HOW CETA CAN ENDANGER COUNTRY OF ORIGIN LABELLING (COOL)

EXECUTIVE SUMMARY

Even though CETA is preemptively entering into force, EU member state parliaments have the responsibility of cancelling or ratifying the EU's trade deal with Canada. In order to do so, they must confront a series of critical questions regarding CETA, including on the future of European food and agriculture. One such question relates to the labelling of meats sold in European supermarkets.

The so-called 'free' trade rules rooted in the World Trade Organisation (WTO) and expanded in CETA pose a serious threat to the goal of creating a consumer and farmer-friendly EU labelling scheme for meat and dairy products sold in Europe. Such country of origin labelling laws (COOL) allow consumers to know where certain foods originated. In a world with highly globalised supply chains, an animal could have been born in one country, fattened in another, and slaughtered in yet another before it ends up on the dinner plate as beef or pork.

There is broad and strong support among consumers, independent family farmers and the European Parliament for labelling of meat products. COOL addresses consumers' demands to know where their food comes from, and can help to assure consumers that incidents like the 2013 EU horsemeat scandal are not repeated.

The EU currently has COOL regulations for fresh cuts of beef, pork, poultry, sheep and goat meat, but not for processed meat. The European Parliament and some EU member states have proposed expanding the scope of labelling to include processed foods, but have been met with resistance from the meat industry and the European Commission. The fact that the EU COOL laws currently exclude dairy and processed meat, and is limited to meat from cattle, pigs, poultry, goats and sheep shows that there is still much need for improvement in the EU's country of origin labelling scheme.

In fact, due to popular demand, France began a two-year trial in January 2017 to expand COOL to processed foods containing more than 8 percent meat or more than 50 percent milk. Any such products must now specify where the livestock was born, raised and slaughtered. European agribusiness has opposed this move, saying it fragments the EU common market. Yet Italy, Portugal, Lithuania, Romania, Greece, Finland and Spain are also moving forward with more stringent COOL provisions for products such as meat and dairy and extending COOL to non-animal products such as wheat in pasta. If these initiatives are successful, they could lead to an EU-wide adoption of COOL for meat and milk in processed foods.

Regrettably, CETA is likely to stand in the way of these popular and needed improvements to meat labelling in Europe. This is because even basic country of origin labelling of fresh meat, let alone expanding labelling to processed foods, is under pressure from transnational meat processing giants such as JBS and Cargill. These global companies dominate the meat industry in Canada, the US, Brazil and Mexico, and have spent years lobbying the Canadian and US governments to get COOL repealed in the US.[1]

On behalf of these giants, Canada used the dispute settlement system of the WTO to help repeal a US law very similar to current EU rules, which required companies to indicate each country where an animal had been born,

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raised and slaughtered.[2] In 2015, the WTO ruled in favour of Canada against the US, contending that the US labelling scheme was unfair to Canadian pork and beef producers. Using the WTO judgement as an excuse, the US Congress voted to repeal the law in its entirety, including for poultry, even though the WTO ruling was limited to beef and pork. The WTO ruling helped achieve what the industry had been unable to accomplish after five years of lobbying – a repeal of US country of origin labelling of meats.

The global meat industry views COOL as a barrier to expanding meat sales.[3] With CETA granting Canada greater access to the EU market, it will increase agribusiness incentives to undermine existing EU COOL legislation, and will certainly stand in the way of expanding labelling to processed meats and dairy products. CETA will expand the EU's quotas for Canadian pork and beef imports by 12-14 times the current levels.[4] The successful WTO challenge of US COOL law suggests that Canada may now be more than willing, on behalf of its agribusiness interests, to bring a case against the EU's even more comprehensive labelling scheme at the WTO. The European Parliament's recommendation to expand COOL to processed meats, as well as efforts by France, Italy and others to expand COOL to processed foods that include meat and dairy or to pasta, are thus vulnerable to such challenges.

Moreover, CETA will add another forum for challenging COOL rules, the Investor Court System. The President of Cereals Canada, Cam Dahl, had hinted at legal action even before Italy approved COOL for pasta, stating that: "from an ideal perspective, I hope Italy doesn't take this final step and officially move forward... But we can't assume that that is going to happen, so we do have to prepare, whether that's WTO action, or whether there are measures under the Canada-EU trade agreement. We have to prepare for that."[5] This means that after CETA comes into force, initiatives such as France or Italy's could be permanently derailed, let alone be expanded to an EU-wide level.

The Investor Court System empowers foreign investors – including meat-processing corporations – to directly sue the EU and member states (and seek compensation) for regulations that they claim reduce profits or discriminate against non-EU corporations that have invested in the EU. CETA empowers the Canadian meat industry to initiate such challenges. CETA's chapter on regulatory cooperation promotes the harmonisation of regulations between Canada and the EU. With Canada lacking adequate COOL for meats, the EU's COOL regulations are particularly vulnerable to being harmonised to weak Canadian standards.

CONSUMERS AND FAMILY FARMERS OVERWHELMINGLY SUPPORT COOL

Consumers in the EU show overwhelming support for origin labelling, particularly for animal products. Eighty-eight percent of EU citizens consider it necessary to label the origin of meat,[8] while 71 percent believe that knowing the origin of food is important.[9] Austrian, French, Polish and Swedish consumers in particular, show high interest in knowing the origin of their food. Eighty-three percent of Swedes and 93 percent of Austrians want country of origin labelling of meat.[10] Food safety, quality, environmental impact and ethical concerns are key reasons consumers want to know food origin.[11]

Even though Canada lacks a similar labelling system, Canadian consumers have become increasingly interested in COOL and support a traceability system.[12] In 2010, 50 percent of consumers indicated that country of origin was a driver of food choice.[13] COOL has received continued,

WHAT IS COOL AND WHY IS IT IMPORTANT?

Country of origin labelling (COOL) laws allow consumers to know where their food comes from. In the EU, the law requires that companies label fresh meat from cattle, pigs, poultry, goats and sheep to indicate where an animal was born, raised (fattened) and slaughtered.[6] COOL allows consumers to distinguish the kind of a life the animal had before it became food: born and raised on one farm? Or shipped en masse across borders as part of an industrial supply chain and pieced together from different animals? COOL, therefore, enhances transparency and provides important information to consumers about the origin of their food.[7] It also allows local producers, farmers and ranchers who raise their own animals to showcase that they are not part of an industrial, agribusiness-driven supply chain.

strong support from civil society groups including farm, rural, labour, environmental and consumer organisations.[14]

European family farmers and local producers believe they benefit from origin labelling because they receive a higher price for well-known, quality products.[15] Similarly, Canada's National Farmers Union has stated that COOL can 'meet the information needs of consumers, help build diversified local markets, reduce food miles, and move our meat system toward increased social, economic and environmental sustainability.'[16]

Many EU member states are responding to this consumer interest, while European agribusiness opposes it. A new pilot regulation in France, effective from January 2017 for a period of two years, requires COOL for meat and milk in processed foods – those that contain at least 8 percent meat or 50 percent milk.[17] Any such products must now specify where the livestock was born, raised and slaughtered. European agribusiness has opposed this move, stating that it undermines the EU common market.

Italy, Portugal, Lithuania, Romania, Greece, Finland and Spain are also moving forward with more stringent COOL provisions.[18] For instance, Italy's rule requires 'country of milking' as well as 'country of processing' for dairy products such as mozzarella.[19] Portugal is also pursuing COOL for dairy products.[20] If these initiatives are successful, they could lead to an EU-wide adoption of COOL for meat and milk in processed foods.

CETA is likely to stand in the way of this progress, given strong opposition to labelling by both Canadian and European agribusiness. The agribusiness lobby group FoodDrink Europe has tried to appeal to consumers by making an argument based on affordability and availability: 'the meat used in processed foods often comes from different EU and/or non-EU countries; these countries might frequently change in order to ensure an affordable price, a steady quality and constant availability to consumers all over Europe and beyond.'[21]

CETA BRINGS GLOBAL AGRIBUSINESS THROUGH THE BACKDOOR

CETA also opens the door to the US meat industry with all of its market share and clout. The Canadian meat industry has become an integrated North American market due to the North American Free Trade Agreement (NAFTA). A large number of cattle and pigs are transported across the US-Canadian and Mexican border as part of an industrial meat

THE COSTS OF DOING BUSINESS WITH JBS

Headquartered in Brazil, JBS is the largest meat processor in the world. Propped up by the Brazilian National Development Bank (BNDES), JBS rose to the top through a series of rapid mergers and acquisitions over the last decade. In 2017, JBS's controlling shareholders Josely and Wesley Batista reportedly admitted in front of Brazilian special prosecutors that they paid bribes to nearly 1,900 politicians (including the current and past Brazilian presidents) to acquire companies worth up to twenty billion USD in assets.[24]

The extent of this corruption came to light as JBS was trying to recover from a food safety scandal related to meat exports. In March 2017, it was reported that investigators uncovered bribes paid to food safety inspectors that allowed exports of tainted meat products – including practices such as adding chemicals to meat to conceal rotting odour, adding pigs' heads to sausages, and adding cardboard to processed poultry as filler – to Europe and elsewhere.[25] As a response the EU, China and other countries invoked temporary bans on Brazilian meat imports, which have now been revoked.[26]

As part of its acquisition spree, JBS acquired Moy Park in 2015 – Northern Ireland's largest employer and the supplier of nearly a quarter of the chicken consumed in Western Europe. It is now being reported that Moy Park will be sold to another giant meat processing corporation – potentially US-based Tyson, or China-based WH Group, or another major meat corporation[27] – in order for JBS to raise the funds to pay 3.2 billion USD in fines.[28] This may be the world's largest 'leniency' fine a corporation has had to pay to avoid being charged for criminal activity, according to Brazilian prosecutors.[29]

Even if JBS sells Moy Park, it will continue to have a physical presence in Europe through its Italian subsidiary, Rigamonti (selling meat products).[30] It could thus avail itself of CETA's provisions from both Europe and Canada.

And yet, who is paying for JBS's crimes? Currently, it is the beef producers that sell to the company. Cattle prices paid to producers have had their biggest decline in twenty years since news of the JBS scandal broke.[31] In addition, JBS's meteoric rise has resulted in serious environmental and social costs.[32]

supply chain.[22] NAFTA, which came into force in 1994, led to a dramatically restructured meat production in Canada, the US and Mexico.

The closure of small family farms, already underway in the 1980s, accelerated. Markets became much more integrated and specialised with animals being born in one country, raised in another and possibly slaughtered in another. The number of animals per farm increased dramatically while prices paid to farmers per kilogramme of meat dropped, as farms became part of the supply chains of a few very powerful corporations that dictated the price.

Today, two transnational corporations – Brazil's JBS and US giant Cargill – control 90 percent of beef processing in Canada,[23] and thus determine prices paid to producers. They are also two of the four largest corporations that control much of the beef and pork slaughter in the US. These transnational corporations are responsible for the movement of animals back and forth across the US-Canada border.

Their practices are increasingly raising public concern, with JBS receiving much international attention this year due to rampant food safety and bribery scandals (See box "Cost of Doing Business with JBS"). Information about Cargill remains secret because of its status as a private entity with no public shareholders. CETA will only serve to increase these corporations' global clout and the lack of transparency around their operations and lobbying activities.

Both of these corporations have a physical presence in Europe, and thus CETA empowers them to use the Investor Court System to challenge EU regulations such as COOL. Moreover, CETA gives them a special seat at the table to target regulatory barriers that impede their access to the EU market or reduce profits (see Briefing Paper 1 for more detail).

Given that JBS and Cargill exert significant control over the meat market in the US and Canada, it is no surprise that both the Canadian and US meat lobbies publicly supported the defeat of US COOL. The US meat industry spent over five million USD per year between 2009 and 2012 on lobbying for US revisions to COOL legislation.[33] Two hundred and fifty large companies and trade associations (e.g. Kraft, General Mills, Cargill and the National Pork Producers Council) also lobbied the US House of Representatives to weaken COOL.[34]

Meanwhile, the industry-backed Canadian Cattlemen's Association (CCA) was instrumental in initiating the WTO challenge. It called the initial WTO judgement 'an important victory for Canadian cattle producers' and supported 'Canada's right to retaliate'.[35] The Canadian Pork Council (CPC), the pork industry's mouthpiece, publicly supported the WTO ruling that COOL was discriminatory because it required record-keeping and segregation of Canadian livestock.[36] The North American Meat Institute, the largest trade association representing meat industry interests in the US, also supported the WTO ruling that COOL violated US trade commitments.[37]

DIFFERENCES BETWEEN EU AND CANADIAN REGULATIONS

EU COOL REGULATIONS

The EU first developed COOL regulations for beef in response to the bovine spongiform encephalopathy (BSE) crisis – known as 'mad cow disease'. Effective in January 2002, it required labelling of where the cattle were born, raised and slaughtered at each stage of marketing.[38] In 2014, in response to the horsemeat scandal of 2013, the EU passed legislation to expand COOL to the meat of pigs, sheep, goats and poultry (but, ironically perhaps, not horse).[39] The scandal had led to consumer outrage when DNA from horses and pigs was found in beef samples in the UK and Ireland.[40] In one Tesco supermarket, 29 percent of one beef burger was found to be horsemeat.[41] The regulation also mandated the Commission to submit a series of reports to the European Parliament and Council exploring the possibility of expanding COOL to other foods (e.g. other types of meat, meat as an ingredient, even milk).

In February 2015, the European Parliament tabled a resolution urging the European Commission to issue legislative proposals to make COOL mandatory for meat in processed foods.[42] In May 2016, it adopted a resolution that called on the Commission to implement mandatory COOL for all kinds of dairy and meat products, and to consider extending COOL to other single-ingredient foods. It once again urged the Commission to submit legislative proposals for mandatory COOL for meat in processed foods.[43]

In response, the Commission upheld its position that the best approach is voluntary labelling for meat as an ingredient and for lightly processed dairy and meat products.[44] Current EU legislation therefore continues to require COOL only for unprocessed (fresh) beef, pork, poultry, goat and sheep meat.

CANADA HAS LIMITED COOL REGULATIONS

Canada's COOL legislation is limited to certain imported pre-packaged goods, including meat and dairy products. Not only are few products labelled, but Canadian rules are weak, requiring merely that the country of origin be stated, rather than a breakdown of where an animal was born, fattened and slaughtered, as is required by EU regulations and the now-repealed US COOL.[45]

WHY CETA IS A THREAT TO THE EU'S COOL

CETA hands agribusiness new incentives to challenge current and proposed labelling standards. With quotas for duty-free meat imports from Canada to the EU increasing over a six-year transition period to 75,000 tonnes for hormone-free pork and 45,840 tonnes for hormone-free beef,[46] agribusiness will seek to ensure that COOL rules do not undermine this opportunity for increased market share. The successful WTO challenge of US COOL suggests that Canada may be more than willing, on behalf of its agribusiness interests, to bring a case against the EU's even more comprehensive meat origin labelling scheme. CETA hands agribusiness more powerful tools to challenge these policies. The Canadian government, which expects better market access once CETA comes into force, has also already highlighted concerns about COOL regulations proposed by EU member states.[47] CETA's regulatory cooperation provisions, which promote harmonising standards between the EU and Canada to be as similar as possible, would make it difficult to strengthen or expand COOL to processed meats, milk or other products or types of meat.

Given Canada's weak labelling requirements and the already strong opposition from agribusiness, CETA's regulatory harmonisation mechanisms – described in Briefing Paper 1 – will empower Canadian agribusiness to intervene at the early stages of developing such rules. Experience under NAFTA shows that regulatory cooperation efforts, even when voluntary and not detailed in the text of a trade agreement, help weaken public interest regulations, and have a chilling effect on the adoption of new regulations (see Briefing Paper 1). CETA's investment chapter empowers foreign investors (including meat processing corporations) to sue governments directly through the Investor Court System. CETA enables these transnational corporations to directly challenge domestic laws, policies or regulations on the basis of alleged discrimination or loss of potential profits, and to receive compensation.[48] This means that the Canadian meat industry could sue EU member states should they choose to expand COOL regulations, arguing that such requirements are discriminatory against foreign producers, or create 'barriers' to trade. In addition, Canada's wheat industry could challenge Italy's proposal to expand country of origin labelling to pasta – and it could do so directly through the Investor Court System, rather than relying on the Canadian government to press its case.

CONCLUSION: THE THREAT IS REAL

From Finland to Greece, member states across the EU are moving towards better origin labelling of various food products just as CETA is entering into force. French consumers are demanding mandatory origin labelling of processed meat, stating: 'consumers want clear information on the origin of products. Farmers and cooperatives are also willing to make the origin of their products more visible.'[49]

Meanwhile, Canada's government and industry are objecting to improved labelling standards, and are already exploring potential challenges. In February 2017, Canadian Agriculture Minister Laurence MacAulay and Canadian wheat exporters raised concerns about Italy's proposed mandatory COOL for pasta, complaining that Italy's proposal would discourage the use of Canadian durum, as Italian pasta makers would segregate supplies by country.[50]

The Italian government nonetheless approved country of origin labelling for pasta in July 2017 – prior to the end of the European Commission's comment period on the proposal. In response, the President of Cereals Canada asked: 'are there legal options together with the Italian industry that we could pursue to have an injunction put in place? I don't know if that's possible, but that's something we're looking at.'[51]

Canada has already successfully used the WTO to repeal COOL legislation in the US on behalf of agribusiness interests. Now, motivated by an interest in taking advantage of increased export opportunities opened up by CETA, Canada and its transnational corporations can also use CETA's many provisions, including regulatory harmonisation and the Investor Court System, to challenge both the EU's current country of origin labelling system, and ongoing efforts to expand it.

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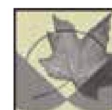

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