

Real Restrictions or Just Trade Chill? Do Trade Agreements Substantially Limit Development of Local and Sustainable Food Systems?

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Although many still question the benefits of including agriculture in trade agreements (cf. Rossett, 2004), Canada is unlikely to alter its commitment to them in the near term. Given their current structure, do trade agreements constrain the development of local and sustainable food systems?

The common view in policy and business circles is that some GATT provisions; several World Trade Organization (WTO) agreements, including the Agreement on Agriculture (AoA); and the Canadian Agreement on Internal Trade (AIT) do in fact, significantly limit the policy and programme instruments that can be applied. My preliminary reading of these WTO agreements and the AIT suggests that, although there are some restrictions, Canadian governments have far more latitude than is typically acknowledged, and more substantial drivers can be put in place than currently exist without triggering trade disputes. I hope this session will explore the degree to which these lines of argument have merit.

How is Local/Sustainable Development Currently Taking Place in Canada?

The driving idea behind local/sustainable agriculture is to maximize the environmental, social and economic benefits that can accrue with a greater emphasis on regional food systems. Governments are currently playing a relatively modest role in their evolution. Federal environment pillar provisions under the Agricultural Policy Framework (APF) represent a relatively small percentage of total federal transfers to farmers (AAFC 2009). And little, if any, of the programming in this pillar links agri-environmental improvements to fully integrated regional food supply chain approaches. Jurisdictionally, local and regional systems are generally under the provincial domain. The provinces do participate in APF environment pillar programming and have some grant programmes for local infrastructure development. Many of them offer generic “buy local” marketing schemes and sometimes procurement programmes, but few of these link local with sustainable production. The supply management marketing boards provide primarily local products if a provincial definition of locality is used, but sustainable production, processing and distribution have only been promoted to a modest degree. Some municipalities have local procurement policies, but not typically ones focusing on, and merging, local and sustainable food.

It is likely that the trade agreements have encouraged a reduction in instrument choice. The favoured tools for the federal and provincial governments are tripartite funded business risk management programmes, as well as sectoral contribution agreements and information programmes to drive “market development”. The contribution agreements are not typically framed around very specific programme parameters, but rather serve wider purposes, through which those interested in regional food systems might be successful with their applications.

The nature of food procurement at subnational levels is particularly interesting. Provinces and the MASH sector will typically procure through food service operators. The requirement for local/sustainable is typically only a small part of the tendering process and does not usually have

much impact on which firm gets the bid. Furthermore, given the state of local/sustainable development, setting high procurement targets is unrealistic in the near term, further reducing the overall significance of these provisions.

More significant roles are being played by private and NGO actors and, to a lesser extent, private and para-public foundations. Sometimes these actors work in collaboration with governmental or para-governmental agencies. Therefore, a complex set of actors is involved in development processes and much of this work may not be directly impacted by the trade agreements, since typically civil society is not covered by them.

GATT Article III

Article III of the GATT is based on the idea that “like products” have to be treated similarly, regardless of source. Governments cannot apply taxes, charges, or non-tariff trade barriers (NTBs) to imported products to support their domestic industry. Historically, disputes between countries regarding this rule have usually only been triggered when such tariffs and charges are involved. This article is referenced in many WTO documents to support WTO provisions.

Paragraph 8 of the Article allows for exemptions for government procurement of products for government purposes without resale. This might cover, for example, food purchased for hospitals, prisons and in some cases government employees.

But are local/sustainable products “like” with imported conventional products? They appeal to different market segments, often have different supply chains, and serve different economic and environmental purposes. There is likely an argument, yet to be explored formally within WTO mechanisms, that they are not actually “like” (cf. Hudek 2000).

WTO Agreements

Under the WTO Agreement on Agriculture, governments are supposed to remove barriers to trade. Negotiations are currently stalled, and the AoA is still operating largely under rules agreed upon in 1995. Support for local and sustainable food systems might generally be considered one of many non-tariff trade barriers, but the structure of the deal appears to offer numerous opportunities for more aggressive interventions. I highlight several here.

First, the agreement does not specifically apply to the MASH sector. Nor does it say anything about non-governmental organizations. Multi-actor support programmes, a common feature of current development efforts, might not then be covered, even if the state was part of the partnership.

Second, Green Box (or environmental measure) support is permitted, so it is feasible to mark local/sustainable programming for this category. If properly constructed, such measures can also generate significant environmental improvements. Doing this properly means linking environmental measures along the supply chain so that the product benefits are enhanced by their regionality. For example, the environmental benefits of IPM or organic adoption in fruit and vegetable production are augmented by shortening supply chains with innovative distribution, reducing cooling and refrigeration requirements, and reducing supply chain waste. An integrated strategy allows for additional GHG reductions and energy use efficiencies. In fact, such supply

chain improvements can exceed the on-farm environmental benefits and also those of longer-distance supply chains (MacRae et al., submitted).

Third, even if local/sustainable provisions fall into the amber box category, governments are allowed to provide a considerable amount of subsidy in this category; they are just not supposed to exceed the limits imposed by the AoA. Although recent data is lacking, the federal government's spending on amber box programmes appears to be substantially below its agreed upon limit (Holden 2005). In part, this is because when a specific programme costs less than 5% of total farm income in the targeted commodity area, it is not counted. This is known as the *de minimus* provision. Given this rule, it's entirely feasible to construct a useful and substantial programme and not even have it count towards Canada's amber box total. Alternately, a larger programme could be designed that is counted but still does not take Canada over its amber box cap.

There is also the WTO Agreement on Government Procurement that applies to central agencies; to provincial governments and affiliated agencies; as well as for central government contracts valued at over \$217,000 (2008 exchange rates) (Carter-Whitney 2008) and perhaps even higher amounts for sub-central agencies. This agreement is primarily about tendering procedures, supplier qualification and selection, and the awarding of contracts. It may limit the choice of suppliers for a contract, but given that many food procurement provisions are executed through food service firms, the language of the agreement may not limit the ability of tendering agencies to write in local/sustainable procurement targets. Some sub-central agencies are also exempt if the procurement relates to regional development objectives. The provisions cover many provincial departments, but an equal number of MASH entities and NGOs are exempt, depending on the province.

Agreement on Internal Trade (AIT)

There are a number of exceptions/exemptions to the Canadian Agreement on Internal Trade (AIT) under which local/sustainable food procurement would appear to be covered.

The two most important exemptions are outlined below.

1. The procurement provisions of the AIT are about tendered contracts and who is eligible to win the bids. The AIT is designed to reduce the possibility that governments will favour bidders from their province. Local/sustainable requirement provisions in the tender can be constructed so they are not discriminatory to the bidders.
2. Any good being resold to the public is not covered by the AIT. Since the food purchased by food service companies is typically resold to the public, it would appear to be exempt.

The AIT does apply to the MASH sector, but also contains exemptions for regional development and environmental protection, if provisions do not represent excessive barriers to trade (Carter-Whitney 2008; Shrybman 2009). Shrybman (2009) has argued that it is entirely feasible for municipalities to craft local food procurement provisions that are entirely consistent with the spirit of the AIT and its contract dollar value thresholds. Presumably then, local/sustainable procurement measures could be similarly consistent. And ultimately, if Article III of the GATT is not applicable, as discussed above, then local/sustainable products would not be considered "like" with conventional/imported goods.

A Note on the Proposed Canada–EU Comprehensive Economic and Trade Agreement (CETA)

Shrybman (2010) argues that the proposed CETA goes beyond the WTO AoA and AIT in changing municipal procurement provisions which could then shift rules around food procurement. Subnational governments, including the MASH sector, would not be able “to restrict tendering to Canadian companies, or stipulate that foreign companies bidding on public contracts accord some preference for local or Canadian goods, services, or workers” (Shrybman 2010, 4). This sentence in the draft text has likely been included because the WTO and AIT are silent on such provisions. A current draft of the CETA however, suggests application only of contracts exceeding \$200,000. Given that the text is still under discussion, how agricultural goods will be defined and whether food resold to the public will be covered are open questions.

Conclusion

In conclusion, there would appear to be numerous ways to promote local/sustainable food system development without running afoul of trade agreements. Bundling local/sustainable together may create new opportunities for exemptions and recategorization of initiatives to permissible status. Subnational governments, para-governmental agencies and NGOs are often exempt; this is an important consideration in an era of increasing regulatory pluralism. Canada appears to have subsidy room under the WTO AoA. Ultimately, innovative ideas that do not fall into existing categories may fly under the radar or may not be sufficiently significant to trigger a dispute.

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