified them in terms of their objective "Protection of consumers and human health" (WTO, 2007) though the US later retreated on the health grounds (Johnecheck, 2010) and called for comment on the measures to be sent to the USDA's Agricultural Marketing Services. The Canadian government views closely matched those of larger Canadian livestock producers and US COOL opponents claiming regulations would cost 3.9\$ billion US (the USDA figure) and provide no benefit to consumers. It also claimed that the US and Canadian governments had been working hard for 18 years for trade integration to "make national origin irrelevant in business and consumer decisions"(Government of Canada, 6) and noted that the definition of processing in the Act did not conform with the Codex standard. With over 10 per cent of Canadian agri-food exports being meat and a tightly integrated continental system of production the industry perspective (represented by organizations of beef and pork livestock producers, corporate meat packing and processing firms and the Canadian Federation of Agriculture) and that of the Canadian government were shaped by the extensive movement of live animals, carcasses and meat products across the border. Canadian producers feared that meat which needed to be labeled as product of Canada or Canada and the United States would need to be segregated and would suffer at the hands of US meat packers and consumers in comparison to US products. In contrast consumer groups and smaller livestock producers in the US argued that a voluntary system of labeling was misleading. US consumers did not realize that USDA inspected meat originated in Canada or Mexico and had only been slaughtered in the US. Others in Canada such as the National Farmers Union did not oppose COOL seeing the problem as one of corporate concentration and the excessive dependence of Canadian livestock producer on the big meat processing companies.

In June 2008 the Food Conservation and Energy Act finally passed Congress

after a long battle that included a presidential veto and override. The 673 page bill included measures to implement COOL effective September 30, 2008. Canada raised concerns to the USDA and indicated it would launch formal consultations with the US under the provisions of the WTO. Canada objected to the three labeling options, the definition of processing and claimed discriminatory treatment under the WTO arguing that COOL represented a reversal of economic integration, would be costly and confuse consumers. US COOL opponents mounted a concerted lobbying effort to influence the implementation of regulations allowing vague labels which indicated meat products were derived from a number of national sources. Optimistic, Canada suspended its WTO challenge in January 2009. In the interim a President supportive of COOL and a new Secretary of Agriculture took over the administration in January 2009. The USDA final rule on COOL was preceded by a letter on February 20, 2009 from Agriculture Secretary Vilsack who “suggested” to the industry that they voluntarily go beyond the rules and indicate specifically to consumers what production steps occurred in which country, signaling a move in the absence of compliance to tighter mandatory rules. Thus a label should note that the animal was born in Canada, raised and slaughtered in the US (Vilsack). Canadian producers feared that if compliance costs increased and led to a need to segregate Canadian cattle and meat there would be a reluctance on the part of US processors to purchase Canadian livestock, or lead to discounted prices for Canadian producers in the US market. At that point Canada re-started the WTO process.

What had changed in the period from the US Administration’s opposition to COOL at the Codex in 2003 and the Farm Bill in 2008? A simple answer might be a new Democratic Administration, however, there is little evidence that the previous Democratic Administrations had been supportive of COOL labeling. Rather the answer might be found in changing attitudes about the food system. As Michael Pollan has argued:

The American people are paying more attention to food today than they have in decades, worrying not only about its price but about its safety, its provenance and its healthfulness. There is a gathering sense among the public that the industrial-food system is broken. Markets for alternative kinds of food — organic, local, pasture-based, humane — are thriving as never before. All this suggests that a political constituency for change is building (Pollan, 2008,6)

Small scale livestock producers were joined in the battle for COOL by over 100 other local food, environmental and consumer organizations. In fact the COOL case reflects a broader set of trends around food that pose challenges for the globalized corporate food system. However the rules outlined in the TBT agreement of the WTO do not necessarily recognize the justifications offered for COOL labeling of meat as the trade dispute between the US and Canada (later joined by Mexico) indicates.

COOL and the WTO

After consultations failed the US dispute with Canada and Mexico over COOL moved to the WTO panel stage in the spring of 2010. Canada objected to the US measures based on commitments under sections 2.1 and 2.2 of the TBT agreement (Canada, 2010). The 2.1 WTO commitment to non-discrimination was violated to the extent that the labeling directive from

Vilsack outlined above singled out Canadian beef and pork. Canada argued because of the integrated history of the industry and the need to segregate product regulations would result in fewer commercial opportunities in the US market and lower prices, thus leading to disproportionate harm to Canadian products in the US market. Canada argued that the main intent of the US measures was “was to protect U.S. ranchers from foreign competition by recapturing market share for U.S. cattle” (Canada, 1) and that the 2.2 commitment to use the least trade restrictive measure had been violated since the measures was clearly limiting access of Canadian beef and pork to the US market and voluntary measures could have achieved the stated US goal regarding consumers.

The first US submission to the panel shows how the US sought to justify these measures. While the initial US notification to the WTO spoke of measures “to protect consumers and human health” the submission in August 2010 was much more circumspect in its justification. The United States was careful to argue that these measures complied with WTO obligations because they do not discriminate against foreign products (all meats must be labeled) and are necessary in effect to avoid misleading consumers, part of the Codex criteria and the TBT justification. The US submission included survey data showing the level of confusion of US consumers about the origins of meat under voluntary systems. As the US submission noted in response to Canadian and Mexican demands that the US retain only voluntary labeling such limited regulation had resulted in an absence of clear labeling. According to the US submission “the primary problem with voluntary labeling is that many businesses will not voluntarily make the choice to label their products with origin information when given the option.” (US 2010) A comment which could well be used to describe voluntary US rules on labeling GM food.

In late May 2011 the confidential WTO panel report to the parties indicated that it found that U.S. COOL requirements were discriminatory and did not fulfill the objective of helping inform consumers of the origin of meat and violated the WTO agreement on Technical Barriers to Trade. The final report in November upheld this view and while it did not dismiss the right to label origin of food or the justification of providing more information to consumers, it found the measures too trade restrictive. As the International Centre for Trade and Sustainable Development (ICTSD 2011) noted this was the third US regulatory measure justified as strengthening consumer protection and access to information to be found as too trade restricting by the WTO in 2011. The US response noted that “the panel affirmed the right of the United States to require country of origin labeling for meat products,” but disagreed with the specifics of how the United States designed those requirements (USTR 2011). Attempts over the winter to find a way to comply with the WTO and satisfy groups demanding clear labeling failed and the US announced in March 2012 its decision to appeal the WTO ruling. While disappointing and angering US COOL supporters (von Reppert-Bismark) the ruling has opened a debate at the level of trade law about the legitimacy of the consumers’ right to know as a basis on which to regulate (Ross 2011) and brought home once again the extent to which trade rules have limited regulatory policy space and citizens’ right to know how and where their food is produced.

The ruling has not however, deterred those pushing for country of origin labeling elsewhere. Even as the preliminary finding of the WTO panel was being released the European Union was moving in the direction of expanding country of origin labeling for meat and possibly

a broad range of other foods. The following outlines the emergence of issues of food eaters rights to know their provenance of food within the European Union.

The European Union and Food Labeling

In the European Union Country of Origin Labeling has become an issue within a broader struggle over labeling and the provision of information about what people are eating. Issues and concerns range from promoting healthy eating, supporting smaller, local producers, animal welfare and environmental sustainability along with food safety, quality and cost. The struggle involves European Commission, the Council and the Parliament as well as national governments along with non-state actors including producers (large and small), environmentalists, consumers groups, public health and nutrition advocates and many corporate interests including large food processors, distributors and retailers.

The EU has been active on issues of food regulation including for over two decades. National divisions over GM crops approvals in the 1990s led to a centralization of regulation in the Commission and recourse to labeling law as a way of responding to political pressures without closing the door on biotechnology and GM crops. (Marsden et al 2009). Recent concerns with rising levels of obesity and the attendant health problems opened a debate around how to use food labeling to promote healthy diets. This was reflected in the development of a Commission White Paper on Obesity in May 2007 (European Commission) which concluded that there was a need for policy coherence at the regional level and regulations that would ensure consumers were better informed about the nutritional content of the food they were eating. Voluntary corporate food sector action was seen to be insufficient and therefore there was a need for mandatory labeling requirements. The Commission focussed on what should be labeled in terms of the nutritional content of food and how it should be labeled, that is the size and clarity of labels, with a view to finding the best method by which consumers could easily and quickly access information facilitating healthy food choices. However the process of revising European labeling regulations which the White Paper initiated resulted in a struggle over food labeling that went well beyond the Commission's original intention.

In June 2008 the Commission tabled proposals to consolidate and revise existing labeling regulations to make labels clearer and more relevant to consumers including placing them on the front of packages. The proposals were considered in depth by the European Parliament's Committee on the Environment, Public Health and Food Safety (ENVI). What emerged was a struggle over food labeling involving the actors outlined above, Members of the European Parliament (MEPs) arrayed along ideological (Socialist, Green and Conservative) and national lines and fierce lobbying at the national and regional level of the Commission, the MEPs and the national representatives of the Council. Among those able to bring significant resources to the table, as in the United States case, were the corporate associations of food processors such as the Confederation of Food and Drink Industries (CIAA) and individual corporations such as Unilever. In addition the European Consumers Organization (BEUC) and national consumer organizations such as the UK's Which were involved, as were a wide array of producer federations and health advocates such as the European Health Network. The result was a broadening of the scope of the proposed revisions to regulations which ultimately included COOL for certain products.

In November 2008 after much debate the parliamentary committee issued its first report drafted by German MEP Renate Sommer as *rapporteur* (a centre right Peoples Party member) which proposed some limited revisions of the Commission proposals. The draft however, after much conflict among committee members and a huge number of amendments, was withdrawn and the committee began once again to consider the issues at the beginning of the next legislative term in 2009. A second draft of the committee's report emerged in November 2009. Among the key issues and debates about labeling were questions about what should be labeled (in terms of content and nutrients—singling out fat, sugar and salt), how it should be labeled—simple traffic light warnings devised in the UK (red is bad) the consumer groups' preference, or for a guideline daily amount—the food processing industry preference, and where the label should appear. The Commission proposed front of package labeling which many groups supported but the food processing industry opposed. In terms of COOL the Commission had proposed no changes at all to existing regulations which cover only beef, honey, olive oil, fresh fruit and vegetables leaving most labeling, in terms of origin as voluntary, unless the omission of such labeling would mislead consumers as to the origin of the product, echoing the Codex standard. What emerged however in the second draft of the parliamentary committee's report was a proposal to extend the mandatory requirement for COOL labeling to include “all fresh meat, prepared meals with meat or fish as the main ingredient and dairy products” (Rankin). The addition of COOL to other products and changes to the Commission's original proposal by Parliament meant an extended and more complex process of adoption of new regulations which included the Council.

On March 16, 2010 the ENVI committee voted to adopt its draft report which was followed on June 16 by a first reading vote approval in the European Parliament. EU Agriculture ministers also weighed in on the issues in February 2011 and supported mandatory COOL for pork, lamb and poultry but called for the extension to dairy products and meat and milk used as ingredients in prepared food to only be adopted after a feasibility study conducted by the European Commission. A second reading report was adopted by the ENVI on April 19 2011 with a final vote of Parliament on July 5. In the meantime “trilogue” negotiations between representatives of Parliament, the Commission and the EU member states had begun in May. In the end a package was approved that included the extension of COOL to a number of meat products and further study by the Commission of the impact of extending beyond these products to dairy and processed foods. Front of pack labeling, the central Commission goal, however, was a different story.

This prolonged rule-making process allowed for continued lobbying and other efforts to shape labeling regulation. Thus the food processing industry opposed the extension of COOL labeling as impractical especially for processed or prepared foods where sourcing varied over a short time period, as costly, especially for small and medium sized enterprises, and of no real benefit to consumers. A number of their views were echoed by Sommer, the committee's *rapporteur* who feared that the COOL regulations would be the most controversial and difficult to resolve in negotiations with the Council. In contrast Green members of the committee and the consumers associations and smaller producers at the national level generally welcomed the COOL provisions while bemoaning the success of the food processors in defeating stronger regulations on the placement and content of label requirements in terms of nutrition. Whether or

not these COOL regulations once adopted, will become the subject of a trade challenge, as was the case in the US, may ultimately be affected by the final resolution of the US WTO case.

Food Exporters and Country of Origin Labeling: Australia and New Zealand

That country of origin food labeling emerged as an issue in Australia and New Zealand given trends described above may not seem surprising. However Australia, as a major food exporter and head of the Cairns WTO group has aggressively championed trade liberalization. Many of the positions Australia and New Zealand have taken at the Codex also reflected a perspective that seeks trade liberalization and harmonization of standards over other issues on questions of labeling. So did the creation of a joint food standards body for Australia and New Zealand FSANZ whose goals are set out in the *Food Standards Australia New Zealand Act 1991*.

The NFA had a reforming agenda and sought to consolidate the responsibility for domestic food standards development by reducing the number of decision-making layers, creating uniformity between jurisdictions, establishing objectives for food standards, promoting coordination between domestic and international food standards, ensuring all its business was open and accountable, and retaining the involvement of States and Territories in standards development and administration.

When FSANZ adopted a new standard requiring COOL labeling for certain products New Zealand surprisingly exempted itself from the standard and refused to move to mandatory labeling. In neither case however did the issue of COOL labeling go away. New Zealand once again this year has found itself under pressure to move to COOL on certain products. A move it has refused to make despite pressures to harmonize. Food labeling has been an issue in both countries.

Australia and COOL

Mounting political pressure and public concerns about increased food imports (potatoes from New Zealand destined for McDonalds and rising levels of pork imports) led to a review of labeling undertaken by FSANZ at the request of the Australia and New Zealand Food Regulation Ministerial Council (the Ministerial Council) which oversees its work. The result was a decision in the fall of 2005 to move to COOL for certain products. These changes created a requirement that all packaged food sold in Australia contain a statement that either identifies where the food was made or produced or identifies the country where the food was made, manufactured or packaged for retail sale and whether the food is constituted from imported ingredients or local and imported ingredients as the case may be. In 2006, COOL provisions were extended to certain fresh produce (seafood, pork, fruit and vegetables). There were no COOL requirements imposed for chicken or beef. The result was a proliferation of labels as the consumer group Choice pointed out. Under the regulations food could be labeled:

“Product of Australia” means all the significant ingredients must originate here, and almost all the manufacturing or processing must be done in Australia. “Made in Australia”, “Australian Made” and “Manufactured in Australia” claims mean the

product must be substantially “transformed” in Australia – it must have undergone a fundamental change in form, appearance or nature, such that the product existing after the change is new and different from the product beforehand – with at least 50% of production costs incurred here. All these claims come under the Trade Practices Act. Where you see these claims on products, the manufacturer must meet the COO test requirements of the legislation (Fong).

The result was that many products were labeled “Made in Australia” and a growing dissatisfaction as a result of a number of labeling food scandals regarding “Made in Australia”. These were similar to the Chinese apple juice carton labeled “Product of Canada “ revealed by Canadian Broadcasting Corporation in a 2007 television program(www.cbc.ca/marketplace/product_of_canada_eh/video.htm)

As a result of these issues and other concerns about the regulatory burden on the food industry an independent review of labeling was initiated in 2009 by the Council of Ministers which included an attempt to address what were called “ Consumer Value Issues” and set out criteria for determining when state regulation is necessary. Such values were placed fourth in a tier of criteria below safety, preventative health and new technologies. The labeling review headed by a former Australian Health Minister Neal Blewett held public consultations through 2009-10 receiving over 6000 submissions. The review process had clearly stimulated much input. Many submissions dealt with issues around new technologies, and Consumer Values. Many submissions raised concerns with limits and loopholes of the existing mandatory GM food labeling regulation of 2001 which had failed to include animal feed and which both Greenpeace and the Australian consumer organization CHOICE felt had failed to fully inform consumers about the GM content of their food. A number of submissions also addressed the issues of COOL labeling and the confusion around labeling in terms of the origin of products. In its final 2011 report the review noted in the case of COOL “there are a few inexplicable primary product exceptions” such as lamb, beef and chicken and argued that such loopholes should be closed and that COOL be “ extended to cover all primary products for retail sale.” The report also noted “extraordinary public confusion over the ‘Made in Australia’ claim” due in large part to the fact that such a claim can be made if 50% of the costs of production have occurred in Australia and the food has been ‘substantially transformed there even though most of the product’s ingredients were imported, a standard in line with Codex labeling principles. Panel recommendations included:

Recommendation 40: That Australia’s existing mandatory country-of-origin labelling requirements for food be maintained and extended to cover all primary food products for retail sale.

Recommendation 42: That for foods bearing some form of Australian claim, a consumer-friendly, food-specific country-of-origin labelling framework, based primarily on the ingoing weight of the ingredients and components (excluding water), be developed.

The ultimate response of the governments of Australia and New Zealand to the recommendations resulted, in the case of Australia, in an extension of the COOL labels to other unpackaged meats including beef and lamb in Australia but not in New Zealand as I discuss below. The decision

reflects a response to rising consumer desires to know the origin of meat, especially after changes to FSANZ regulations in 2010 in relation to BSE allowed previously ineligible countries to export beef products, to Australia “subject to these countries meeting specific animal health and food safety requirements” (FSANZ, 2011)

The meat industry organization and the largest Australian farmers organization opposed COOL along with on the processing industry, however, the retail sector (highly concentrated in both Australia and New Zealand) was less so. As an FSANZ assessment of the regulatory change noted Australia has an extremely low level of meat imports and many in the food industry had been labeling under the voluntary schemes so the cost to industry would not be significant. Even as the Australian government was feeling pressure to move further on COOL as a major food exporter it also felt the need to ensure continued market access for its products elsewhere and the need to reinforce WTO rules that supported that goal.

The Canadian and Mexican dispute with the US over COOL in 2009 presented Australia with a challenge. On the one hand as a WTO member Australia has strongly supported agricultural trade liberalization and the dispute resolution process. Australia is also a major meat exporter, including to the United States. However, Australia also had COOL labeling for pork and was in the process of reviewing extending it to other meat products. Thus Australia felt the need to intervene as a third party in the WTO but did so in a way which supported some of the claims of Canada and Mexico regarding the impact of the US law while refraining from condemning the laws intent as wholly protectionist or its goal as completely illegitimate. Australia’s submission directly identifies its material interest in the dispute:

As the world’s second largest exporter of beef and second largest exporter of beef to the United States, these issues are of immediate relevance to Australia’s access to the US beef market (Australia, 3)

Much of this exported beef in the form of trimmings ends up in ground beef in the US. One of the key issues on which the submission focuses. It notes Australia’s own mandatory country of origin labeling requirements but also the challenge as a food exporter to countries with country of origin labeling requirements to ensure that “such requirements do not hinder international trade.”

Australia was concerned that the de facto impact of the US requirements hurt its exports. Quoting from the US Department of Agriculture on the production of ground beef:

Often those imported beef trimmings are not purchased with any particular regard to the foreign country, but the cost of the trimmings due to current exchange rates or availability due to production output capacity of that foreign market at any particular time. Because of that, over a period of time, imported beef trimmings being utilized in the manufacture of ground beef can and does change between various foreign countries. (Australia, 15)

Australia noted the reality that large-scale industrial production of ground beef and sourcing based largely on exchange rates and availability means that it is difficult for processors to accurately label at any point in time from where beef is sourced, thus making a label declaring

origin to either be inaccurate or at best incomplete. Australia claimed that while US domestic beef would not be impacted by the labeling foreign products would create a problem that might lead them to suffer in the US marketplace as their product became less valued paralleling the arguments made by Canada and Mexico. Thus the de facto impact of the labeling measure discriminated against imports. Implicit however in this argument is a notion that the fair treatment of imports trumps accurate information about where the origins of the beef. Australia's did accept the US argument that:

enabling consumers to identify the source of a product would be a legitimate objective. Australia accepts the statement by the United States that this objective is "closely related"⁷¹ to preventing deceptive practices and assists with market transparency and consumer protection. Australia observes that consumer confidence in products is of increasing importance to most consumers. (19)

Despite accepting the legitimacy of the US objective Australia argued that the measure does not achieve that objective well or in the least trade restrictive way possible and alternatives exist that could provide more flexibility in labeling to deal with the ground beef situation. Ironically it is these various elements of flexibility in Australia's implementation of its own COOL standard that have led, according to consumer and other organizations and the labeling review panel, to great confusion among Australians about what "Made in Australia means" and to demand a closing of many labeling loopholes in the name of accurate and clear labels.

New Zealand: COOL is not cool

New Zealand like Australia has strong trade interests in food exports. The food industry and producers exports valued NZ\$19.8 billion in 2007–08 (versus Australia's A\$23.3 billion) making the economy and balance of trade even more dependent on food exports than is Australia. The government's position on COOL labeling reflects these trade interests and the strong opposition of key actors, such as Meat and Wool New Zealand and the New Zealand Food and Grocery Council, to COOL labeling. At the same time the whole recent history of food standards in the region has been one of seeking harmonization. Variation from a joint food standard is permitted however, under the agreement based of "on the grounds of exceptional health and safety, third country trade, environmental or cultural factors." It was on the basis of third country trade that New Zealand rejected the COOL standard of 2006.

The government argued that voluntary labeling was preferable because origin was "Not an issue of safety, rather seen as a marketing tool and should be driven by consumer demand and supplier response" (New Zealand, 2011). The government also accepted the food processing and retailing view that costs would be high and passed on and thus outweigh the benefits to consumers. Finally the government argued that trade was very important to the New Zealand economy and as a major food exporter and a strong proponent of liberalized international trade COOL was not in keeping with New Zealand's trade interests or consistent with its positions in organizations like the WTO. The Government also pointed to the confusion that Made in Australia had created

Australia requires country of origin labelling on all packaged foods, fish, pork and fresh whole or cut fruit and vegetables. They also have guidelines for the use of the terms “Product of Australia” and “Made in Australia”. The resulting commercial risks (i.e. change of label or danger of non-compliance when source of supply is changed) of inaccurate labelling has seen many manufacturers use the ‘made in Australia from imported and local ingredients’ label. This practice is not meeting consumer expectations for country of origin labelling in Australia. (New Zealand)

However the decision to reject mandatory COOL did not mean the end of the issue. Not long after the decision not to accept or implement the 2005 standard a New Zealand movement demanding COOL did emerge supported by a range of organizations including Horticulture New Zealand which represents 7000 commercial fruit and vegetable growers and political parties such as the Greens and NZ First. In 2008 Sue Kedgley a Green member of Parliament was able to gather 38,000 signatures on a petition presented to the Select Committee on Health. The committee rejected the demand for COOL largely on the basis that it would be costly, possibly impact trade and more curiously claimed that it might limit consumer choice. However the issue did not end there. A coalition of 30 groups formed under the COOL NZ network which included trade unions, pork producers, fruit growers, organic farmers and other food activists.

The initiation of the labelling review in 2009 has once more revived the issue. With the recommendations on COOL in the 2011 report the government was in the position of having to respond, even in the midst of an election campaign, to demands for mandatory COOL—a campaign in which the Greens highlighted the issue and made their support for any government conditional on COOL. In the response to the labelling review the New Zealand government decided to continue to opt out of the standard. The issue is unlikely to end there, however, even though the government did not need to curry the Greens support on the issue, the gap on COOL between Australia and New Zealand is growing which aside from frustrating and mobilizing NZ proponents of COOL may increase the pressure from Australian producers who see the lack of COOL labelling in NZ as providing a backdoor for unlabelled foreign product into the Australian market.

At the same time New Zealand’s government has remained staunchly anti-COOL at home it has continued to counter moves to COOL elsewhere as reflected in its interventions in WTO disputes.

New Zealand and the WTO COOL Dispute

NZ like Australia felt the need in Aug 2010 to intervene as a third party in the Canada-Mexico dispute with the US over COOL. In its submission it noted the US justification of the measure as necessary to provide consumer information but went on to question that justification, unlike Australia, noting that it is not mentioned in the TBT list of acceptable justifications and while careful to allow that that list might not be exhaustive claimed that “where a purported objective is not listed in Article 2.2, a WTO Member must provide particularly clear and compelling evidence of its legitimacy”. The New Zealand submission then went on to try to show that consumer confusion about the origin of their meat based on pre-existing voluntary labeling and the need to address such confusion does not equate with

preventing deceptive practices (a justification acceptable under the TBT) and thus concluding in the case of the US:

New Zealand submits that a similar “self-justifying” regulatory trade barrier could be seen to exist here: a Member is seeking to rely on the confusion created by its own regulation to justify the need for further regulations that have the potential to restrict trade.

The submission went on to extol the virtues of voluntary labeling as an alternative.

Voluntary COOL is an arrangement between industry and consumers and operates without government intervention or conditions (other than the government requirement for truth in labelling). It is responsive to market demand as opposed to creating or distorting the market. Voluntary COOL therefore allows the design and operation of the labelling system to be developed in response to supply and demand needs. As such, voluntary COOL is particularly relevant where there is no compelling evidence of market failure.

The latter comment on market failure is one the review panel on labeling would dispute. Despite these NZ government efforts at countering the movement to COOL, given the labeling review and pressures to go further on COOL in Australia the issue will likely remain on New Zealand’s political agenda.

Conclusion

The cases outlined above show that even in the face of a global corporate-dominated food system there is a desire to know more, as eaters, about where our food comes from reflecting an unease with the existing food system. These demands are reflected in the development of local and transnational movements challenging global agribusiness such as VC, slow food, local food and groups concerned about food security and climate change. Such movements have increasingly converged around demands to know the provenance of food. The struggles over food labeling are one aspect of the way in which these demands have manifested themselves at the national and regional level. While trade rules and standards have sought to harmonize regulations, limit policy space and facilitate trade food movements which, as Pollen notes look like a “big, lumpy tent”, have challenged the corporate food regime and its attendant form of global governance with what is ultimately a movement to re-localize the global food system under the broader frame of food sovereignty.

The formation of a US Food Sovereignty Alliance (Aziz), the Australian Food Sovereignty Alliance are manifestations of this trend as was the recent effort in Canada to develop the Peoples Food Policy which has opened a debate that challenges the export-oriented agribusiness model embraced by Canadian governments for some time. The Peoples Food Policy calls upon states to ensure “clear and accurate food labeling based on consumer’ and farmers’ rights to access information about food content and origins’ (Peoples Food Sovereignty, 2007) Similar alliances have emerged as well in Europe. Another factor which has shaped policy on food regulation has been a trend in many countries to greater demands and

expectations for transparency and the right of citizens, especially consumers, to know and be able to exercise informed choice. While labeling and ethical consuming are often seen as part of a reformist project of individual consumption which can reinforce the existing food system and is open to cooptation by corporations (Marsden et al, Friedman and McNair) the potential is still there for authentic alternative and sustainable food systems to develop out of a debate over trade rules, the right of states to regulate food and the engagement of food eaters in a dialogue with food producers. The campaigns around labeling in the case of GM foods and Country of Origin have been broad enough to bring consumer, environmental, small and organic farmers and local food activists into broader networks. As these cases indicate, even in countries which are major food exporters and governments are closely allied with agri-business interests, demands for more information about the origins of food has led, in the case of economically integrated regions, to policy divergence reflected in the North American conflict over COOL, divisions within the EU and the split between Australia and New Zealand which as the labeling review noted

represents the most significant exception to the uniformity of the trans-Tasman food labelling regime. This divergence of approach over CoOL between the trans-Tasman partners is unfortunate given the pursuit by both governments of a closer integration of the two economies, with the shared goal being a single economic market and in particular a seamless food regulatory system.

Despite pressures to harmonize at the global level these cases highlight a divergence of policies reflecting the varied outcomes of struggles over food regulations and standards which reflect differing levels of instrumental and discursive power across actors and a growing public awareness about food issues. As the Australian Food and Grocery Council noted: “The food label is the arena in which many of the most intense disputes over food take place”, The labeling Review panel argues that “the label provides the most public face for controversies over food. This pivotal role is reflected in the number of Bills on food labeling recently before the Australian Parliament.”

Such national and regional struggles over labeling as these cases suggest has led to divergence and thus more trade disputes. These disputes are challenging what had been the accepted justifications for regulation largely limited, in the case of food, to safety and avoiding deception. They are generating a larger debate about food labeling which goes beyond dismissive claims that all such labeling regulations about provenance are mere trade protectionism. The struggle over food labeling could help to strengthen movements to challenge the current system of global food governance. As Rosset says food is indeed “different” and not just another traded commodity. Eating food is the most intimate act of consumption, necessary to our survival and well-being tied up in culture and community. People care about what they eat, where it comes from and how it is produced and are demanding a right to know.

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