Vol. 5 No. 3, pp. 76–99 September 2018

Canadian Food Studies La Revue canadienne des études sur l'alimentation

Original Research Article

Food for thought: How trade agreements impact the prospects for a national food policy

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Abstract

This article examines the prospect for a national food policy through the lens of trade agreements and the concept of policy space. It traces the shrinking of domestic policy space in recent decades as a result of trade agreements. Advocates such as Food Secure Canada seek a "coherent" food policy that supports a sustainable, more domestically-focused, food system. This article argues that the prospects for such a policy are constrained, based on Canada's past history, under both Liberal and Conservative governments, as well as recent bilateral and regional agreements. It examines the Canada-European Union Comprehensive Economic and Trade Agreement (CETA**)**, the Transpacific Partnership Agreement (TPP) which included the United States, and the subsequent Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) negotiated by the remaining eleven partners after the US departure. Focussing on market access, standards, regulatory harmonization and procurement, I argue that provisions in these agreements, along with what we might expect in future trade negotiations, pose challenges for the development of a national food policy.

Keywords: Food policy, trade agreements, Canada

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DOI: 10.15353/cfs-rcea.v5i3.282
ISSN: 2292-3071

Introduction

In 2015, the newly elected Liberal government made good on a campaign promise to develop a national food policy. In his mandate letter to the minister of agriculture, the prime minister instructed him to "develop a food policy that promotes healthy living and safe food by putting more healthy, high-quality food, produced by Canadian ranchers and farmers, on the tables of families across the country" (Food Secure Canada , 2017a, p. 3). This initiative was met by many food movements with cautious optimism. Not long after being given this policy mandate Agriculture Canada initiated a series of national consultations and meetings with stakeholders. While the mandate for a new national food policy implies a focus on production for domestic demand little has been said about its relation to trade and investment policies.

This article examines the prospects for this policy development through the lens of Canada's negotiation of international trade and investment agreements since the 1980s. It examines the extent to which these agreements and negotiations have, in some areas, had the effect of limiting policy space for national and sub-national governments. I argue that based on Canada's past history and recent bilateral and regional agreements, in particular CETA and the TTP/CPTPP, the prospects for the development of a national food policy are constrained. The goal of "policy coherence", in Food Secure Canada's words, may be difficult to achieve given these agreements and future trade negotiations. Food Secure Canada has called for the recognition of the right to food and food sovereignty and ensuring healthy and sustainable food. To achieve these goals it identifies potential policy instruments, such as preferential procurement, which would:

> Set targets for local, sustainable food and beverage procurement by public institutions such as hospitals, long-term care facilities and schools to ensure the food they serve is fresh, sustainable, locally grown/sourced and promotes healthy eating (Food Secure Canada, 2017b, p. 12).

Other proposals for a national food policy raised by various groups have focused on food and public health, environmental sustainability, food waste, and animal welfare[1]. Each of these concerns could involve a range of national, sub-national, and international regulations, standards, or other policy instruments involving public procurement, food labelling, or regulating food content and methods of food production.

Recent international trade agreements have, in some instances, limited the prospects for achieving these visions of a national food policy that is locally oriented, sustainable, and promotes human or animal health. Trade agreements have increasingly created pressures for governments to harmonize regulations and policies that are seen to impede market access for

[1] For example see the Ontario Public Health Association submission, September 2017, Animal Justice Canada, July 2017 Diabetes Canada, September 30, 2017, Food Secure Canada, 2017b

imported food. Such harmonization efforts could impinge on a range of measures that are designed to privilege locally-produced food or food produced in a certain way. Regulatory harmonization, limits on governments' preferential procurement from domestic suppliers and pressures to enhance access to the Canadian market for foreign food exporters, all threaten to limit the scope of a national food policy.

While equally worthy of attention, investment measures in trade agreements, and specifically the mechanism of Investor State Dispute Settlement (ISDS), are not addressed in this article. A 2015 report on North America Free Trade Agreement (NAFTA) notes that affiliates of US firms operating in Canada and Mexico have sales that outstrip processed food exports to either Canada or Mexico from the US (Zahniser, Angadjiv, Hertz, Kuberka & Santos, 2015, p.20). The goal to expand investment opportunities in the three countries (article 102 of the NAFTA agreement) was achieved especially in the food sector. When it comes to the investor state dispute settlement (ISDS) provision, Canada has advocated for it both in bilateral investment treaties and at the World Trade Organization WTO (Smythe, 2015). This issue also delayed the CETA negotiations and has come up in the context of the re-negotiation of NAFTA. Supporters of ISDS argue that it has fostered the rule of law and encouraged investment while critics claim that it has imposed a regulatory chill on many states (Brower & Schill, 2009, Tienhaara, 2011). While investment has played an important role in re-shaping the food sector in North America, the focus here is on the concept of national policy space and the extent to which it has been shrinking as a result of multilateral, regional, and bilateral trade agreements.

Policy space for what?

While Canada does not yet have a national food policy it certainly has an agricultural one. Its most recent iteration is the federal-provincial Agricultural Partnership which came into effect April 1, 2018. As the website outlines two of the six priorities are:

- Markets and trade: to open new markets and help farmers and food processors improve their competitiveness through skills development, improved export capacity, underpinned by a strong and efficient regulatory system.

- Public trust: to build a firm foundation for public trust through solid regulations, improving assurance systems and traceability. (Agriculture and Agri-Food Canada, 2017a)

Because of its export orientation, Agriculture Canada has been active on export market access issues and efforts to harmonize regulations with other states in order to remove barriers and ensure future market access. At the same time, like many other states, Canada has also sought to preserve space for national policies and regulations in trade negotiations. As Mayer

(2009) points out, there is a tension between pursuing international economic integration *via* trade agreements and the desire of states to maximize autonomy, both to pursue economic growth and to respond to domestic demands or needs. In 1968, Richard Cooper described the challenge of "how to keep the manifold benefits of extensive international economic intercourse free of crippling restrictions while at the same time preserving a maximum degree of freedom for each nation to pursue its legitimate economic objectives"(Mayer, 2009, p. 373).

The internationalization of markets and the development of trade rules, particularly in the General Agreement on Tariffs and Trade (GATT) Uruguay Round negotiations, have weakened both the effectiveness of domestic policy instruments to achieve national goals and reduced the number of policy instruments available to states in some areas. Ostry notes that despite opposition from a number of developing countries, they eventually accepted the inclusion of "new issues"—trade in services, intellectual property and investment, central to the American negotiating agenda at the Uruguay Round"—in return for improved market access (Ostry, 2002, p.288). The structure of the negotiations as a packaged, single undertaking and the leverage of the United States in the negotiations, enabled such a "lopsided bargain" to take place and made it difficult for a number of developing countries to fully recognize the implications of the agreement. The result was a move away from "border barriers to domestic policy" within trade negotiations (Ostry, 2002, p.288).

The recognition that national policies could now become subject to new restrictions under international trade agreements led to concerns over shrinking policy space. In response to what Ostry called a "bum deal" a number of developing countries, supported by the United Nations Conference on Trade and Development (UNCTAD), began to argue for the need to preserve "policy space for development" and the need for differential treatment for developing countries under trade rules (Hannah & Scott, 2017). The Uruguay Round agreement and its various elements including the agreement on Trade Related Intellectual Property (TRIPs) raised a number of additional concerns. Most controversial was the impact of TRIPs on access to essential medicines in developing countries. More recently, however, there has been an increasing recognition in policy fields, such as public health, that agreements may restrict the policy space to regulate for health in developed countries as well. (Friel et al., 2016; Koivusalo, 2014).

The WTO and subsequent regional and bilateral trade agreements have also impacted policy space by re-framing national regulatory differences. While the focus of initial post WWII trade agreements was on market access for goods as tariff barriers came down, there was recognition that non-tariff barriers imposed by states, such as export quotas, also needed to be addressed. As De Ville and Silles-Brugge (2015) point out:

> In the 1970s non-tariff barriers were still understood in a rather limited way as barriers to trade that were not tariffs but had similar, explicit intention to restrict trade, such as countervailing or anti-dumping duties, voluntary export restraints or direct subsidies to enterprises. Increasingly the term non-tariff barrier has come to

> cover regulations whose objective is not to restrict trade but which serve other potentially legitimate policy goals such as, for example, health, consumer or environmental protection (p.51).

As a result, regulatory differences became redefined as potential trade barriers and states came under pressure from a range of actors to harmonize regulations and standards in the name of trade. This is very much the case with food. Most trade negotiations were also structured in the direction of a unilineal path to further trade liberalization. Going all the way back to the creation of the GATT in 1947 and subsequent rounds of trade negotiations the ethos of the GATT and the WTO was economic liberalization. The GATT was successful in limiting tariff barriers to trade, beginning with a series of bilateral agreements lowering tariffs on goods and later formulas and processes designed to ratchet tariffs downward.

By the 1980s the changing nature of trade and investment led to a focus on non-tariff barriers, and an expanding negotiation agenda. In the case of services and investment, the targets of liberalization were national policies and regulations limiting market access for service exporters and foreign investors (primarily the developed countries and major corporations). Given disappointing results on investment rules in the Uruguay Round, the United States focused on the Organization for Economic Cooperation and Development (OECD) as a venue to create rules to limit regulation on foreign investors (Smythe, 2000). The negotiation process stressed broad top-down commitments to liberalize. These obligations would automatically open all sectors to investment unless a state specifically exempted a sector. This was called a "negative list" approach. In addition, existing policies or regulations would be subject to standstill, that is, a commitment to not increase restrictions in the future. Finally, remaining measures would be targeted for roll back (i.e. removal).

This approach was attempted in the OECD negotiations on investment rules (OECD, 1996). It ultimately failed, however, partly because of civil society opposition in a number of countries, as well as the narrow range of participants (developed countries) and the limited scope for tradeoffs. In contrast, in the case of negotiations of the General Agreement on Services, there was no overarching commitment to liberalize across services and states were free to identify only those particular services they wished to open to foreign providers. For many service corporations and service exporting countries the results were seen as a disappointment (Thornberg & Edwards, 2011).

Agriculture has proven to be one of the thorniest issues within trade liberalization at the GATT and the WTO. The signing of the Agreement on Agriculture (AoA) in 1995 separated agriculture from the GATT. The WTO agreement included three "pillars" of commitments: 1) increased market access for imports; 2) elimination of national export subsidies; and 3) an end to trade distorting domestic subsidies, used by large actors including United States and the European Union and, to a much lesser extent in per capita terms, India and China. Continued negotiations in the WTO Doha Round have shown that changes to the rules, especially in relation to subsidies, have proven difficult to achieve. However, agriculture and food exports have been

affected by various regulations and standards that are increasingly seen to limit market access and thus identified as non-tariff barriers by exporters. For example, the US and Canada characterized EU regulations banning the use of hormones in meat production as trade barriers, as they limited their beef exports to the EU.

Recognizing that domestic measures may still pose legitimate import barriers, WTO agreements recognized that states had obligations to ensure the safety of food products and limit the spread of diseases and pests. Two WTO agreements address these measures. The first, the Agreement on Sanitary and Phytosanitary (SPS) Measures, deals with food safety, and the second, the Technical Barriers to Trade (TBT) Agreement, addresses regulatory measures adopted to deal with consumer safety, health or environmental protection, including product labelling (WTO, 2011).

Negotiating policy space: The trade imperative, regulatory transparency and harmonization

The WTO SPS and TBT agreements, both of which link directly to food standards and regulations, have become subjects of very protracted trade disputes. The WTO Agreement on SPS Measures, along with article 20 of the GATT, allows a state to regulate beyond safety and human health "to protect human, animal or plant life or health", (WTO, 2011, A2.1) but "measures must be 'based on scientific principles and not maintained without sufficient scientific evidence" (A 2.2). In the interests of harmonization states "shall base measures on international standards, guidelines or recommendations, where they exist" (A.3.1). States may go beyond international standards, but only if the justification is scientifically based risk assessment. The SPS Agreement does not reference any broader societal or environmental concerns, or recognize any justification not rooted in scientifically-based risk assessment. However, article 11 does recognize the right of states to access dispute settlement mechanisms of the WTO and article 11.3 indicates that

> …nothing in this Agreement shall impair the rights of Members under other international agreements, including the right to resort to the good offices or dispute settlement mechanisms of other international organizations or established under any international agreement.

This raises the broader question of the relationship between other agreements particularly multilateral environmental agreements and the WTO.

Other agreements such as the Convention on Biological Diversity have different considerations that may justify regulations which could restrict trade. For example, article 26 of the Cartagena Biosafety Protocol notes that in reaching a decision on imports, states can take into account, "consistent with their international obligations, socio-economic considerations arising

from the impact of living modified organisms on the conservation and sustainable use of biological diversity, especially with regard to the value of biological diversity to indigenous and local communities." However, it is not clear how this would relate to the criteria set out under the WTO's SPS Agreement. As one legal analyst points out:

> Generally speaking, trade agreements have specific rules that draw the boundary beyond which socioeconomic considerations may be seen as becoming a means to unduly restrict trade in living modified organisms (Benvenides, 2017, p.23).

While article 11.3 of the SPS and its reference to other agreements might potentially open policy space, the extent to which efforts to claim these exceptions would be considered at all, or accepted, would be determined in a WTO Dispute Settlement Process.

In addition, states can claim general exceptions, as outlined in article 20 of the GATT, for measures designed, for example, to protect public morals. Again the extent to which this option is available may rest on the resolution of trade disputes, if such exceptions are challenged. Howse and Langille (2012) show how the EU was able to use article 20 in its ban on the import of seal products based on public morals and "the community's ethical beliefs about the nature of cruelty" (p. 368) in the harvesting of seals and "the unacceptability of consumption behavior that is complicit with that cruelty". They argue that there is policy space at the WTO to address the treatment of animals. The fact that the EU was ultimately successful in 2015 in the WTO case appears to support their claim. However, others are more skeptical about the use of article 20. In an analysis of its use by WTO members in trade disputes up to 2013, Public Citizen found the WTO dispute resolution process ruled the article to be relevant in 32 of 40 cases where it was claimed. However, under various threshold tests the Dispute Resolution Body upheld only one of the 32 cases. (Public Citizen, 2013)

The TBT Agreement also covers non- safety aspects of food, including labelling, and seeks to harmonize national requirements to avoid "unnecessary obstacles to international trade'. It also affirms states" right to take 'measures necessary to ensure the quality of their exports, for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices' (WTO Agreement on Technical Barriers to Trade, 2011). While protection of the environment is referenced, in contrast to the SPS, measures 'shall not be more trade- restrictive than necessary to fulfil a legitimate objective' (article 2.2). What constitutes a legitimate objective is limited to national security requirements, the prevention of deceptive practices, and protection of human health or safety, animal or plant life or health, or the environment (article 2.2). Thus, legitimate objectives would not include providing consumers with information about the provenance of their food. According to TBT obligations, all such state regulations should be transparent, based on international standards, the least trade restrictive as possible, and follow WTO "most favoured nation" (MFN) and nondiscrimination provisions. In the case of food, the international standards referenced in WTO agreements are those of the Codex Alimentarius.

A joint body of the Food and Agricultural Organization and the World Health Organization, Codex was founded in 1962 with a mandate to develop food standards 'protecting the health of consumers' and to harmonize them to ensure 'fair practices in the food trade' (Codex, 2017). As a result of being referenced in WTO agreements, Codex has become the key international food standard setting body. The Codex has always reflected very political struggles over food standards, which typically involved large food-producing states, the EU, powerful representatives of agribusiness and biotechnology firms, and non-governmental organizations. It has frequently been criticized for being dominated by a few large food-exporting states and their corporate allies (Avery, 1995; Lang, 1999). Because it is referenced in WTO agreements, the outcome of Codex power struggles can limit or enhance regulatory policy space at the national or sub-national level (Buckingham, 2000). Codex standards serve as a benchmark and justification to the WTO as to whether national food regulations constitute unjustifiable barriers to trade. National rules that deviate from (i.e. exceed) Codex standards, in response to consumer or other civil society demands, could become the subject of trade disputes and targets for WTO authorized trade retaliation. On the other hand, if a state's regulatory practice becomes the Codex standard, it is insulated from challenges to that regulation as an unjustified trade barrier. Codex standard setting processes have become even more politicized, reflected in its growing state membership (188) and the increased involvement of trade officials, as well as non- state actors, both corporations and non- governmental organizations (NGOs), in shaping standards (Veggeland & Borgen, 2005).

Disagreements at Codex have often centered on labelling and on the use of techniques to enhance meat and milk production using growth promoters in animal husbandry. The battle over a standard for labelling food derived from genetically modified organisms (GMOs) began in 1991 and lasted for 20 years. It pitted the United States, Canada and allied GMO food-exporting countries against the EU and a number of other countries. The result, a weak but permissive standard on labelling, meant that EU regulations on mandatory labelling would largely go unchallenged at the WTO (Smythe, 2014). In the case of country of origin labelling the Codex abandoned any effort to develop a standard in 2003. This has allowed for country of origin labelling; however, it has not prevented trade disputes. A prolonged dispute with Canada and other countries over meat labelling ultimately resulted in the US rescinding its meat labelling regulations to conform to a finding against it at the WTO in December 2015 (Eng, 2016).

In the case of growth promotors in animal husbandry, the EU restrictions have been a barrier to meat exports into the EU market for both the US and Canada. The conflict has been reflected in attempts by the US and allied food producers, including Canada, to develop safe drug residue standards in the production of meat at the Codex, which would then serve as the basis for a WTO challenge to the EU regulations. While the EU has long banned the importation of meats produced using growth promoters (under EU Council's directive 96/22/EC), three types of growth promoters have been widely used in North American meat production. The existence of the first two types of promoters, hormones and antibiotics, goes back well over 50 years. Their use, however, has changed over time, reflecting the intensification of meat production. For

example, the non-therapeutic use of antibiotics to promote growth has soared. According to the Union of Concerned Scientists, overall use in animals to promote growth rose by 50 percent between1985 and 2001 (Mellon, Benbrook, Benbrook, & Union of Concerned Scientists, 2001, p.62**).** The third type of promoter, beta agonist drugs, have a shorter history and were only approved for use in the US in 2003 (Smythe, 2013).

Beta agonists have been in use for about a decade in Canada, initially in pigs and later in cattle and turkeys (Smythe, 2013). The first product, ractopamine hydrochloride, is produced by Elanco Animal a division of the Eli Lilly drug company. Added to animal feed under various names such as Paylean, Optaflexx, and Topmax Ractopamine, its effect is to speed up the heart rate of the animal and produce heavier, leaner, more muscled animals which are more profitable to producers and have a lower fat content. However, to be effective it must be fed to animals until shortly before slaughter. The result is that a small amount of drug residue remains in the meat. A second beta agonist, zilpaterol hydrochloride, was approved for use in cattle by the US Food and Drug Administration (FDA) in 2006. Produced by Merck, it has been aggressively marketed in competition to ractopamine since its approval in both the US and Canada under the brand names Zilmax and Intervet (Peterson, 2012).

While Codex work on standards of drug residues for these growth promoters began in 2004, disagreement over the adequacy of scientific risk assessments prevented a standard from being developed, and the process was abandoned at the July 2012 Codex Commission meeting in Rome (Codex Alimentarius Commission, 2012). After fierce lobbying, both for and against the standard, the US, Canada, and other countries that permitted the use of the drug, such as Brazil, won a narrow victory against the delegates from the EU, Russia and China, who opposed adopting the standard (personal observation at the Codex meeting). However, that did not mean countries were willing to alter domestic regulation in line with the decision. Similar to the issue of hormones in beef production, a Codex standard does not guarantee market access. When the EU lost at the WTO on the hormone beef issue it did not open its market,[2] nor did it do so after the Codex 2012 meeting (European Union, 2012, p.24). Subsequently, both the US and Canada were left with the option of developing programs and a Memorandum of Understanding (MOU) for beef and pork producers certifying that their products were growth promoter free in order to be able to export a small amount to the EU (Canadian Food Inspection Agency, 2018).

The use of rBST[3] to increase milk production and differing standards also became an issue at the Codex Alimentarius when the US pushed for adoption of a standard. Despite being

[2] The original 1997 WTO case brought against the EU by the US and Canada challenged the ban on the import of beef produced using hormones. The WTO panel ruled that the EU had violated the SPS agreement in not basing its regulation on risk assessment. The EU subsequently completed an assessment and concluded there was potential harm to human health. The US disputed the adequacy of the assessment and introduced a series of trade sanctions. Ultimately the US and Canada each signed an MOU with the EU in 2009 which allowed for beef exports to the EU if it was certified as hormone free. See Johnson (2015).

[3] rBST refers to recombinant bovine somatotropin. This is a synthetic version of the growth hormone somatotropin. It has been approved for use in the US to increase milk production in dairy cattle. However, it is not approved for sale in Canada as I discuss below. See Government of Canada, Questions and Answers on Growth Promoters

considered by the relevant Codex committee in 1998, consensus on developing a safe level has eluded delegates for almost two decades. The US and other allies have continued to push the approval of a standard without success, even while many US grocery retailers only stock milk that is labelled rBST-free. The point of this discussion is that what the Codex was addressing was a regulatory difference, which, if a Codex standard is adopted, can then be deemed a trade barrier on the part of the state that deviates from the standard. As a consequence, the outlier from the Codex standard becomes vulnerable to trade retaliation under the WTO SPS agreement.

Regional and bilateral agreements: Market access and harmonized regulations

Recent bilateral and regional trade agreements reflect the continued efforts of a number of food-exporting countries and agribusiness to attain further market access for their products by either limiting the discretion of states to privilege locally-produced food or to push for regulatory harmonization which may further restrict policy space. After uncertainties about ratification and issues regarding the investor-state dispute mechanism, the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada has come into effect. In the case of the TPP, which both Conservative and Liberal governments supported, the election of Donald Trump and the United States' withdrawal has rendered its future uncertain.

However, it is worth examining the agreement that was reached before the US withdrawal for several reasons. First, many of its provisions were the result of US and other food exporters' demands, along with those of many agribusiness corporations and food industry associations. The shift in the US Administration's approach from regional to bilateral negotiations means that many of these measures may well reappear in new bilateral or re-negotiated agreements with Canada. Second, despite the US withdrawal the remaining TPP eleven countries did move forward with an agreement (Government of Canada, 2017b). They also suspended a number of provisions pending a possible US return to the agreement.

CETA

What follows is a brief analysis of the aspects of the 2017 CETA agreement between Canada and the EU that relate to market access. This issue is closely tied to differences in standards and regulations, in the case of meat, and Canada's supply management system in relation to dairy and cheese. Both have implications for local food and the goal of a national food policy of putting more Canadian produced food on "the tables of families across the country" (Food Secure Canada 2017a, p. 3).

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https://www.canada.ca/en/health-canada/services/drugs-health-products/veterinary-drugs/factsheets-faq/hormonal-growth-promoters.html

Global Affairs Canada‘s website describes CETA almost exclusively in export and market access terms, pointing to increased access for beef and pork into the EU market. However, this enhanced access is for meat that is certified as produced without growth promotors. Canada already had a quota to export 23,200 tonnes of hormone-free beef but exported only 9,000 tonnes in 2011 (National Farmers Union, 2014). Canada did not export any pork to the EU in 2011 and exported only 5,000 tonnes in 2010 (National Farmers Union, 2011). Again, while there is a significant expansion in access for ractopamine-free pork under the provisions of CETA, it is not at all clear that Canadian producers, slaughter houses, and processors can ramp up the production of pork and beef to take advantage of this. Seafood products also obtained enhanced access to the EU market, however, Canada’s dairy industry paid the price, as the agreement enhanced access to Canada for EU producers of fine cheese. According to the Dairy Farmers of Canada:

> The additional access is equivalent to a 2.25 percent cut in farm quota, bringing a potential farm income loss of nearly $150 million/year. To put that into perspective on the level of the significance to the Canadian dairy sector, the projected loss from the additional access given to EU is the equivalent of the total milk production in Nova Scotia or other small provinces. In total, the estimated impact to dairy farmers and cheese makers is a loss of domestic market valued at $300 million annually (Dairy Farmers of Canada, 2015).

Pressures on the dairy sector continued with Canada’s signing of the TPP and later the CPTPP (discussed below). As outlined above, many regulations relating to food are often framed by food exporting countries and agribusiness as barriers to market access. CETA addresses both TBT and SPS standards and regulations in Chapters 4 and 5 which incorporate WTO agreements and reaffirm the signatories’ obligations under the TBT and the SPS. Further commitments are made about regulatory cooperation in Chapter 21 of the agreement:

> Without limiting the ability of each Party to carry out its’ regulatory, legislative and policy activities, the Parties are committed to further develop regulatory cooperation in light of their mutual interest in order to
> (a) prevent and eliminate unnecessary barriers to trade and investment;
> (b) enhance the climate for competitiveness and innovation, including by pursuing regulatory compatibility, recognition of equivalence, and convergence; and
> (c) promote transparent, efficient and effective regulatory processes that support public policy objectives and fulfil the mandates of regulatory bodies, including through the promotion

> of information exchange and enhanced use of best practices (Government of Canada, 2016, 21.1.4)

In addition, 21.6 creates a regulatory cooperation forum involving European Commission and deputy minister level Canadian officials. The text commits the parties to develop a work plan, hold regular meetings, and report to the CETA joint committee. In contrast in the TPP we see aggressive language on limiting or challenging SPS and TBT measures as trade barriers. Despite these vague commitments to harmonization of standards, opponents of CETA see potential for agribusiness to lobby for lowering EU standards toward what have traditionally been more permissive Canadian and US standards, for example, in the use of growth promoters in meat production (Council of Canadians, 2017, Corporate Europe Observatory, 2017).

While market access appears to be a mixed picture for various sectors of food production in Canada, the CETA chapter on government procurement could potentially create a barrier for efforts to build and support local food systems. Canada is already a party to the WTO Government Procurement Agreement, which tries to ensure open, fair, and transparent processes of bidding on government contracts and the elimination of discriminatory measures against foreign suppliers (WTO, 2014). Through negotiation between its 41 WTO member signatories, states open sectors to these commitments through a process of listing them in schedules. These types of agreements, depending on their sector coverage and contract value thresholds, can have implications for the ability of governments to support local food producers. MacRae (2014) has argued that existing trade agreements such as the WTO and NAFTA, as well as the agreement on internal trade barriers within Canada, have not posed significant obstacles to municipal or provincial authorities seeking to use procurement policies in the health and education sectors to support local food producers and sustainable food systems.

On the surface, however, CETA appears to pose significant barriers. The coverage in Chapter 19 includes municipalities which will be subject to the non-discrimination obligation (Government of Canada, 2016b). The Global Affairs summary does not highlight the low threshold value for contracts. As Wood notes, the threshold for provinces and territories is "200,000 SDR ($315,000) for government entities including municipalities, academia, school boards, and hospitals (MASH)" (Wood, 2016, p. 32). While this threshold is not out of line with other procurement agreements that Canada has signed, it is the breadth of coverage that is of concern.

Despite a campaign by the NGO, the Council of Canadians, and concerns expressed by 50 municipalities who requested exemptions, the exceptions listed in the agreement are very few. It is the combination of dollar thresholds for various sectors, the breadth of coverage of local authorities and agencies, and negotiated exemptions that determine the extent to which these measures limit preferential procurement. While there may be some scope to use public procurement contracts if carefully crafted[4] to support local sustainable food systems and

[4] See Bell-Pascht (2013) for some strategies regarding procurement contracts for local food.

producers, the devil is in the details and the extent to which Canadian trade negotiators trade off one sector over another.

The Trans-Pacific Partnership

The roots of the TPP lay in a small group of states at an Asia Pacific Economic Cooperation Forum meeting seeking to further trade ties. Brunei, Chile, Singapore, and New Zealand signed a Trans-Pacific Strategic Economic Partnership Agreement (TPSEP or P4) in 2006. New Zealand, with a very food export dependent economy, has been zealous in pursuing trade agreements and its close trade ties to Australia made it likely that Australia would join. However, once the United States signalled its intent to become involved in a broader set of negotiations, it was almost inevitable that Mexico and Canada, as NAFTA partners, would join (Government of Canada, 2017a).

Concluding in February 2016, the Trans-Pacific Partnership provides a number of contrasts to CETA. It had even more potential, given the array of countries that are signatories and their differing standards and regulations, to provide both challenges and opportunities for Canadian food producers. For those seeking to expand policy space to build a Canadian food policy that supports Canadian producers and sustainable food systems, a number of provisions may spell trouble. While, in the case of CETA, the two sides in the negotiations were similar in terms of living standards and per capita incomes, among the TPP members there is broad diversity in terms of economic size and per capita incomes.

The presence and size of the US economy meant that their key objectives in the areas of investment, intellectual property and regulations would be reflected in the negotiations. With food exporters like the US, Canada, Australia, and New Zealand it is no surprise that a range of issues related to market access for food products and standards that might inhibit agricultural trade would form an important part of the negotiations. Evidence indicates that the corporate food industries in these countries were keenly interested in negotiations and provided extensive input to negotiators pushing for greater market access, new trade rules limiting state discretion to carve out sectors, more regulatory harmonization and investment protection (Friel et al., 2016).

Unlike the EU, the TPP countries are significant markets for Canadian and US meat exports. While a range of food products would benefit from tariff reductions, meat producers in particular had much to gain. About half of Canadian beef and almost two thirds of pork are exported and 80 percent of exports go to the TPP countries. As the largest importer of beef, Japanese tariff reductions would have increased US exports, as would tariff reductions in Vietnam. Similar tariff reductions in Japan (the most important market) Malaysia and Vietnam offered opportunities for Canadian export growth. Unlike the EU, regulations on the use of growth promotors did not pose barriers for access.

The situation for the Canadian dairy sector was quite different however. From the outset, these products were likely to be a target given that Australia, New Zealand, and the US were part

of the negotiations. Indeed, access on dairy was one of the major and final sticking points in negotiations. The Canadian government claimed it had largely resisted the pressure:

> Canada offered only limited new access for supply managed products. This access which will be granted through quotas phased in over five years amounts to a small fraction of Canada's current annual production: 3.25 for dairy (with a significant majority of the additional milk and butter being directed to value-added processing), 2.3 percent for eggs, 2.1 percent for chicken, 2 percent for turkey and 1.5 percent for broiler hatching eggs. (Foreign Affairs, Trade and Development Canada, 2015)

Once again, the supply managed sectors, especially dairy, were in their view, sacrificed to get an agreement that mostly benefited food exporters. In her appearance before the House of Commons Standing Committee on Agriculture and Agri-food, Executive Director of the Dairy Farmers of Canada (DFC) Caroline Emond noted that the combined impact of the CETA and TPP on milk production in 2016 would represent a loss of $282–357 million in revenue to farmers. Export opportunities to offset this remain limited since any export sales at below domestic prices could be seen as export subsidies. Dairy farmers, in her view, were bearing the cost of these agreements and seeing after twenty years a "world dairy market that was essentially a dumping ground" (Emond, 2016).

Additional milk imports from the US also raised the issue of an anomaly in the TPP which goes back to differing standards and regulations in relation to the production of milk. The use of the growth hormone rBST is banned in Canada but not the United States. As I indicated above, although the United States approved Monsanto's rBST synthetic hormone to increase milk production in the early 1990s, Canada did not, despite enormous pressure from Monsanto. This was partly because of concerns about increased production of milk in Canada in a supply managed system, but also due to concerns about animal welfare (Mills, 2002). While there was little dispute that the milk produced using the hormone was safe for human consumption, the impact on animal welfare was raised by civil society in both Canada and the EU, which also had a ban. Such regulatory divergence, as we have argued above, can be a source of trade disputes and be framed by those seeking market access as a trade barrier and thus subject to pressure for harmonization in trade agreements.

In addition to market access, the TPP can also be examined in terms of government procurement and regulatory standards under the SPS and TBT provisions. Government procurement provisions would have less of an impact since they did not go as far as the CETA provisions, and were driven by a failure of Canadian negotiators to get much more access to the US and limit its Buy American provisions. Given the refusal of the US to provide more access to its market in terms of procurement there was no incentive for Canada to offer up increased coverage of procurement obligations beyond provincial authorities. This left municipalities, school boards, and hospitals outside of the procurement obligations (Sinclair, Mertins-Kirkwood,

& Trew, 2016). The case of regulations was different, however, as the TPP reflects an agenda that more aggressively targets regulatory barriers to the major food exporters and their industry supporters.

The United States Trade Representative's office highlighted this gain in the TPP in comparison to the WTO, labeled "SPS plus" by supporters. It is hard to view this section of the agreement as well as the provisions on biotechnology in the second chapter on national treatment and market access, as anything but a prelude to the US negotiations with the EU known as TTIP, which were then ongoing. TPP article 2.27, *Trade of Products of Modern Biotechnology*, deals with the approval of new products and the export of food products containing inadvertently low levels of GMOs. It calls for extensive evidence of risk and food safety assessments, speedy review of applications for new products and mechanisms to resolve regulatory differences (United States Trade Representative, 2016).

Both the US and Canada have been heavily invested in GM crops and because of regulatory differences been shut out of the EU market. In some cases, shipments of products were turned back because of inadvertent contamination and the EU requirement for mandatory labelling of foods produced with GMOs. Section 2.27 reiterates that "nothing in this article shall require a Party to adopt or modify its laws, regulations and policies for the control of products of modern biotechnology within its territory. (2.27.3)" Despite that assurance, the intent of the articles is to target regulations that might limit the access of GMO products and insist on risk and food safety assessments based on "sound science". National differences in regulatory standards regarding GMO crops or foods containing them, such as labelling requirements, are reframed in the agreement as a market access problem.

The TPP chapter on SPS makes no reference to 2.27 or foods containing GMOs. What it does do, however, is develop mechanisms by which exporters can challenge state regulations that would impact market access and force tighter timelines on regulators to justify such measures. New elements are described by the USTR as a major gain going beyond the WTO (USTR, 2016). While promoting science-based and transparent regulation, the agreement also obligates members to publish SPS regulations for public comment, and notify importers and exporters in a timely way of any shipments being detained for SPS concerns. TPP commitments also permit importing countries to conduct an audit of an exporting country's food safety regulatory system.

The SPS chapter article 7.11 regarding import checks and the right, if an importation is restricted, for the importer to challenge it has been called a "Rapid Response Mechanism" which was a demand of the Food and Agriculture Task Force of the U.S. Business Coalition for the TPP. Critics like the US Consumers Union and Food and Water Watch see it as a "as a private right for an importer/exporter to dispute at the treaty level an official action by a government to enforce its food labeling and safety laws." (Center for Science and the Public Interest, 2013). It had been widely supported by the major food and food processing corporations in the US and their advocates such as the Grocery Manufacturers Association.

As a Common Cause report (2015) indicates, large food and beverage corporations were among the major groups lobbying for the TPP. The Grocery Manufacturers of America spent

over 4.5 million (US$) on lobbying in 2014. A *Guardian* article characterized it as a corporate payment to the US Senate to fast track the TPP (Gibson, 2015). Troubling for TPP supporters, however, was the fact that several analyses of the agreement by the US International Trade Commission, the World Bank and economists at Duke University showed that there was very little net economic benefit to the major high-income countries in the long-term. Major food corporations, however, are another matter.

The leaked texts from the US –EU trade negotiations in 2016 also make it clear that there has been a strong push from the US for harmonization of regulations in a way that could further limit food standards and regulations that are seen as limiting market access for exports including GMOs crops and limits on the use of growth promoters in meat production. Dissatisfied with access to the EU market and poor export volumes resulting from the MOU on meat produced without growth promoters, the Obama Administration signaled in late 2016 that it would again consider retaliatory measures over the EU ban on meat produced with hormones. This may indicate what is to come in future bilateral negotiations. The Institute on Agricultural and Trade Policy's study of the TTIP negotiations with the EU in 2016 concluded that they represented nothing less than a "corporate meat" takeover of the agreement (Institute for Agriculture and Trade Policy, 2016), referring to the enormous influence of large corporate industrial meat companies like JBS and WH Group.

The US post-election decision to pull out of the TPP left the remaining eleven partners to determine its future. At the urging of Japan, they decided to move forward with many parts of the agreement. About twenty provisions of the agreement, most linked to key US demands in the area of intellectual property and environmental protection have been suspended. They were seen as the price that had to be paid for access to the lucrative US market. They could be reinstated, if all members agree, in the event of the US re-entering the agreement. Many provisions that may have an impact on food production and market access, including the provisions affecting dairy are still in place. The market access concessions (3.25 percent of the Canadian market) rather than being reduced based on the US exit, will go to the remaining partners. (Haney, 2018)

Conclusion: A national food policy and trade agreements

The above analysis suggests that efforts to support a more local and sustainable food system in a new national food policy may be challenging in the face of recent and future trade agreements. The four goals for a food policy[5] outlined by the Minister of Agriculture are broad and undefined. Each could involve an array of policy instruments and regulations that might be constrained by trade agreement obligations. While Global Affairs is one of many departments and agencies involved in the policy development, it is unclear to what extent trade priorities will

[5] They include: increasing access to affordable food, improving health and food safety, conserving our soil water and air, and growing more high quality food (Agriculture and Agri-Food Canada (2017b).

drive or constrain food policy or whether future trade agreements and trade deals will be evaluated through the lens of a new national food policy. We can only look at what Canadian governments have done in the past as a guide.

It is worth remembering that both Liberal and Conservative governments have been very consistent in promoting trade agreements and focussing on export opportunities and market access. Past governments and their negotiators were able to preserve the supply management system despite great pressure both in the NAFTA negotiations and at the WTO. However, the CETA and TPP agreements revealed a new willingness to trade off domestically-oriented sectors and policies for enhanced foreign market access for export-oriented food and other products. European cheese was accorded more access to the Canadian market in CETA while increased market access for dairy imports was included in the TPP though amounts are small.

On the issue of procurement, it is clear that the CETA agreement, unlike the WTO procurement agreement, could have an impact on the ability to use procurement policies to support local food producers, depending on the size and nature of the contract. While aggressive US Buy American policies make any reciprocal trade deals on procurement with the US less likely, given the concessions in CETA, future bilateral trade deals with other large food exporters could be a different matter.

Finally, one area that has received less attention by those looking at trade and the potential for sustainable and more local food systems, is the issue of food standards and the extent to which differences in standards and regulations have been reframed as trade barriers and thus the basis for trade disputes and strong pressures for harmonization. Canada has generally been onside with the United States in international bodies such as the Codex and the WTO in pushing an agenda that limits domestic food regulations to a scientifically based, public safety rationale. While this has been seen as ensuring market access for products like Canadian beef and pork abroad it has not, as indicated above, even been fully successful in ensuring that. Moreover, if policy differences widen rather than narrow, as states like Canada address food policy through environmentally sustainable food production or public health policies, this could come home to roost for Canada. Policies and regulations that differ substantially from those of trading partners like the United States and are not based on a public safety rationale could be subject to pressure to harmonize or face trade disputes or retaliation.

The history of trade and investment agreements and their rules has been one of using those rules to shrink the space for national public policy and regulation in many areas. A national food policy will only be as good as the policy space available unless there is a real effort to link up and develop coherent, whole of government, food policy that includes the impact of trade and investment agreements.

Acknowledgement: The author would like to acknowledge the support of the Concordia University of Edmonton's Small Research Needs Fund and the helpful comments of reviewers and editors on this article.

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