

**PURSUING FOOD SOVEREIGNTY IN CANADA AMIDST  
THE TRADE AGREEMENTS:  
A Case Analysis of CELA's Model Local Food Act**

Submitted by Kathryn Henley  
March 31<sup>st</sup>, 2015

Supervisor: Rod MacRae

A Major Paper submitted to the Faculty of Environmental Studies in partial fulfillment of  
the requirements for the degree of Master in Environmental Studies, York University,  
Ontario, Canada

Student Signature: \_\_\_\_\_  
Supervisor Signature: \_\_\_\_\_ [see attached email]

**ABSTRACT**

Policymakers and advocates of food sovereignty alike argue that the trade agreements to which Canada is a party restrict the potential to develop government-sponsored local food policies; however, there is growing academic support for the view that there is some latitude in the agreements that can be exploited through creative legislative drafting. Using the Canadian Environmental Law Association's (CELA) proposed Model Local Food Bill for Ontario as a case study, this paper argues that by integrating local and sustainable measures, policymakers may be able to develop local food programs without violating Canada's trade commitments. Recommendations are made as to how the Model Bill could be modified so as to further food sovereignty goals while evading trade complaints; these recommendations are categorized as efficiency, substitution, or redesign stage initiatives, to identify the challenges of implementing each of the measures if they were to be included in a modified bill. Though one of the goals of this paper was to propose specific language for each of the measures, the nature of trade disputes and the actual content of the Model Bill restricted this author's ability to do so; this is an area for future examination.

<b>CONTENTS</b>
-----------------

<b>FOREWORD</b>	<b>1</b>
<b>1. INTRODUCTION</b>	<b>2</b>
<b>2. OVERVIEW OF FOOD SYSTEMS DISCOURSES &amp; FOOD SOVEREIGNTY</b>	<b>4</b>
A. Neoliberalism and the Corporate Food Regime	4
B. The Right to Food	6
C. Food Security	7
D. Food Sovereignty	8
i. Food sovereignty in Canada	11
ii. Food sovereignty and the Analysis of CELA's Model Bill	13
<b>3. CELA'S MODEL BILL</b>	<b>14</b>
A. Overview of the Model Bill	14
B. The Model Bill and Food Sovereignty	15
i. Localism	15
ii. Sustainable Agriculture	18
iii. Reconnection of Urban and Rural Communities	19
iv. Participation of Farmers, Consumers, and Indigenous Communities	21
v. Flexibility	22
<b>4. TRADE AGREEMENTS</b>	<b>23</b>
A. World Trade Organization	24
i. General Agreement on Tariffs and Trade	25
(a) Article III: National Treatment on Internal Taxation and Regulation	25
(b) Article XI: General Elimination of Quantitative Restrictions	31
(c) Article XX: General Exceptions	31
ii. Agreement on the Application of Sanitary and Phytosanitary Measures	33
iii. Agreement on Technical Barriers to Trade	34
iii. Subsidies and Countervailing Measures Agreement	35
iv. Agreement on Agriculture	36
v. Agreement on Government Procurement	38
B. North American Free Trade Agreement	39
C. Agreement on Internal Trade	39
D. Comprehensive Economic and Trade Agreement	40
<b>5. DISCUSSION</b>	<b>45</b>
A. Targets	45
B. Distribution Measures	46
C. Procurement	48
i. Monetary Thresholds	51
ii. Exceptions	53
(a) Contracts with NGOs and public bodies	53
(b) Procurement of goods intended for commercial resale	53
(c) Aboriginal communities and corporations	54
(d) Agricultural goods made in furtherance of agricultural support programs or human feeding programs	54
(e) Social and Environmental Criteria	55
(f) GATT Articles XX(b) and (g)	56
D. Targeted Support Programs	56
E. Technical Regulations and Standards	59
<b>6. CONCLUSION</b>	<b>62</b>
<b>7. BIBLIOGRAPHY</b>	<b>64</b>

## FOREWORD

My overarching goal upon completion of the MES program, as indicated in my Plan of Study (POS), was to understand how international laws can affect domestic policy choices, specifically in the realm of food policy. My Major Paper (MRP) has allowed me to examine this in a concrete way by studying international trade law and policy, and how a number of multilateral commitments have affected Ontario's ability to make decisions in relation to local food production, distribution and procurement. This topic considers the intersection of my three components (international law, public policy analysis, and the global food system), and has given me further understanding of the process of developing legislation and making legislative decisions, which has been valuable for me in my capacity as a joint JD student.

Through researching and writing my MRP, I believe that I was able to accomplish a number of the learning objectives that I set out in my POS. I was able to examine the impact of hard legal instruments, specifically international trade treaties, on domestic lawmaking in the realm of food; though I did not directly analyze the compliance aspect of these treaties, I did observe the effect that a desire for compliance can have on domestic policymaking, and the role of trade agreements as one barrier to policy implementation. Further, using CELA's Model Bill allowed me to see the role that non-governmental organizations can have (or at least attempt to have) on policymaking. I was also able to synthesize my understanding of the global food system, and the distinctions between the conventional supply chain and alternative models that have arisen in response to its failings; this resulted in my support for food sovereignty as opposed to other alternative paradigms. Finally, though my paper does not specifically examine the citizen perspective of public policy decisions in relation to food, it does address how they can limit consumer choice and affect the self-sufficiency and self-determination of producers and consumers alike.

## 1. INTRODUCTION

Over the past few decades and, in particular, since the creation of the World Trade Organization (WTO) in 1995, trade liberalization for all goods and services, including food products, has increased exponentially. As a consequence, domestic policies and programs have progressively been impacted by international obligations, and many policymakers believe that the innumerable trade agreements preclude them from creating measures that promote the local food system; this can have a detrimental effect on the livelihoods of local producers as well as consumers. Consequently, champions of food sovereignty, or simply localism generally, often argue that the only way to improve local food initiatives is to withdraw from the trade agreements or completely redesign them. However, a growing group of academics argue that there is much more leeway in these trade agreements that would allow for government-sponsored local food policies.

Most of the academic work regarding compliance with trade agreements has been focused on eco-labeling schemes and organic certification.<sup>1</sup> With respect to local food policies and programmes, very little work has been done on how to create these without running afoul of the trade agreements; however, MacRae argues that by combining local and sustainable initiatives, conflicts with Canada's trade commitments may be avoided.<sup>2</sup> By integrating the two types of measures, he asserts that more exemptions may be found within the trade agreements and there may be fewer accusations of discrimination from other Member States.<sup>3</sup>

This paper builds on MacRae's argument; it analyses a number of Canada's interprovincial and international trade commitments, particularly the WTO agreements, and attempts to show that they are not inherently incompatible with the creation of government and para-government-facilitated and -funded local food policies and programs. This, the argument goes, would advance food sovereignty. In the words

---

<sup>1</sup> See e.g. Carsten Daugbjerg, "The World Trade Organization and Organic Food Trade: Potential for Restricting Protectionism?" (2012) 2:1 *Organic Agriculture*, 55; Alan Swinbank, "Like Products, Animal Welfare and the World Trade Organization" (2006) 40:4 *JL of World Trade* 687; Erich Vranes, "Climate Labeling and the WTO: the 2010 EU Ecolabelling Programme as a Test Case Under WTO law" in Christoph Hermann & Jörg Phillipp Terhechte, eds, *European Yearbook of International Economic Law*, vol 2 (2), (Springer, Berlin, 2011) 205.

<sup>2</sup> Rod MacRae, "Do Trade Agreements Substantially Limit Development of Local/Sustainable Food Systems in Canada?" (2014) 1:1 *Canadian Food Studies* 103.

<sup>3</sup> *Ibid.*

of Sustain Ontario, “The Law Leaves Room for Local Food”<sup>4</sup>; this paper attempts to demonstrate how it does so using the Canadian Environmental Law Association’s (CELA) proposed Model Local Food Bill for Ontario.<sup>5</sup> This Model Bill was created to be a basis upon which the government of Ontario could create its own Local Food Act, and was “designed as a comprehensive approach to encourage local food development and ecologically sound farming practices in Ontario.”<sup>6</sup> The Bill focuses primarily on local food distribution and procurement, and the establishment of local food education programs within schools.

For my analysis, I performed qualitative research by means of a legal textual analysis, similar to the approach taken by Vranes.<sup>7</sup> Whereas Vranes examined the European Union’s 2010 Ecolabelling Programme through a WTO lens, I analyzed key features of CELA’s Model Bill within a food sovereignty framework and through the lens of a number of key trade agreements. Specifically, I evaluated the Bill’s contents with respect to the tenets of food sovereignty, and inquired as to how it could be altered to further these goals. I then engaged in a review of various agreements of the World Trade Organization (WTO), including the *General Agreement on Tariffs and Trade (GATT)*, as well as the *North American Free Trade Agreement (NAFTA)*, the *Agreement on Internal Trade (AIT)*, and the *Canada-European Union Comprehensive Economic and Trade Agreement (CETA)*, which is awaiting ratification. In order to understand more thoroughly what the debates are around relevant provisions of the agreements, I examined past dispute panels and academic commentary. I then explored ways that the Model Bill could be altered in order to accommodate Canada’s trade commitments, while upholding the “local” aspect of the Act. Finally, I categorized my recommendations as either efficiency, substitution, or redesign stage initiatives, following Hill and MacRae’s Efficiency-Substitution-Redesign transition framework.<sup>8</sup>

---

<sup>4</sup> Sustain Ontario, Media Release, “The Law Leaves Room for Local Food” (27 February 2015) online: <<http://sustainontario.com/2015/02/27/26028/news/media-release-the-law-leaves-room-for-local-food>>.

<sup>5</sup> Canadian Environmental Law Association, *Ontario Local Food Act, 2013: A model bill*. (Toronto, ON: CELA, 2013), online: CELA <[http://s.cela.ca/files/891ModelLocalFoodBill\\_0.pdf](http://s.cela.ca/files/891ModelLocalFoodBill_0.pdf)> [Model Bill].

<sup>6</sup> Canadian Environmental Law Association, Media Release, “Model Local Food Act sets out much needed support for Ontario’s local food systems” (27 February 2013) online: CELA <[http://www.cela.ca/sites/cela.ca/files/MR270213\\_0.pdf](http://www.cela.ca/sites/cela.ca/files/MR270213_0.pdf)>.

<sup>7</sup> Vranes, *supra* note 1.

<sup>8</sup> Stuart B Hill & Rod J MacRae, “Conceptual Framework for the Transition from Conventional to Sustainable Agriculture” (1996) 7 *JL Sustainable Agriculture* 81.

## 2. OVERVIEW OF FOOD SYSTEMS DISCOURSES & FOOD SOVEREIGNTY

### A. Neoliberalism and the Corporate Food Regime

The reigning trade paradigm of the day is neoliberalism, a political economic theory that asserts, “human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade.”<sup>9</sup> Neoliberalism promotes the retreat of state intervention, enabling unprecedented corporate control over the decision-making processes that affect citizens. The concomitant discourse in food systems is an “industrial and corporate-led model of agriculture.”<sup>10</sup>

The corporate food regime “aims at the removal of social and political barriers to the free flow of capital in food and agriculture and is institutionalized through international agreements such as the WTO’s Agreement on Agriculture.”<sup>11</sup> As Skogstad indicates, “at virtually every component in the food supply chain, the trend is towards fewer and larger enterprises.”<sup>12</sup> This trend has meant that the global food system has become more integrated both horizontally and vertically. Horizontal integration refers to corporate concentration at a single stage of the system; vertical integration refers to the corporate concentration of multiple stages i.e. one firm completes multiple steps in the supply chain.<sup>13</sup> Integration happens not only locally, but also across borders: transnational companies will control many parts of the supply system around the globe. Thus, Kloppenburg, Hendrickson, and Stevenson argue that the global food system is both centralized – in the sense that food is grown in fewer areas, on fewer farms, and processed and sold by fewer transnational corporations – and decentralized – in the sense that production is widely dispersed around the globe, and both production and processing of food often takes place far away from where it is ultimately consumed.<sup>14</sup>

<sup>9</sup> David Harvey, *A Brief History of Neoliberalism* (New York: Oxford University Press, 2005) at 2.

<sup>10</sup> Annette Aurélie Desmarais, “Building Food Sovereignty: A Radical Framework for Alternative Food Systems” in Mustafa Koç, Jennifer Sumner & Anthony Winson, eds, *Critical Perspectives in Food Studies* (Toronto, ON: Oxford University Press, 2012) 359.

<sup>11</sup> Madeleine Fairbairn, “Framing Resistance: International Food Regimes & the Roots of Food Sovereignty” in Hannah Wittman, Annette Aurélie Desmarais, & Nettie Wiebe, eds, *Food Sovereignty: Reconnecting Food, Nature and Community* (Black Point, NS: Fernwood, 2010) 15 at 18.

<sup>12</sup> Grace Skogstad, “Introduction: Internationalization and Canadian agriculture: Policy and governing paradigms” in *Internationalization and Canadian Agriculture: Policy and Governing Paradigms* (Toronto, ON: University of Toronto Press, 2008) 3 at 17 [Skogstad, “Introduction”].

<sup>13</sup> *Ibid.*

<sup>14</sup> Jack Kloppenburg Jr, John Hendrickson & GW Stevenson, “Coming in to the Foodshed” (1996) 13:3 *Agriculture and Human Values* 33.

The corporate food regime also encourages economies of scale (where higher levels of production mean cheaper production) and transnational corporations tend to favour areas where labour is cheap and weather is relatively constant year-round.<sup>15</sup> Skogstad points out that this has led to competition among governments who wish to attract foreign firms, and that these governments often will only provide assistance to farmers whom they believe are competitive in an international trade sense.<sup>16</sup>

In order for the corporate model to function, States have been required to expand their trade obligations as they relate to the production, processing, and consumption of food. As Wiebe and Wipf note, the “inclusion of agriculture in [GATT] negotiations, articulated in the [WTO], put official government stamps on decades of economic policies based on the globalization of a neoliberal, industrial, capital-intensive and corporate-led model of agriculture.”<sup>17</sup> These policies have resulted in “widespread loss of control over food markets, environments, land and rural cultures” for rural communities.<sup>18</sup>

However, some academics remain sceptical about the effect that trade agreements have had on agricultural policies. Skogstad, for example, asserts that despite the programmatic changes that have taken place in Canadian agricultural policy (and which can be linked to international trade agreements such as the General Agreement on Tariffs and Trade (GATT)), the state assistance paradigm still prevails.<sup>19</sup> The state assistance paradigm arose after the Second World War, and is rooted in the notion that “agriculture [is] an exceptional economic sector” requiring governmental regulation and financial subsidies.<sup>20</sup> In the Canadian context, this notion manifested itself in the establishment of “farmer income safety nets,” the supply-managed sectors, and the former single-desk Canadian Wheat Board.<sup>21</sup> Because these types of programs still exist in Canada, Skogstad argues that the market liberal paradigm (neoliberal) has not become dominant.<sup>22</sup> It is worth noting, however, that the Canadian Wheat Board’s monopsony has since been disassembled in the name of freer trade, thus showing the ascendancy of the corporate-led model.

---

<sup>15</sup> *Ibid.*

<sup>16</sup> *Supra* note 12.

<sup>17</sup> Nettie Wiebe & Kevin Wipf, “Nurturing food sovereignty in Canada” in Hannah Wittman, Annette Aurélie Desmarais, & Nettie Wiebe, eds, *Food Sovereignty in Canada: Creating Just and Sustainable Food Systems* (Black Point, NS: Fernwood, 2011) 1 at 3.

<sup>18</sup> *Ibid.*

<sup>19</sup> Grace Skogstad, “Canadian Agricultural Programs and Paradigms: The Influence of International Trade Agreements and Domestic Factors” (2008) 56:4 *Canadian Journal of Agricultural Economics* 493 [Skogstad, “Canadian Agricultural Programs”].

<sup>20</sup> *Ibid.* at 495.

<sup>21</sup> *Ibid.* at 500.

<sup>22</sup> *Supra* note 19.

Regardless of whether the market liberal approach has actually overtaken the state assistance paradigm, it is obvious that the food regime as a whole has trended towards market-control. In response to this trend, a number of movements have emerged: the first global reaction arose in 1947 with the arrival of the “right to food” discourse; this was followed closely by talk of “food security”; and, more recently, “food sovereignty” has surfaced as the dominant critique of agribusiness. Each of these is explored below.

## B. The Right to Food

In 1948, the *Universal Declaration of Human Rights (UDHR)* was signed.<sup>23</sup> Though not binding, it was the first document that recognized the existence of human rights in practical terms. However, it was not until 1966 that these rights were formally recognized through the development of the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.<sup>24</sup> The former recognizes personal integrity rights, rights of due process, and political rights, while the latter addresses distributive justice and social equity (including the right to food, which is articulated in Article 11). These covenants came into force in 1976; however, the rights they inscribe only become law when ratified by their signatories.

ICESCR has been criticized generally by academics as being ‘weak’ in the sense that it merely proclaims that every State “undertakes to take steps” towards “achieving progressively” the rights that it sets in place.<sup>25</sup> This is problematic for ensuring that citizens’ right to food has been met, especially because each State only has the obligation to take steps within “the maximum of its available resources” to ensure compliance with the treaty.<sup>26</sup> If a treaty breach cannot be identified, it cannot be remedied and thus there is no enforcement for the right to food. Nonetheless, Fairbairn notes that, despite the fact that neither of these international accords have any enforcement mechanisms, “they create a legal precedent within the ratifying countries, which allows citizens or courts to charge states with the obligations to

<sup>23</sup> *Universal Declaration of Human Rights*, GA Res 217(III), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810, (1948) 71.

<sup>24</sup> *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976, accession by Canada 19 May 1976) [ICCPR]; *International Covenant on Economic, Social, and Cultural Rights*, 16 December 1966, 993 UNTS 3, Can TS 1976 No 46 (entered into force 3 January 1976, accession by Canada 19 May 1976) [ICESCR].

<sup>25</sup> *Ibid*, Art 2(1).

<sup>26</sup> *Ibid*.

ensure adequate food in situations in which citizens are unable to secure it for themselves.”<sup>27</sup> However, because the right to food is framed as a positive right (i.e. States must proactively ensure that it is fulfilled, rather than merely passively ensuring that it is not interfered with), States have been far less inclined to ensure that it has been met, thus undermining the ability to create legal precedent. At present, Canada has not recognized the human right to food constitutionally, legislatively, or through any programs or policies. It is, in part, because of the retreat of state intervention that food advocates shifted away from rights talk following the 1972-73 World Food Crisis.<sup>28</sup>

### C. Food Security

Along with the right to food discourse, the roots of what is now known as “food security” emerged in the 1940s. In 1945, the Food and Agriculture Organization (FAO) of the United Nations (UN) was created; its first Director-General was Sir John Boyd Orr, a Nobel Prize-winning nutritionist who publicized the state of world hunger.<sup>29</sup> Fairbairn asserts that the food security framework emerged on a global scale at the World Food Conference in 1974.<sup>30</sup>

Food security is a term often used to describe a condition wherein all members of a society have constant access (including physical, economic and social access) to acceptable food.<sup>31</sup> One school of thought asserts that, in order to achieve food security, sufficient food must be available and accessible, both physically and economically.<sup>32</sup> Moreover, food must be adequately nutritious, safe for eating, and culturally acceptable.<sup>33</sup> Finally, there must be “policies and processes that enable the achievement of food security” (i.e. agency to ensure that it is realized).<sup>34</sup> Though there are numerous conceptions of food security, many of the dominant ones “[emphasize] national level supplies, and the major factors involved

---

<sup>27</sup> *Supra* note 11 at 20.

<sup>28</sup> Fairbairn, *supra* note 11.

<sup>29</sup> D John Shaw, *World Food Security: A History Since 1945* (New York: Palgrave MacMillan, 2007), online: <[http://observatorioseguridadalimentaria.org/sites/default/files/publicaciones/archivos/Shaw\\_A\\_History\\_of\\_Food\\_Security\\_since\\_1945\\_2007.pdf](http://observatorioseguridadalimentaria.org/sites/default/files/publicaciones/archivos/Shaw_A_History_of_Food_Security_since_1945_2007.pdf)>.

<sup>30</sup> *Supra* note 11 at 22.

<sup>31</sup> Elizabeth A Dowler & Deirdre O'Connor, “Rights Based Approaches to Addressing Food Poverty and Food Insecurity in Ireland and UK” (2012) 74:1 Social Science and Medicine 44.

<sup>32</sup> Centre for Studies in Food Security, “The Five A’s of Food Security” online: Ryerson University <<http://www.ryerson.ca/foodsecurity/our-approach.html>>.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

are national imports and production levels.”<sup>35</sup> In practice, this means a country can be considered ‘food secure’ when its citizens are, in fact, ‘food insecure,’ due to inadequate access.<sup>36</sup>

Despite the significance of national levels, food security has been criticized as shifting away from state intervention in the marketplace towards concentration on the individual purchasing power of citizens, thus giving priority to markets over social welfare, and giving more power to corporations.<sup>37</sup> As such, some conceptions have been condemned for having been overtaken by the dominant neoliberal paradigm. Other conceptions of food security have become popular due to their compatibility with the dominant paradigm: for example, some academics have pointed towards a number of labelling programs, including fair trade and organic, which “rely on a neoliberal discourse of consumerism, personal responsibility and choice, thereby contributing to the normalization of neoliberalism.”<sup>38</sup>

This understanding of certain food security discourses posits escalating production and increasing imports as the solution to the fundamental problems of the agri-food system; alternatively, food sovereignty provides a more relational approach, where food is not viewed solely as a commodity to be traded in the global market.<sup>39</sup> Food sovereignty has thus been seen as a better critique of the dominant neoliberal model than the most popular conceptions of food security, which commentators argue fail to address the power imbalances inherent in the agri-food system.<sup>40</sup>

#### D. Food Sovereignty

The concept of food sovereignty first appeared on the international scene in 1996: La Via Campesina, a self-proclaimed “transnational peasant movement,” used the term at the World Food Summit that year to describe an alternative framework for agri-food systems. Madeleine Fairbairn asserts, “food sovereignty is both a *reaction to* and an intellectual *offspring of* the earlier concepts of the ‘right to food’ and ‘food security’.”<sup>41</sup> However, as opposed to the two movements that preceded it, this frame resists the agribusiness model. Wittman, Desmarais, and Wiebe define food sovereignty as “the right of

<sup>35</sup> Fairbairn, *supra* note 11 at 23.

<sup>36</sup> See e.g. discussions on food deserts: Kristian Larsen & Jason Gilliland, “Mapping the Evolution of ‘Food Deserts’ in a Canadian city: Supermarket Accessibility in London, Ontario, 1961–2005,” (2008) 7:16 Int’l J.L. of Health Geographics, doi: 10.1186/1476-072X-7-16.

<sup>37</sup> Desmarais, *supra* note 10.

<sup>38</sup> Fairbairn, *supra* note 11 at 19.

<sup>39</sup> Hannah Wittman, Annette Aurélie Desmarais & Nettie Wiebe, (2010). The Origins & Potential of Food Sovereignty” in Wittman, Desmarais & Wiebe, *supra* note 11, 1.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Supra* note 11 at 15 [emphasis added].

nations and peoples to control their own food systems, including their own markets, production modes, food cultures and environments.”<sup>42</sup> Though it is also a rights-based approach, it does not focus solely on availability and accessibility; rather, food sovereignty emphasizes the right of farmers and consumers to be part of the decision-making process for policies that affect them.<sup>43</sup> Wiebe and Wipf argue that “community-based control over the food system” is necessary to ensure both “sustainable food production and genuine food security,” which they say are the markers of food sovereignty.<sup>44</sup> Self-determination, self-sufficiency, and participation are thus central for the realization of food sovereignty.

In 2007, the Nyéléni International Forum for Food Sovereignty was held in Mali. There were five hundred participants in attendance, representing a variety of movements – peasant, pastoralist, and social, to name a few – from around the world.<sup>45</sup> The outcome of the forum was the Peoples’ Food Sovereignty Statement, a declaration that sought to elucidate the meaning of food sovereignty after a decade of uncertainty. The Statement asserts that production of food must be community-based, and that food sovereignty is rooted in the rights of people to have control over their food systems.<sup>46</sup> Wiebe and Wipf assert that strategies for achieving food sovereignty must be developed at every level – local, regional, and national; they argue that one uniform model of food sovereignty cannot be established and transferred between locales.<sup>47</sup> Wittman, Desmarais and Wiebe also attest to the need for “home grown” approaches to agri-food systems, and argue that food sovereignty “requires developing appropriate strategies for change within our own array of unique political, cultural and ecological domains.”<sup>48</sup>

There was consensus at the Nyéléni forum for the need to remove any barriers separating production operations from consumption, and to base production methods on local knowledge.<sup>49</sup> Wiebe and Wipf also assert that one of the key tactics to realizing food sovereignty is a shift to alternative modes of production<sup>50</sup>: although conventional agricultural systems are highly productive, they are both unstable

---

<sup>42</sup> *Supra* note 39 at 2.

<sup>43</sup> Desmarais, *supra* note 10.

<sup>44</sup> *Supra* note 17 at 5.

<sup>45</sup> Wittman, Desmarais & Wiebe, *supra* note 39.

<sup>46</sup> Peoples’ Food Sovereignty Statement. (2007) online: Nyéléni <[http://www.nyeleni.org/IMG/pdf/Peoples\\_Food\\_Sovereignty\\_Statement.pdf](http://www.nyeleni.org/IMG/pdf/Peoples_Food_Sovereignty_Statement.pdf)>.

<sup>47</sup> *Supra* note 17.

<sup>48</sup> *Supra* note 39 at 5.

<sup>49</sup> Wittman, Desmarais & Wiebe, *supra* note 39.

<sup>50</sup> *Supra* note 17.

and unsustainable.<sup>51</sup> According to Altieri, one precondition to food sovereignty is a move towards regional agroecological approaches to agricultural production, which have been shown to improve productivity on small-scale farms, as well as seed sovereignty for farmers.<sup>52</sup> This is because both food sovereignty and agroecological frameworks have a focus on “local autonomy, local markets, local production-consumption cycles, energy and technological sovereignty, and farmer-to-farmer networks.”<sup>53</sup>

Agroecology is a science that applies “ecological concepts and principles to the design and management of sustainable agroecosystems”<sup>54</sup>; it has thus been deemed “the science of sustainable agriculture.”<sup>55</sup> Agroecological systems are generated so that producers can grow food without depending greatly on synthetic chemicals (pesticides, fertilizers, etc.) and fossil fuels; the goal is for such systems to promote natural processes, relying on internal ecological processes. In other words, agroecological systems are designed to be both *productive* and *sustaining*, with Hecht calling them “semi-domesticated systems” on the scale of human intervention – they are not natural, but they are not industrial either.<sup>56</sup>

Agroecological systems substitute conventional farming practices with more traditional techniques but updated with our new understanding of ecological processes. These include: the planting of polycultures, rather than monocultures; the use of crop rotations; the employment of agroforestry techniques to increase biodiversity; and using knowledge and management approaches to pest, disease, soil, and weed management.<sup>57</sup> Norgaard and Sikor point to the growing gap “between social and ecological processes”, and the ever-widening gap between consumers and producers<sup>58</sup>; agroecological approaches seek to bridge this divide by engaging in more sustainable practices. In order to be truly sustainable, Altieri argues that systems must: be regionally appropriate and participatory; contribute to the social justice movement; and restore biodiversity.<sup>59</sup> The Toronto Food Policy Council (TFPC) similarly

---

<sup>51</sup> Richard B Norgaard & Thomas O Sikor, “The Methodology and Practice of Agroecology” in Miguel A Altieri, ed, *Agroecology: The Science of Sustainability*, 2nd ed (Boulder, CO: Westview Press, 1995) 21.

<sup>52</sup> Miguel A Altieri, “Scaling Up Agroecological Approaches for Food Sovereignty in Latin America” in Wittman, Desmarais, & Wiebe, *supra* note 11, 120.

<sup>53</sup> *Ibid* at 129.

<sup>54</sup> *Ibid* at 121.

<sup>55</sup> Miguel A Altieri, ed, *Agroecology: The Science of Sustainability*, 2nd ed (Boulder, CO: Westview Press, 1995).

<sup>56</sup> Susanna B Hecht, “The Evolution of Agroecological Thought” in Altieri, *supra* note 51, 1 at 5.

<sup>57</sup> Altieri, *supra* note 55.

<sup>58</sup> *Supra* note 51 at 28.

<sup>59</sup> *Supra* note 55.

asserts that there are four key characteristics of an agroecosystem: it must be productive, sustainable, equitable, and provide a stable output.<sup>60</sup>

### *i. Food Sovereignty in Canada*

The realization of food sovereignty is, evidently, location-specific. With this in mind, Wiebe and Wipf consider the barriers to realizing food sovereignty in Canada, including: the diminishing number of farmers in the country; the fact that Canada was established as an export-oriented economy at the time of colonization and the complex nature of pre-existing indigenous food systems; rural-urban migration, which is one source of disconnect between producers and consumers; and the pressure to continue down the road of industrialized farming through new technologies.<sup>61</sup> Wiebe and Wipf also point to domestic and international trade policies that act as a significant impediment to achieving food sovereignty in Canada.<sup>62</sup> Finally, the country's reliance on food imports, as well as the negative relationship between farmers' incomes and increased yields, also generate difficulties.<sup>63</sup> Many of these barriers are tied to the global orientation of the current agri-food system.

One of the important features of a shift to food sovereignty in Canada lies in turning to indigenous knowledge of food systems in different regions.<sup>64</sup> This knowledge may provide "invaluable insights into the kinds of transformations in values, behaviours and worldviews that food sovereignty demands,"<sup>65</sup> including an understanding of "seed varieties, growing patterns, appropriate and sustainable scale, waste management, cooperation and ways of living successfully in particular locations."<sup>66</sup> Furthermore, establishing strong ties between farmers and urban consumers is essential in order to move away from the agribusiness model and empower both producers and consumers.<sup>67</sup> Finally, Wiebe and Wipf note that

---

<sup>60</sup> Toronto Food Policy Council, "Health, Wealth and the Environment: The Impacts of the CUSTA, GATT and NAFTA on Canadian Food Security" (Toronto: TFPC, 1994), online: <[http://www1.toronto.ca/city\\_of\\_toronto/toronto\\_public\\_health/healthy\\_families/nutrition/toronto\\_food\\_policy\\_council/files/pdf/tfpc\\_environment.pdf](http://www1.toronto.ca/city_of_toronto/toronto_public_health/healthy_families/nutrition/toronto_food_policy_council/files/pdf/tfpc_environment.pdf)> [TFPC].

<sup>61</sup> *Supra* note 17.

<sup>62</sup> *Ibid.*

<sup>63</sup> Darrin Qualman, "Advancing Agriculture By Destroying Farms? The State of Agriculture in Canada" in Wittman, Desmarais, & Wiebe, *supra* note 17, 20.

<sup>64</sup> See e.g. Dawn Morrison, "Indigenous Food Sovereignty: A Model for Social Learning" in Wittman, Desmarais, & Wiebe, *supra* note 17, 97.

<sup>65</sup> Wiebe & Wipf, *supra* note 17 at 8.

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid* at 9.

one positive trend for food security in Canada is the growth of urban agriculture, in addition to the development of “urban food charters, food coalitions and food policy councils.”<sup>68</sup>

Hill and MacRae created their “efficiency-substitution-redesign” (ESR) framework in order to “[assess] strategies to support the transition from conventional to sustainable agriculture”; this spectrum can also be used to determine how much transformation is required in order to achieve food sovereignty in Canada.<sup>69</sup> In the context of sustainable agriculture, these authors assert that efficiency-stage modifications constitute “shallow sustainability” while substitution- and redesign-stage changes fall under “deep sustainability.”

In addition to discussing on-farm changes to promote sustainable agriculture, Hill and MacRae also propose ESR changes with respect to various institutions that affect this sector, namely governmental, educational, and agribusiness; they note that “this framework can be applied to both the analysis of the process of decision making, and to the contents of the decisions.”<sup>70</sup> In this context, efficiency-level changes consist of lower-level modifications of existing programs or systems, which do not engender change at the higher levels. Systemic changes are more likely to take place during the substitution-stage, where entire programs may be replaced with new ones that focus on the desired sustainability goals; this type of change takes longer to implement and involves the participation of multiple actors within the institution. The ultimate goal is, of course, redesign: “it is proactive and can potentially generate permanent solutions to problems,” though these changes are much more significant, and thus take more time to execute.<sup>71</sup>

The adaptations necessary to move towards food sovereignty, as described above, are significant; they involve fundamental changes to our ways of knowing (by incorporating indigenous knowledge), our practices (ultimately shifting to an agroecological approach), and our relationships (both socially, by reconnecting urban and rural populations, and institutionally, by encouraging citizen participation in the decision-making process). Consequently, they all fall within the redesign stage; unfortunately, “redesign approaches are rarely implemented until institutions have first tried efficiency and substitution strategies

---

<sup>68</sup> *Ibid* at 10.

<sup>69</sup> *Supra* note 8 at 81.

<sup>70</sup> *Ibid* at 82.

<sup>71</sup> *Ibid* at 86.

and found them wanting.”<sup>72</sup> It will thus take a great deal of time and dedication to reach a food sovereign state.

## ***ii. Food sovereignty and the Analysis of CELA’s Model Bill***

From the foregoing, a number of key principles stand out as central to the food sovereignty frame. First, all of the above demonstrates that there is general agreement that a shift towards localism (at least in thought, if not in action) is necessary to realize food sovereignty. This shift underlies the remaining principles: the use of sustainable agricultural methods, particularly agroecological approaches; the reconnection of urban and rural communities; and a participatory regime that empowers all members of the food system, including farmers, consumers, and indigenous communities. A Local Food Act for Ontario must also be flexible enough to account for very different communities across the province.

---

<sup>72</sup> *Ibid.*

### 3. CELA'S MODEL BILL

Wiebe and Wipf argue that “Achieving food sovereignty in Canada hinges on making some fundamental changes in our domestic and trade policies, our ‘food cultures,’ our view of our place in the wider world, and many of our relationships to each other and our environments.”<sup>73</sup> As a possible first step towards such a fundamental change at the regional level, in February of 2013, the Canadian Environmental Law Association (CELA) attempted to influence Ontario provincial food policy by drafting the *Ontario Local Food Act, 2013: A Model Bill* (“Model Bill” or “Bill”). The drafters explain its purpose in the following terms<sup>74</sup>:

The Act’s purpose is to improve Ontario’s local food systems by 1) improving Ontario’s knowledge of the benefits of local food, 2) strengthening Ontario’s local food economy, 3) promoting environmentally friendly farming, production and processing practices, 4) improving local food distribution, 5) increasing public procurement of local food, and 6) inter-governmental coordination and public participation in local food planning and decision-making.

These purposes are reiterated in section 1 of the Act.

The following provides a general overview of the Model Bill, followed by a brief analysis of its relationship with the concept of food sovereignty.

#### **A. Overview of the Model Bill**

The Model Bill is divided into eight parts, addressing the six purposes outlined above. Part I describes the purposes of the Bill and how it should be interpreted, including defining key terms. This Part also provides the Decision-making Principles of the Act<sup>75</sup>:

- (a) food systems approach;
- (b) multi-functionality approach;
- (c) social justice and health equity approach;
- (d) precautionary approach;
- (e) ecosystems approach; and
- (f) sustainable development approach.

<sup>73</sup> *Supra* note 17 at 7-8.

<sup>74</sup> Model Bill, *supra* note 5, explanatory note.

<sup>75</sup> *Ibid*, s 2.

Part II outlines the administration of the Model Bill; it sets out the powers and duties of the Minister of Agriculture and Food, and establishes the roles of Directors, an Ontario Local Food Systems Committee, and an Advisory Council on Ontario Local Food Policy.

Part III sets out the Bill's "Local Food Strategy and Targets"; it states that both quantitative and qualitative targets must be established "in relation to (1) local food procurement; (b) local food distribution; and (c) local food education."<sup>76</sup> This Part also dictates the creation of an Ontario Local Food Strategy. The bulk of my trade analysis will centre on this Part, as well as Part IV, which prescribes the local food assessment that must be completed by the Minister and dictates the means for local food distribution and procurement.

Parts V and VI of the Model Bill outline the formation of "Programs for Ecological Farming Practices, Goods and Services Markets, Healthy Food Production, and Processing," as well as education programs in schools.

Part VII of the Bill provides for miscellaneous matters, including public consultation and notice, as well as offences and penalties. Finally, Part VIII establishes the Bill's commencement and short title.

## **B. The Model Bill and Food Sovereignty**

My analysis of this Bill is rooted in the notion that attempts by local governments to become food sovereign are not incompatible with the major trade agreements to which Canada is a party; in order to complete this analysis, I must first establish that the Model Bill fits within a food sovereignty framework. At no point in the Model Bill is the term "food sovereignty" mentioned; however, considering the principles described in the previous section, the following demonstrates that this frame at least informed the creation of the Model Bill, whether directly or indirectly.

### ***i. Localism***

As the title of the Bill suggests, the premise of the Local Food Act is to reorient Ontario's food consumption to food produced and distributed locally; specifically, the purposes outlined above are aimed

---

<sup>76</sup> *Ibid*, s 8.

at “improv[ing] Ontario’s local food systems.”<sup>77</sup> The entire Bill is aimed at taking a local approach to food production, distribution, and procurement. Within section 3, the drafters define ‘local food’ as “(a) food produced or harvested in Ontario, and (b) subject to any limitation in the regulations, food and beverages made in Ontario, if they include ingredients produced or harvested in Ontario.”<sup>78</sup> This approach to processing could be considered weak, as it does not require that all of the ingredients making up the product be produced in Ontario, nor does it provide explicit sustainability requirements for the means of processing. Section 3 of the Bill also defines a ‘local food system’ as “a chain of activities and processes related to the production, processing, distribution and consumption of local food.”<sup>79</sup> The Model Bill thus proposes centralizing the food system in Ontario, contrary to the corporate food regime.

Though CELA chose to define ‘local’ in relation to a political jurisdiction (the province), the concept is contentious, and there are a number of other ways in which it could be delineated.<sup>80</sup> For example, in their study of Local Food Plus (a now defunct third party certifier of local food in Canada), Loudon and MacRae found that using a provincial designation of ‘local’ would violate federal regulations, which dictate that either the food must be produced within 50 km from where it is being sold, or it must be “food that is manufactured, processed, produced or packaged in a local government unit and sold only in...the local government unit [or] one or more local government units that are immediately adjacent to the one... in which it is manufactured, processed, produced or packaged.”<sup>81</sup> However, Loudon and MacRae note that using 50 km to designate local produce “reflects a supply chain distance approach...[which] is limited because it assumes a direct marketing context for local; consequently, rules will focus on fruits and vegetables, the most commonly direct-marketed foods.”<sup>82</sup> In other words, for foods that are not sold directly to consumers by the producers themselves, a 50 km radius is both exceedingly small and under-inclusive of all types of food products. Conversely, Kloppenburg et al. assert that framing local in terms of a “foodshed” is more appropriate, and do not assign a particular distance requirement to that concept.<sup>83</sup>

---

<sup>77</sup> *Ibid*, explanatory note

<sup>78</sup> *Ibid*, s 3.

<sup>79</sup> *Ibid*.

<sup>80</sup> Fiona N Loudon & Rod J MacRae, “Federal Regulation of Local and Sustainable Food Claims in Canada: A Case Study of Local Food Plus” (2010) 27:2 Agric Hum Values 177.

<sup>81</sup> *Food and Drug Regulations*, CRC, c 870, s B.01.012.(1).

<sup>82</sup> *Supra* note 80 at 185.

<sup>83</sup> *Supra* note 14.

As noted above, the model Local Food Act proposes taking a “food systems approach” to decision-making, which “means the recognition of all the processes that make up a local food system, from growing and harvesting food to its processing, packaging, transportation, distribution, preparation, marketing, consumption, management of food and packaging waste, and the recovery of nutrients within a region.”<sup>84</sup> This approach reflects the limited supply chain interpretation set out above, where local food is that which is produced, processed, packaged or manufactured in the same, or neighbouring, governmental jurisdictions. Nonetheless, despite its claim to taking a food systems approach, the Local Food Strategy<sup>85</sup> is based on targets that relate solely to local food procurement, local food distribution, and local food education<sup>86</sup> – three possible endpoints for the food that has been produced. Thus, it seems that simply the step prior to procurement, distribution or education, must take place within the province – whether that step be production, processing, packaging *or* manufacturing. The Model Bill, therefore, does not appear to take any detailed account of the changes that must be put in place in order to achieve a food systems approach: the current formulation would allow producers to ship products out of the province for processing, and ship them back in for purchase, while still calling the food “local”; a more robust approach would combine the Ontario jurisdictional requirement with a supply-chain approach, requiring that all stages of the supply chain take place within the province (albeit, with some exceptions, such as where Ontario lacks the proper infrastructure; however, this could be corrected at the redesign stage).

An even stronger definition of local, deemed “both conceptually legitimate and operationally viable at this stage in the relocalization process” by Loudon and MacRae, would be a 160-200 km radius.<sup>87</sup> Though this could, perhaps, be a long-term target in the Local Food Strategy (at the redesign stage), at the efficiency and substitution stages, the provincial definition of ‘local’ might be much more realistic.

---

<sup>84</sup> Model Bill, *supra* note 5, s 3.

<sup>85</sup> *Ibid*, s 9 (s 9(1) states that a Local Food Strategy must be developed within 18 months of the passing of the Act, and 9(3) says it must be reviewed every five years).

<sup>86</sup> *Ibid*, s 8 (s 8(1) states these targets must be established within one year of passing the Act, and 8(2) specifies that each target must relate to one of the stated purposes of the Act)

<sup>87</sup> *Supra* note 80 at 186.

## ***ii. Sustainable Agriculture***

As indicated above, the Bill provides a number of decision-making principles that must be followed; these principles include the use of a sustainable development approach and an ecosystem approach to decision-making. The former promotes “development that meets the needs of the present, without compromising the ability of future generations to meet their own needs”; the latter “means viewing the ecosystem as composed of air, land, water and living organisms, including humans, and the interactions among them.”<sup>88</sup> Both of these approaches fit with the notion of sustainable agriculture and with an agroecological approach as described above: agroecological systems must be constructed in a way that is productive and which will sustain future generations; they also require a reconnection between social and ecological processes, thus demonstrating an ecosystem approach to agriculture.

More evidence of the promotion of agroecological systems can be found in subsection 1(1)(e) of the Model Bill, which states that one of the purposes of the Bill is “to encourage ecological farming practices that ensure the sustainability of agricultural lands.”<sup>89</sup> The term ‘ecological farming practices’ is then defined in section 3 as “agricultural land use activities that limit chemical and fossil-fuel derived farm inputs, reduce a farm’s carbon footprint, mitigate the effects of climate change, provide species habitat, conserve soil and water, or improve soil and water quality, and such other matters as may be prescribed by regulation.”<sup>90</sup> Further, subsection 13(1) in Part V of the Model Bill states that one of the duties of the Minister is to establish and maintain programs that encourage such practices.<sup>91</sup> Though not quite as robust as an agroecological approach, farming practices that follow these guidelines would fall under the efficiency and substitution stages of transition.

Finally, the Model Bill’s preamble states, “the benefits of a strengthened local food system include stewardship of agricultural lands for the benefit of present and future generations.” However, though CELA links up the concepts of “local” and “sustainable” at numerous points throughout the Bill, it does not assume that local food will be sustainable: in a number of sections of the Model Bill, the drafters distinguish “local,” “local sustainable,” and “local organic.” Whereas ‘local food’ simply means food produced or harvested within the province (as described above), ‘local sustainable’ is “food that is local

---

<sup>88</sup> Model Bill, *supra* note 5, s 3.

<sup>89</sup> *Ibid*, s 1(1)(e).

<sup>90</sup> *Ibid*, s 3.

<sup>91</sup> *Ibid*, s 13(1).

and for which the production meets standards of environmental and social sustainability prescribed by regulation”; this is further distinguished from ‘local organic’ food, which has specified standards set out in section 3 of the Bill.<sup>92</sup> While these three categories may be appropriate at the efficiency stage of a transition towards food sovereignty, as the province moves towards full redesign of the food system a long-term goal would be to maximize the amount of local food produced organically and in a sustainable manner, and to eventually merge the three categories. However, it is unknown how much of Ontario’s food system can realistically be converted into organic production; a study done in 2009 developed a comprehensive two-phase plan which would require fifteen years in order “to boost organic production to 10% [of Ontario’s] agricultural area.”<sup>93</sup> Thus, though the authors note that this conversion would serve “to capture 51% of Ontario’s organic consumption,”<sup>94</sup> it is clear that a single category of ‘local-organic-sustainable food’ is not possible in the foreseeable future.

### ***iii. Reconnection of Urban and Rural Communities***

Though one of the stated purposes of the Model Bill is “to foster a local food network through the development of relationships between farmers, local food system representatives, public sector organizations, schools, students, and the Ontario public,”<sup>95</sup> the Bill lacks practical elements describing how these relationships will come about, except through the administration and public participation processes (described in the next section). In describing how local food distribution will take place, the Bill states that “the Minister shall...establish regional distribution measures including, but not limited to, regional food hubs that are locally developed, sustainable, and based in the community.”<sup>96</sup> If regional hubs are, indeed, community-based, it is possible that they would serve to reconnect urban consumers with rural communities, whether directly or indirectly.

Horst et al. describe a food hub “as a coordinating intermediary between regional producers and suppliers and customers, including institutions, food service firms, retail outlets, and end consumers. [...] Services provided by a food hub may include and are not limited to aggregation, warehousing, shared

---

<sup>92</sup> *Ibid*, s 3.

<sup>93</sup> R MacRae et al, “Ten Percent Organic Within 15 Years: Policy and Program Initiatives to Advance Organic Food and Farming in Ontario, Canada” (2009) 24:2 *Renewable Agriculture and Food Systems* 120 at 129.

<sup>94</sup> *Ibid*.

<sup>95</sup> *Supra* note 5, s 1(2)(f) [emphasis added].

<sup>96</sup> *Ibid*, s 11(1) [emphasis added].

processing, coordinated distribution, wholesale and retail sales, and food waste management.”<sup>97</sup>

Similarly, the Model Bill states that a regional food hub is “a business or organization that facilitates the aggregation, processing, coordination, distribution, and/or marketing of source-identified food products primarily from local and regional producers to strengthen their ability to satisfy wholesale, retail, and institutional demand.”<sup>98</sup>

There are different models for a food hub: though it can refer to a physical outlet (such as a grocery store or co-op), a hub can also be abstract. Though operations have suspended as a result of a lack of funding, Local Food Plus (mentioned briefly above) serves as an example of a third party certifier that also acted as a food hub by re-characterizing relationships between different actors (and including more of them) in the supply chain, thereby creating a food ‘web’ rather than a traditional food chain. Campbell and MacRae assert that Local Food Plus “operate[d] as a virtual market place, by helping buyers and sellers meet, either through direct communication or through its various public outreach strategies, including social media.”<sup>99</sup> Thus, a regional food hub modeled after Local Food Plus – which formerly operated in Ontario – that focuses on transparent, trusting relationships and open communication, may help to reconnect urban and rural communities (even if only indirectly). However, Campbell and MacRae also note that, though “organizational resources” outside of the “traditional market mechanisms” available have, in the case of Local Food Plus, aided in the development of local sustainable markets and of key relationships, “physical hubs can create additional opportunities.”<sup>100</sup> They cite problems associated with the actual distribution of goods from suppliers to buyers as one reason a physical hub might be desirable. A long-term goal of the Model Bill, therefore, may be to create physical hubs (similar to farmers’ markets) that allow in-person communication between urban and rural communities.

It is important to note that, despite the lack of development of urban-rural connections generally, Part VI of the Act states that the Ministers of Agriculture and Food, Education, Child and Youth Services, and Health and Long Term Care must, jointly, “promote food, agriculture, and garden-based educational

---

<sup>97</sup> Megan Horst et al, “Toward a More Expansive Understanding of Food Hubs” (2011) 2:1 Journal of Agriculture, Food Systems, and Community Development 209 at 224.

<sup>98</sup> *Supra* note 5, s 3.

<sup>99</sup> Alissa Mae Campbell & Rod MacRae, “Local Food Plus: The Connective Tissue in Local/Sustainable Supply Chain Development” (2013) 18:5 Local Environment 557 at 565.

<sup>100</sup> *Ibid.*

activities in schools.”<sup>101</sup> This type of education will reconnect urban communities to rural farms, as the experiential component requires students to attend farm tours and participate in the development of school gardens.<sup>102</sup> Further, the Bill encourages “family and community involvement” in these educational activities.<sup>103</sup>

#### ***iv. Participation of Farmers, Consumers, and Indigenous Communities***

Section 1(3) of the Bill notes that one of the ways in which the purposes of the Act (as outlined above) may be fulfilled is through the participation of Ontario residents in the planning and decision-making processes set out in the Model Bill. The Bill requires the Minister to “establish a Local Food Systems Committee to provide advice to, and assist the Minister with, the planning, implementation, and evaluation of actions taken to fulfill the purposes of the Act”<sup>104</sup>; membership of its Committee must include representatives from Aboriginal communities. As part of its duties, the Committee must meet at least once a year to discuss priorities for action in relation to the Act, as well as ensuring that public consultation occurs with respect to “matters relating to the purposes of [the] Act,” specifically regarding targets and the Ontario Local Food Strategy.<sup>105</sup> The Bill also proposes the inclusion of farmer groups, Aboriginal communities, and various other organizations in these meetings, where appropriate.<sup>106</sup>

The Bill further states that the Minister must create an Advisory Council in relation to the Ontario Local Food Policy, which will consist of 21 members appointed by the Minister.<sup>107</sup> The make-up of this council ensures that all facets of Ontario’s food systems shall be represented, including members of vulnerable populations, immigrant populations, Aboriginal communities, and persons at every stage of the food chain.<sup>108</sup>

---

<sup>101</sup> Model Bill, *supra* note 5, s 15(2).

<sup>102</sup> *Ibid*, s 15(2)(a).

<sup>103</sup> *Ibid*, s 15(2)(c).

<sup>104</sup> *Ibid*, s 6.

<sup>105</sup> *Ibid*, s 6(2).

<sup>106</sup> *Ibid*, s 6(3) (see section for full list of Committee membership).

<sup>107</sup> *Ibid*, s 7.

<sup>108</sup> See *ibid*, s 7(2) for a full list of representatives.

### **v. Flexibility**

The Bill provides that the Minister must, initially, undertake an assessment of the status of local food production, distribution, purchase, consumption, and procurement in Ontario<sup>109</sup>; once this is completed, the Minister must “establish regional distribution measures including, but not limited to, regional food hubs that are locally developed, sustainable, and based in the community.”<sup>110</sup> This ensures that distribution of food is flexible to meet the needs of the varied communities across Ontario.

Based on the foregoing, in its current state, the Model Bill is a reflection of food sovereignty in some respects, though is lacking in others. First, it employs quite a broad definition of local, using provincial jurisdiction rather than a specified radius; this may not entirely make sense in instances where a community is based near one of the province’s borders, as food produced in the neighbouring province or state might, in fact, be produced closer to its consumption point. Second, the Act needs to establish a stronger connection between localism and sustainability, and a more robust push for urban-rural reconnection in order to truly embody a food sovereignty frame. Nonetheless, the provincial delineation of ‘local’ and its current connection to sustainability are appropriate at the efficiency transitional stage, as is the push for ecological farm practices. Further, the educational requirements of the Bill are a very good step towards reconnecting urban consumers and rural communities. Finally, on its face, the Act appears to have a wide-reaching and inclusive public participation mandate, and its orientation towards communities means that it is likely flexible enough to embrace food sovereignty once other components are re-jigged a bit.

---

<sup>109</sup> *Ibid*, s 10.

<sup>110</sup> *Ibid*, s 11(1).

#### 4. TRADE AGREEMENTS

Having established that, despite certain shortcomings, the Model Bill is rooted in a food sovereignty frame, I now turn to the tension between food sovereignty and international trade agreements. As articulated by Wiebe and Wipf, “Perhaps the most daunting concrete barrier to Canadian food sovereignty is the array of neoliberal trade agreements that dictate the terms for Canadian agricultural exports and food imports.”<sup>111</sup> Terry Boehm, the former president of the National Farmer’s Union (NFU), further argues that international institutions and trade agreements, including the World Trade Organization (WTO), the General Agreement on Tariffs and Trade (GATT), the North American Free Trade Agreement (NAFTA), and, in the future, the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union pose “real threats to food sovereignty and autonomy.”<sup>112</sup> While, as noted above, there is some debate as to whether international policies and institutions have impacted decisions regarding agri-food policy in Canada,<sup>113</sup> Rosset criticizes the global shift of economic governance away from national governments towards the WTO and similar regional bodies, which are unable to provide safety nets for those who need them.<sup>114</sup>

It should be noted that a food sovereignty framework does not invalidate trade altogether; rather it promotes trade as a means for providing what cannot be grown domestically, and for distributing surplus – the key is that the domestic population is fed first. As articulated in the Peoples’ Food Sovereignty Statement, food sovereignty “promotes the formulation of trade policies and practices that serve the rights of peoples to safe, healthy and ecologically sustainable production.”<sup>115</sup> If production is limited to what can be consumed domestically, and imports are limited to what cannot be produced in Canada, the system also becomes more environmentally sustainable (at least to the extent that the transport of food products contributes to agrienvironmental problems). Furthermore, according to the TFPC, the aforementioned properties of agroecological systems are limited by certain laws of nature, which are, on the whole, violated by trade regimes.<sup>116</sup>

---

<sup>111</sup> *Supra* note 17 at 10.

<sup>112</sup> Naomi Beingessner, “Getting to Food Sovereignty: Grassroots Perspectives From the Nationalal Farmers Union” in Wittman, Desmarais, & Wiebe, *supra* note 17, 43 at 47.

<sup>113</sup> See e.g. Skogstad “Canadian Agricultural Programs”, *supra* note 19.

<sup>114</sup> Peter M Rosset, *Food is Different: Why We Must Get the WTO Out of Agriculture* (Black Point, NS: Fernwood, 2006).

<sup>115</sup> *Supra* note 46 at 1.

<sup>116</sup> *Supra* note 60.

Interestingly, Magnan argues that the rights of self-determination inherent in food sovereignty extend not only to peoples, but also to democratic governments; they exercise these rights through the enactment of agri-food policies and programs “that benefit domestic food producers and consumers.”<sup>117</sup> As a consequence, he claims that supply management regimes are legitimate means of protecting the domestic market under a food sovereignty framework, as they are “vehicles of self-determination and social protection for food producers.”<sup>118</sup>

The reason that the adoption of a Local Food Act (as an exercise of food sovereignty) is problematic for trade is because it would create limitations on imports and exports; as such, it could be considered a “unilateral environmental measure” that would be “adopted in the absence of agreed international standards or rules, or go beyond agreed international standards.”<sup>119</sup> Another example of a unilateral environmental measure would be regulations regarding product labelling. The most important international trade institution relevant to the adoption of unilateral environmental measures in Canada is the WTO and its associated agreements, including the GATT.<sup>120</sup>

While the above discussion focused on all aspects of food sovereignty, the features that pose a serious threat to the trade agreements are the requirements that food be produced and processed locally, and that it be produced and processed sustainably (preferably with the use of agroecological methods). This chapter provides an overview of the trade agreements that pose a significant barrier to the development of local food acts – an example of a practical step towards food sovereignty – in Canada, and the various loopholes that might exist within them to allow for local and sustainable food chains. Once this overview is complete, the Model Bill is analyzed from the perspective of these loopholes.

## A. World Trade Organization (WTO)

The World Trade Organization (WTO) is “the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments

<sup>117</sup> André Magnan, “The Limits of Farmer-Control: Food Sovereignty and Conflicts Over the Canadian Wheat Board” in Wittman, Desmarais, & Wiebe, *supra* note 17, 114 at 115.

<sup>118</sup> *Ibid.*

<sup>119</sup> Phillippe Sands & Jacqueline Peel, *Principles of International Law*, 3d ed (New York: Cambridge University Press, 2012) at 806.

<sup>120</sup> *Ibid.*

included in the Annexes...”<sup>121</sup> It was created in 1994 at the end of the Uruguay Round of trade negotiations, as part of the adoption of the *Final Act*; this Act includes not only the *Agreement Establishing the World Trade Organization*, but also annexed agreements, including the *General Agreement on Tariffs and Trade 1994* (GATT),<sup>122</sup> the *Agreement on Agriculture* (AoA),<sup>123</sup> the *Agreement on Technical Barriers to Trade* (TBT Agreement),<sup>124</sup> the *Subsidies and Countervailing Measures Agreement* (SCM Agreement),<sup>125</sup> the *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement),<sup>126</sup> and the *Agreement on Government Procurement* (GPA).<sup>127</sup> Each of these agreements, and their implications on the establishment of a Local Food Act, will be addressed in turn.

### ***i. General Agreement on Tariffs and Trade (GATT)***

The GATT was first adopted in 1947, and was established to serve as “the main international arrangement to encourage trade between states.”<sup>128</sup> Though the WTO replaced the GATT Council as the institution overseeing international trade, “the GATT 1994 remains the central substantive agreement under the WTO umbrella, which is designed to encourage trade between WTO members by reducing tariffs and preventing trade barriers.”<sup>129</sup> With respect to the creation of a Local Food Act, there are two Articles of the GATT (III and XI) that are potentially problematic, and one Article (XX) that provides potential loopholes that can be exploited.

#### **(a) Article III: National Treatment on Internal Taxation and Regulation**

Article III of the GATT relates to National Treatment, and asserts that Member States must treat imported goods in the same manner as ‘like’ domestic products. This obligation prohibits States from

<sup>121</sup> *Marrakesh Agreement Establishing the World Trade Organization*, 15 April 1994, 1867 UNTS 154, 33 ILM 1144 (entered into force 1 January 1995), Art. II(1).

<sup>122</sup> *General Agreement on Tariffs and Trade 1994, Marrakesh Agreement Establishing the World Trade Organization*, 15 April 1994, Annex 1A, 1867 UNTS 190, 33 ILM 1153 (1994) [GATT 1994].

<sup>123</sup> *Agreement on Agriculture, Marrakesh Agreement Establishing the World Trade Organization*, 15 April 1994, Annex 1A, 1867 UNTS 410 (ratified by Canada 30 December 1994) [AoA].

<sup>124</sup> *Agreement on Technical Barriers to Trade, Marrakesh Agreement Establishing the World Trade Organization*, 15 April 1994, Annex 1A, 1868 UNTS 120 (ratified by Canada 30 December 1994) [TBT Agreement].

<sup>125</sup> *Agreement on Subsidies and Countervailing Measures, Marrakesh Agreement Establishing the World Trade Organization*, 15 April 1994, Annex 1A, 1869 UNTS 14 (ratified by Canada 30 December 1994) [SCM Agreement].

<sup>126</sup> *Agreement on the Application of Sanitary and Phytosanitary Measures, Marrakesh Agreement Establishing the World Trade Organization*, 15 April 1994, Annex 1A, 33 ILM 28 (ratified by Canada 30 December 1994) [SPS Agreement].

<sup>127</sup> *Agreement on Government Procurement, Marrakesh Agreement Establishing the World Trade Organization*, 15 April 1994, Annex 4B, 1915 UNTS 105 (ratified by Canada 22 December 1995) [GPA].

<sup>128</sup> Sands and Peel, *supra* note 119 at 808.

<sup>129</sup> *Ibid* at 809.

imposing any national taxes or charges on either imported or domestic products, and from establishing any “laws, regulations [or] requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions,” in such a way that might favour and/or protect domestic products over imported ‘like’ products.<sup>130</sup> Lester, Mercurio, and Davies assert, “In order for discrimination to exist, the foreign and domestic products at issue must have some degree of similarity.”<sup>131</sup> They also distinguish between *de jure* discrimination – which “is apparent on the face of the measure” – and *de facto* discrimination – which “involves measures that do not explicitly differentiate between imports and domestic goods [but] may distinguish between different products, based on their physical characteristics.”<sup>132</sup> More often than not, it is measures that result in the latter that cause trade disputes; however, even if the treatment accorded to imported products is technically different, the Appellate Body has determined “that different treatment must actually have an adverse effect on the ‘conditions of competition’ for imports.”<sup>133</sup> In other words, when compared to domestic products, the imports must actually be disadvantaged in some way in the marketplace.

There are a number of provisions in Article III, the most important being: Article III:2, which refers to the taxation of “like” products of foreign origin, and states that taxes cannot be “in excess” of those applied to domestic products, nor can they be applied in a way that is contrary to the principles set out in Article III:1 (which states that taxes cannot be applied in a way that engenders protectionism); and Article III:4, which puts limits on the regulatory measures that can be taken by sovereign states. Through a number of dispute settlement rulings, the Appellate Body has determined that, due to the distinct wording of both of these provisions, they each contain different standards when assessing discrimination. In Article III:2, there are in fact two standards: the first sentence requires “[a] discriminatory effect test that looks at the overall impact of the measure on the group of imported products as compared to the group of domestic ‘like’ products,” but the Dispute Settlement Body will not consider the intent of the legislator.<sup>134</sup> Conversely, the second sentence of Article III:2 considers discriminatory effect and the objective intent of

<sup>130</sup> *GATT 1994*, *supra* note 122, Art III(1).

<sup>131</sup> Simon Lester, Bryan Mercurio & Arwel Davies, *World Trade Law: Text, Materials and Commentary*, 2nd ed (Portland, OR: Hart, 2014) at 264.

<sup>132</sup> *Ibid* at 265.

<sup>133</sup> *Ibid*.

<sup>134</sup> *Ibid* at 306.

the legislator; further, “[t]he standard of directly competitive or substitutable products is fairly broad and relies heavily on whether the products at issue compete in the market.”<sup>135</sup> With respect to Article III:4 Lester, Mercurio and Davies note that, in order to find a violation, “There must be (1) a ‘law’, ‘regulation’ or requirement (2) affecting the internal sale, offering for sale, purchase, transportation, distribution or use of imported products that (3) accords ‘less favourable treatment’ to the imported products than to (4) ‘like’ domestic products.”<sup>136</sup> Finally, though “the Appellate Body has seemingly issued a clear and determinative statement that ‘likeness’ is about the economic competitiveness of products,” it all comes down to a case-by-case analysis performed by the Dispute Settlement Body once a violation has been asserted.<sup>137</sup>

It is also important to note that Article III:8 provides an exception to the National Treatment principle by allowing government agencies to favour local producers in purchasing goods “for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.”<sup>138</sup>

In the context of this paper, the regulations and requirements that a Local Food Act would impose – that a certain percentage of food be produced and processed in a certain way (sustainably) and in a particular location (Ontario) – would appear to violate Article III:4. However, a few academics have begun discussing whether this is an accurate interpretation of the GATT, and how legislation might be framed so as to avoid triggering a violation.

Carsten Daugbjerg differentiates the ways that products can be defined for the purposes of trade: either by physical traits or by production methods (which may or may not have an effect on the end product’s physical traits).<sup>139</sup> If a process and production method (PPM) has no impact on the physical attributes of a final product, it is called a non-product related process or production method, or ‘npr-PPM.’ Npr-PPM’s have what both Swinbank and Daugbjerg refer to as “credence characteristics”: the traits possessed by a product that differentiate it from other products on moral or ethical grounds, rather than physical ones; Swinbank uses the example of animal welfare policies in the EU.<sup>140</sup> With respect to a Local

---

<sup>135</sup> *Ibid.*

<sup>136</sup> *Ibid* at 287.

<sup>137</sup> *Ibid* at 271.

<sup>138</sup> *GATT 1994, supra* note 122, Art III:8.

<sup>139</sup> *Supra* note 1.

<sup>140</sup> *Ibid*; Swinbank, *supra* note 1.

Food Act, the geographic location where food is produced or processed could be considered a credence characteristic; this argument appears to be the basis for the use of various naming rules in Europe. For example, the term *terroir* is used to designate areas that have “unique eco-regional features” or cultural significance,<sup>141</sup> and has been applied to distinguish the origin of certain products in the marketplace; the most obvious example of the use of *terroirs* is in the sale of wine.

As opposed to geographical location, sustainable or agroecological farming might not be considered an npr-PPM because the production method might change the attributes of the final product: for example, one could argue that a sustainably-produced carrot would not contain genetically-modified genes and would not have residue from synthetic chemicals, so may be considered different from its conventionally-produced counterpart. However, there is significant debate in the scientific literature about whether sustainable production actually changes the quality of a product, and there is no definitive research that would support the claim that sustainably-produced products are distinguishable in terms of quality. As such, both “local” and “sustainable” would likely be considered npr-PPMs.

Erich Vranes asserts that, so long as there is no discrimination towards foreign products, regimes that are based on PPMs should be seen to comply with the non-discrimination rules of the WTO.<sup>142</sup> However, it is hotly debated whether products that have npr-PPMs are considered “like” with their conventional counterparts as per Article III of the GATT.<sup>143</sup> The Appellate Body has held that “a determination of likeness under Article III:4 is, fundamentally, a determination about the nature and extent of a competitive relationship between and among products.”<sup>144</sup> As such, Vranes points out that policies promoting npr-PPMs have been considered to be discriminatory because they change the conditions of the marketplace with respect to the competitiveness of other products.<sup>145</sup> Swinbank argues that, though environmentally-friendly production methods (and other criteria related to processing and producing goods) have no connection to the determination of ‘likeness’ when it comes to international trade agreements, the reality is that consumers do sometimes differentiate between products based on

---

<sup>141</sup> Loudon & MacRae, *supra* note 80.

<sup>142</sup> *Supra* note 1.

<sup>143</sup> *Ibid.*

<sup>144</sup> *European Communities – Measures Affecting Asbestos and Products Containing Asbestos (Complaint by Canada)* (2001), WTO Doc WT/DS135/AB/R (Appellate Body Report), online: WTO < [https://www.wto.org/english/tratop\\_e/dispu\\_e/135abr\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/135abr_e.pdf) > at para 499.

<sup>145</sup> *Supra* note 1.

production methods.<sup>146</sup> For this reason, and because of the externalities and costs associated with them, he argues that standards based on PPMs should be considered relevant. Read reasons that a disregard for production practices in determining likeness may, in effect, be seen as “reverse discrimination against domestic producers.”<sup>147</sup>

Despite these arguments, the ‘like products’ doctrine enshrined in the GATT is based on objective characteristics, not subjective ethical ones, thus making production and processing methods irrelevant. A GATT working party concluded in 1970 that a determination of whether products are ‘like’ should be made on a case-by-case basis and suggested four criteria for making this determination: the ultimate use of a product in the market; the domestic taste of consumers; the physical properties of the product, including its “nature and quality”; and how the product is classified with respect to tariffs.<sup>148</sup> MacRae claims that all but the last criterion “would have different expression for local/sustainable compared to conventional product”: conventional and local/sustainable products are not necessarily competitive with one another due to their disparate supply chains and consumer bases, as well as the fact that they “serve different economic and environmental purposes”<sup>149</sup>; thus, he argues, they cannot be called ‘like’ products in the context of Article III:4.

MacRae highlights four WTO trade disputes that may have a bearing on Article III with respect to local/sustainable food, though he notes, “none of them address local/sustainable production and distribution directly.”<sup>150</sup> In particular, the *Dolphin-Tuna* dispute “ultimately left open the possibility that Article XX(b) and (g) [...] could be used to craft a WTO compliant measure.”<sup>151</sup> Further, the Country of Origin Labeling (COOL) dispute between Canada, Mexico, and the US (primarily) “addresses local, not local/sustainable, but would appear to support the view that bundling local with sustainable affords protections that are not available when measures are just designed to support local production and processing.”<sup>152</sup>

Though one of the above criteria is consumer-driven, the current WTO system as a whole focuses

---

<sup>146</sup> *Supra* note 1.

<sup>147</sup> Robert Read, “Process and Production Methods and the Regulation of International Trade” in Nicholas Perdakis and Robert Read (eds), *The WTO and the Regulation of International Trade. Recent Trade Disputes between the European Union and the United States* (Cheltenham: Edward Elgar, 2005) 239 at 245.

<sup>148</sup> GATT, *Report of the Working Party on Border Tax Adjustments*, L/3464, adopted December 2, 1970, BISD 188/97.

<sup>149</sup> *Supra* note 2 at 110.

<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*

<sup>152</sup> *Ibid* at 111.

on producers; Swinbank argues that it is consumer preferences that should dictate the rules of 'likeness' and proposes four criteria that, if established by a nation, could serve as an acceptable international standard for labeling products that were made through 'negative' PPMs (and which, therefore, lack credence characteristics).<sup>153</sup> Essentially, he argues "negative attribute" labeling should be allowed if a country can show the following: that a notable segment of its population places significance on how products were processed; that certain process standards are expected; that these standards are applied to both domestic and foreign products; and that citizens expect that they will be alerted should these standards not be complied with.<sup>154</sup>

Lastly, it is important to note that Lester, Mercurio, and Davies point out that in the GATT jurisprudence, there is some indication "that internal laws that regulate the *production process*, as opposed to the *product itself*, do not fall under Article III in relation to their impact on imports and are thus subject to the stricter rules of Article XI (and even if they do fall under Article III, they violate that provision)."<sup>155</sup> Article XI is discussed in the next section.

According to the Appellate Body, "[t]he broad and fundamental purpose of Article III is to avoid protectionism in the application of internal tax and regulatory measures."<sup>156</sup> Though the ultimate goal of food sovereignty is self-sufficiency, it is, in principle, antithetical to free trade, as it promotes domestic consumption while only trading the leftovers; however, in practice, anomalies in the free trade agreements mean that they are not necessarily antithetical in practice. This is at the heart of this analysis: how can we make transitional steps to move towards food sovereignty within existing constraints, while recognizing that only certain aspects of food sovereignty may be possible in the current international environment. The provisions set out regarding National Treatment can be overridden by the exceptions set out in Article XX of the GATT, discussed below, which may serve as openings for the development of a Local Food Act.

---

<sup>153</sup> *Supra* note 1.

<sup>154</sup> *Ibid.*

<sup>155</sup> *Supra* note 131 at 307 [emphasis in the original].

<sup>156</sup> *Japan – Taxes on Alcoholic Beverages (Complaint by the European Communities, Canada & the United States)* (1997) WTO Doc WT/DS8, 10, 11/AB/R (Appellate Body Report), online: WTO <[https://www.wto.org/english/tratop\\_e/dispu\\_e/8-17.pdf](https://www.wto.org/english/tratop_e/dispu_e/8-17.pdf)> at para 109.

(b) Article XI: General Elimination of Quantitative Restrictions

Article XI of the GATT prevents Member States from placing quantitative limits on imported goods through the imposition of measures such as quotas or import or export licenses; this is a general provision that may be overridden by certain other provisions of the GATT, including the public policy exceptions laid out in Article XX (next section). In *India-Autos*, the Dispute Settlement Panel determined that the most important factor to consider in Article XI:1 disputes is “the nature of the measure as a restriction *in relation to importation*” and that it is not restricted to border measures alone.<sup>157</sup> So long as a Local Food Act does not place any quantitative restrictions on imports, there is no reason to think that this provision would be violated. With respect to the argument that regulations regarding production processes violate this section, this would only be the case if the Act prohibited imports from States that did not use a specific PPM, thus having a discriminatory effect against certain countries; this was the issue in the *US-Shrimp* dispute, discussed below.<sup>158</sup>

(c) Article XX: General Exceptions

Despite the limitations set out in Articles III and XI, Article XX of the GATT provides a list of exceptions wherein a State can adopt measures that pursue certain social and political goals, so long as the application of the chosen measures does not amount to “arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade...”<sup>159</sup> Of particular interest are Article XX(b), which exempts regulations “necessary to protect the health of humans, animals, and plant life”; and Article XX(g), which allows the creation of regulations “relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production and consumption.”<sup>160</sup> The burden of proving that such measures are justified is on the State party seeking to invoke the exemption: it must first prove that

<sup>157</sup> *India – Measures Affecting the Automotive Sector (Complaint by European Communities)* (2001) WTO Doc WT/DS146/R (Panel Report), online: WTO <[https://www.wto.org/english/tratop\\_e/dispu\\_e/146\\_175r\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/146_175r_e.pdf)> at paras 7.256-7.262.

<sup>158</sup> *United States – Import Prohibition of Certain Shrimp and Shrimp Products (Complaints by India et al.)* (1998) WTO Doc WT/DS58/AB/R (Appellate Body Report), online: WTO <[https://www.wto.org/english/tratop\\_e/dispu\\_e/58abr.pdf](https://www.wto.org/english/tratop_e/dispu_e/58abr.pdf)> [*US-Shrimp*].

<sup>159</sup> GATT 1994, *supra* note 122, Art XX.

<sup>160</sup> *Ibid.*

the measure fits within one of the specific sub-paragraphs; and, second, that it was not invoked in a discriminatory or disingenuous way.<sup>161</sup>

In Article XX(b) (and other sub-paragraphs), the term ‘necessary’ has been interpreted to mean that there is no reasonable alternative measure available “that leads to a lesser degree of inconsistency with GATT rules”; conversely, in Article XX(g) ‘relating to’ simply requires that “the design and structure of the measure are closely related to the goal of the measure.”<sup>162</sup>

With respect to Article XX(g), the Appellate Body has clarified that the primary objective of the measure must be the conservation of natural resources, and that there must be equitable treatment in the sense that domestically-produced and imported goods are both subject to the restriction.<sup>163</sup> Further, it is the measure in its entirety that is examined, not simply “the discriminatory aspect of the measure.”<sup>164</sup> It remains unclear whether Member States can exercise Article XX(g) to conserve natural resources in other sovereign states.

Regarding the *chapeau* of Article XX, the Appellate Body has emphasised a number of factors when considering whether there has been arbitrary and unjustifiable discrimination, including: whether the policy decisions had a coercive effect on sovereign states; the timeframe other States were given to make changes; and whether the measure takes into account varying conditions in different countries.<sup>165</sup> Also important in determining whether discrimination exists is whether the measure is flexible and transparent.<sup>166</sup> Lester, Mercurio and Davies suggest that the Appellate Body’s findings in *US-Gasoline* indicate, “that Article III requires only a discriminatory *effect* to find a violation, whereas the introductory clause [of Article XX] requires discriminatory *intent* as well.”<sup>167</sup> The unilateral nature of a measure does not, in itself, mean there is a violation; rather, there must be some sort of logical connection between the objective being sought in the sub-paragraph relied upon and the reasons for discriminating between States.<sup>168</sup>

Enforcement of the non-discrimination rules and limiting abuse of the Article XX(b) exception is

<sup>161</sup> Lester, Mercurio & Davies, *supra* note 131 at 367.

<sup>162</sup> *Ibid* at 368.

<sup>163</sup> *United States – Standards for Reformulated and Conventional Gasoline (Complaint by Venezuela & Brazil)* (1996) WTO Doc WT/DS2, 4/AB/R (Appellate Body Report), online: WTO <[https://www.wto.org/english/tratop\\_e/dispu\\_e/2-9.pdf](https://www.wto.org/english/tratop_e/dispu_e/2-9.pdf)>.

<sup>164</sup> Lester, Mercurio & Davies, *supra* note 131 at 392.

<sup>165</sup> *US-Shrimp*, *supra* note 158.

<sup>166</sup> Lester, Mercurio & Davies, *supra* note 131.

<sup>167</sup> *Ibid* at 407.

<sup>168</sup> *Brazil – Measures Affecting Import of Retreaded Tyres (Complaint by the European Communities)* (2007) WTO Doc WT/DS332/AB/R (Appellate Body Report) online: WTO <[https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds332\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds332_e.htm)>.

done through the SPS Agreement (see below); however, Daugbjerg asserts that this Agreement does not cover npr-PPMs.<sup>169</sup> As a result, MacRae notes that “the SPS agreement is unlikely to address issues of sustainability, including organic trade, since these are generally viewed to be npr-PPMs.”<sup>170</sup>

Swinbank highlights the WTO Appellate Body’s ruling in *US-Shrimp*, which implied that PPMs related to environmental legislation may be allowed per Article XX(g).<sup>171</sup> In that dispute, there was a challenge to a US measure that would only allow imports of shrimp that were caught using turtle exclusion devices (TEDs) as a way to protect sea turtles; the Appellate Body found that such a measure, if properly worded, could be justified under Article XX(g) as long as it did not infringe the *chapeau*.<sup>172</sup>

With respect to measures taken in order to protect human health and other vital interests, Vranes also notes that the WTO Appellate Body has recently begun taking a less stringent position when inquiring into whether a measure is directly related to vital interests such as human life and health, and thus acceptable per Article XX(b).<sup>173</sup>

## ***ii. Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)***

The *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement) is applied in addition to the provisions of the GATT and deals with measures designed to protect human, animal and plant life or health – much like Article XX(b) of the GATT.<sup>174</sup> The Dispute Settlement Panel determined in *EC-Biotech* that, with respect to animal and plant health, environmental protection is included under this agreement.<sup>175</sup> However, as a result of their effect on the domestic food supply of each sovereign state, SPS measures can be highly controversial. The SPS Agreement grants states a variety of rights and obligations, and includes: provisions that promote harmonization and the use of international standards; provisions that necessitate that SPS measures be based on scientific evidence and a risk assessment (though Article 5.7 allows Member States to adopt measures provisionally in the event that there is not enough scientific evidence available to conduct a risk assessment); and a requirement that

<sup>169</sup> *Supra* note 1.

<sup>170</sup> *Supra* note 2 at 112.

<sup>171</sup> *Supra* note 1.

<sup>172</sup> *US-Shrimp*, *supra* note 158.

<sup>173</sup> *Supra* note 1.

<sup>174</sup> *SPS Agreement*, *supra* note 126.

<sup>175</sup> *European Communities – Measures Affecting the Approval and Marketing of Biotech Products (Complaint by the United States, Canada & Argentina)* (2006) WTO Doc WT/DS291-293/R (Panel Report) online: WTO <[https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S006.aspx?Query=\(%40Symbol%3d+wt%2f291%2fr\\*+not+rw\\*\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUICChanged=true](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(%40Symbol%3d+wt%2f291%2fr*+not+rw*)&Language=ENGLISH&Context=FomerScriptedSearch&languageUICChanged=true)>.

measures are the least trade-restrictive and protectionist as possible.<sup>176</sup> As was mentioned above, this agreement does not apply to npr-PPMs, and thus may not cover local/sustainable measures.

### ***iii. Agreement on Technical Barriers to Trade (TBT Agreement)***

The original *Agreement on Technical Barriers to Trade* (TBT Agreement) was adopted in 1979 at the end of the Tokyo Round of negotiations; however, it was renegotiated during the Uruguay round and was split into two agreements: the *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement, discussed above) and the new TBT Agreement.<sup>177</sup> The TBT Agreement is concerned with the technical standards and regulations enacted by States in order to regulate the packaging and labelling of products; it was created to prevent any limitations that these may impose on international trade, while allowing technical requirements that are created for legitimate purposes, such as for consumer or environmental protection. The TBT Agreement differentiates between technical regulations and the standards that make up domestic food policies. The former are mandatory policies (enforced by the government) relating to production and processing methods (PPMs) and product characteristics, whereas the latter are voluntary measures such as those applying to organic producers.

Article 2.1 of the TBT Agreement provides for similar rules of non-discrimination and national treatment as Article III of the GATT: technical regulations and standards must be applied to 'like products,' whether they are imported or produced domestically.<sup>178</sup> Further, Article 2.2 of the TBT Agreement prohibits technical regulations that are "more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create."<sup>179</sup> The TBT Agreement also allows similar public policy exceptions for regulations as Article XX of the GATT, and a non-exhaustive list of legitimate objectives is also contained in Article 2.2; these legitimate objectives include "protection of human health or safety, animal or plant life or health, or the environment."<sup>180</sup> With respect to standards, countries are expected to follow the *Code of Good Practice for the Preparation, Adoption and Application of Standards*, which is found in Annex 3 of the TBT Agreement.<sup>181</sup>

<sup>176</sup> *SPS Agreement*, *supra* note 126.

<sup>177</sup> *Ibid*; *TBT Agreement*, *supra* note 124.

<sup>178</sup> *Ibid*, Art 2.1.

<sup>179</sup> *Ibid*, Art 2.2.

<sup>180</sup> *Ibid*.

<sup>181</sup> *Ibid*, Annex 3.

Vranes and Daugbjerg both discuss the debate surrounding the definition of “technical regulations” in the TBT Agreement, and whether it includes npr-PPMs; despite the prevailing view (especially in developing countries) that it does not, Vranes argues that the TBT Agreement covers npr-PPM-based measures, particularly with respect to eco-labelling.<sup>182</sup> Should it not apply, Vranes nonetheless asserts that the TBT Agreement does not intrinsically prohibit standards and regulations that are based on npr-PPMs, nor does the fact that labeling schemes are process-based necessarily prohibit them under the GATT.<sup>183</sup> Daugbjerg points to Article F of Annex 3 of the TBT Agreement, which permits “WTO member states to diverge from the general rule on standard setting” as a “potential loophole for using domestic organic standards as disguised restrictions to trade.”<sup>184</sup>

Additionally, Vranes suggests that, though the TBT Agreement does not explicitly include the GATT Article XX exceptions, it does apply, which MacRae asserts “suggests that using Article XX to justify supports for local/sustainable food is permissible.”<sup>185</sup>

#### ***iv. Subsidies and Countervailing Measures Agreement (SCM Agreement)***

Another legal text of the WTO is the *Subsidies and Countervailing Measures Agreement* (SCM Agreement), which, with the help of Articles XVI and XXIII of the GATT, serves to restrict a State’s ability to provide domestic subsidies to producers. Article XXIII specifically prevents nations from diminishing or effectively quashing, whether directly or indirectly, any benefits other nations should be receiving from the GATT.<sup>186</sup>

Per the SCM Agreement, a subsidy is defined as any “financial contribution” by a government or public body, including: direct or potential direct transfers of funds; foregone government revenue that would otherwise be due; purchase of “goods or services other than general infrastructure”; and payments made “to a funding mechanism” or “entrust[ed] or direct[ed] to” a private body to carry out one or more of the type of functions” previously listed.<sup>187</sup> Article 1.1(b) provides that the financial contribution must confer a benefit in order for a subsidy to exist (a financial contribution that does not result in a benefit to the

<sup>182</sup> Vranes, *supra* note 1; Daugbjerg, *supra* note 1.

<sup>183</sup> *Supra* note 1.

<sup>184</sup> *Supra* note 1 at 60.

<sup>185</sup> *Supra* note 2 at 112.

<sup>186</sup> *SCM Agreement*, *supra* note 125.

<sup>187</sup> *Ibid*, Art 1.1(a)(1)(i)-(iv).

recipient is not a subsidy).<sup>188</sup> Finally, the SCM Agreement requires that the payment have a specific target (such as a particular sector or industry), meaning that government spending that benefits society as a whole will not be considered a subsidy; whether the specificity requirement is met will be determined on a case-by-case basis.<sup>189</sup> As such, when discussing funds that go towards environmental improvements, MacRae argues that if the wider public feels the benefits of certain measures, they should not necessarily be considered as “farm subsidies.”<sup>190</sup>

The SCM Agreement lays out three categories of subsidies: non-actionable subsidies, which are those that States are permitted to grant; prohibited subsidies, including export subsidies and domestic subsidies, which are automatically banned; and actionable subsidies.<sup>191</sup> The latter are allowed, but can be challenged if a Member can demonstrate that another Member has such subsidies, and that the subsidies have an adverse effect on trade; adverse effects include “injury to the domestic industry of another member; nullification or impairment of benefits accruing directly or indirectly to other Members under GATT [...]; [and] serious prejudice to the interests of another Member.”<sup>192</sup> However, importantly, Article 5 of the SCM Agreement “does not apply to subsidies maintained on agricultural products as provided in Article 13 of the Agreement on Agriculture.”<sup>193</sup>

#### ***v. Agreement on Agriculture (AoA)***

The *Agreement on Agriculture* (AoA) came out of the Uruguay Round of negotiations, and contains three pillars: domestic support, market access, and export subsidies.<sup>194</sup> This paper is concerned with the first, domestic support, which classifies different types of subsidies into “boxes” (reflecting subsidy commitment schedules) relative to how they impact, or “distort,” trade.<sup>195</sup> As explained by Lester, Mercurio, and Davies, “[w]here a commitment has been made in the schedule for a particular product, the Member agrees not to provide more than the committed amount of subsidies. Where no commitment has

---

<sup>188</sup> *Ibid*, Art 1.1(b).

<sup>189</sup> *Ibid*, Arts 1.2, 2.1.

<sup>190</sup> *Supra* note 2.

<sup>191</sup> *Supra* note 125, Parts I-III.

<sup>192</sup> *Ibid*, Art 5.

<sup>193</sup> *Ibid*.

<sup>194</sup> *Supra* note 123.

<sup>195</sup> Rosset, *supra* note 114.

been made, no subsidies are permitted.”<sup>196</sup> Further, they note that, unlike the SCM Agreement, the AoA is not explicitly concerned with “the trade-distorting effects of subsidies.”<sup>197</sup> As set out briefly above, the SCM Agreement prohibits subsidies that are contingent upon the use of domestic goods over imported ones; however, should a Member set out support commitments pursuant to the AoA, domestic subsidies will be allowed so long as they do not cause adverse effects, as set out in Part III of the SCM Agreement.<sup>198</sup>

Measures that fall within the “green box” are unrestricted and states are not required to apply the general reduction commitments to them; these are domestic support measures that have little to no impact on trade, and can be found in Annex 2 of the AoA. They must be funded by a governmental program, and cannot “have the effect of providing price support to producers”; there are also a number of policy-specific criteria that will apply in order for the exemption to apply.<sup>199</sup> Included among the green box policies are: those governing food security and governmental services; direct payments to producers under environmental and regional assistance programmes (so long as they are not based on production levels or prices); and support measures that constitute less than five percent of a Member State’s value of production for either an individual product or its total value of agricultural production.<sup>200</sup>

The “amber box” contains any domestic support measures that are more than minimally trade distorting, including subsidies to producers that are quantity-based and price supports; however, as noted above, price support measures are permitted for up to five percent of agricultural production.<sup>201</sup> Between 1995 and 2000, Canada was required to reduce its payments to amber box programs by 20%.<sup>202</sup> Lastly, “blue box” supports are those that would fit into the amber box if not for the fact that they contain conditions aimed at reducing trade-distortion. There are no restrictions on how much governments can spend on blue box supports.<sup>203</sup>

With respect to domestic food policy in Canada, it is important to note that supply management is not prohibited under any of the subsidy commitment boxes because it does not involve a direct payment

---

<sup>196</sup> *Supra* note 131 at 457.

<sup>197</sup> *Ibid.*

<sup>198</sup> Lester, Mercurio & Davies, *supra* note 131.

<sup>199</sup> AoA, *supra* note 123, Annex 2.

<sup>200</sup> *Ibid.*, paras 2-3, 5, 12-13.

<sup>201</sup> AoA, *supra* note 123, Art 6.

<sup>202</sup> *Ibid.*

<sup>203</sup> *Ibid.*, para 5.

from the government to producers<sup>204</sup>; nevertheless, it is still considered by many to be trade distorting, and has been challenged in the international sphere. Though the Special Rapporteur claims that it is the countries, not the WTO, that impose conditions that impair supply management schemes, he nevertheless argues that changes must be made to the AoA from the Doha Round that allow marketing boards and supply management regimes to reach their full potential, which involves altering rules related to quotas and tariffs.<sup>205</sup>

MacRae also points out that the limits the AoA sets on funding and subsidies do not apply to the MASH sector (municipalities, school boards, and publicly-funded health, academic, and social service providers) or NGOs; however, he points to Vranes' warning that non-governmental activities may nonetheless be attributed to the state should the government provide any inducements or deterrents.<sup>206</sup> Further, MacRae notes that support for environmental sustainability is authorized under the green box, and governments have a relatively high ceiling for subsidies under the amber box (meaning spending can increase substantially).<sup>207</sup> Finally, "when a specific program costs less than 5% of total farm income in the targeted commodity area, it is not counted" because of the *de minimis* provision; thus, many support programs could be created to fall outside of the AoA.<sup>208</sup>

#### ***vi. Agreement on Government Procurement (GPA)***

As indicated above, Article III:8 of the GATT provides an exception to the National Treatment principle with respect to public procurement. However, the *Agreement on Government Procurement* (GPA) was negotiated during the Tokyo Round (revised in the Uruguay Round) and provides additional regulations for the procurement process, particularly with respect to the transparency in the tendering process; it is aimed at ensuring fair treatment for foreign suppliers. The GPA is distinct from the agreements described above in that it is plurilateral; while members of the WTO must comply with the aforementioned agreements, the GPA is optional, not mandatory. The Agreement covers not only central and subnational governments, but also public enterprises; further, it limits consideration of 'offsets,' which

---

<sup>204</sup> Rosset, *supra* note 114.

<sup>205</sup> Olivier De Schutter, "The World Trade Organization and the Post-Global Food Crisis Agenda Putting Food Security First in the International Trade System," (2011) Briefing Note 4 by the Special Rapporteur on the Right to Food, online: WTO <[http://www.wto.org/english/news\\_e/news11\\_e/deschutter\\_2011\\_e.pdf](http://www.wto.org/english/news_e/news11_e/deschutter_2011_e.pdf)>.

<sup>206</sup> *Supra* note 2.

<sup>207</sup> *Ibid.*

<sup>208</sup> *Ibid* at 114.

are conditions aimed at domestic support (including local content requirements).<sup>209</sup> However, the GPA is not applicable to contracts whose values fall below 130,000 Special Drawing Rights (SDRs), which, as of March 10, 2015, is equivalent to \$227,590 CDN; for sub-national governments (such as the province of Ontario), the valuation limit is 355,000 SDRs, or \$621,495 (March 10, 2015). The GPA also allows governments to add technical requirements to contracts, though they should be performance-based, and preferably founded on international standards; further, they should not reference a specific origin.<sup>210</sup> Finally, the GPA provides exceptions for small and minority-owned businesses, and for domestic support programs.<sup>211</sup>

## B. North American Free Trade Agreement (NAFTA)

The *North American Free Trade Agreement* (NAFTA) creates a regional trading bloc between Canada, Mexico, and the United States; it came into force in 1994, at the same time as the formation of the WTO.<sup>212</sup> On the whole, the NAFTA contains provisions very similar to those set out in the GATT and other WTO Agreements (including national treatment and rules related to technical requirements); however, unlike the WTO's GPA, the provinces are not bound to follow the NAFTA rules.<sup>213</sup> Furthermore, under NAFTA, municipal procurement is irrelevant, and MacRae notes that “[t]he procurement rules between Canada and the US [...] are still only applicable at the federal level for goods valued at more than USD\$25,000.”<sup>214</sup>

## C. Agreement on Internal Trade (AIT)

The *Agreement on Internal Trade* (AIT) is a Canadian trade agreement between the provinces, the territories, and the federal government<sup>215</sup>; it entered into force in 1995 and is aimed at reducing trade barriers within Canada. MacRae points out that the AIT, Article 401.1, has similar requirements for non-discrimination as the GATT; however, it also contains exemptions for “Legitimate Objectives” under Article

<sup>209</sup> GPA, *supra* note 127.

<sup>210</sup> *Ibid.*, Art. VI.

<sup>211</sup> GPA, *supra* note 127.

<sup>212</sup> *North American Free Trade Agreement Between the Government of Canada and the Government of Mexico and the Government of the United States*, 17 December 1992, Can TS 1994 No 2, 32 ILM 289 (entered into force 1 January 1994) [NAFTA].

<sup>213</sup> *Supra* note 2.

<sup>214</sup> *Ibid.* at 114.

<sup>215</sup> *Agreement on Internal Trade*, 18 July 1994 (entered into force 1 July 1995) [AIT].

404, including regional development and environmental protection.<sup>216</sup> Also exempt are non-governmental organizations (NGOs) and MASH sector contracts valued at less than \$100,000.<sup>217</sup> Though the AIT's rules were formulated so as to reduce favouritism for local suppliers, MacRae notes that Article 504 allows the establishment of Canadian content rules, so long as they are compatible with the country's international trade obligations.<sup>218</sup> Finally, he notes that the food sold to consumers by food service companies appears to be exempt from the AIT, since Article 507 provides that "procurement of goods intended for resale to the public" are not covered.<sup>219</sup>

#### **D. Comprehensive Economic and Trade Agreement (CETA)**<sup>220</sup>

The Comprehensive Economic and Trade Agreement has been negotiated between Canada and the European Union (EU); at the time of this writing, it is currently under review and awaiting ratification by both parties. It too has similar provisions to the WTO agreements, and incorporates a number of them into its text (for example, Chapter XX covers technical barriers to trade, and Article 2(1) of that chapter incorporates a significant portion of the WTO's TBT Agreement). One area that is dealt with in a significantly different manner than any other trade agreement is government procurement, covered in Chapter X; the remainder of this section addresses this Chapter.

Despite a few key exceptions (which are, nonetheless, diluted), the CETA will be the first international agreement to dictate the terms of government procurement at a municipal level; provincial procurement under the CETA also goes further than the WTO's GPA "to include most utilities, Crown corporations, and the broader MASH sector..."<sup>221</sup> Thus, experts at the Canadian Centre for Policy Alternatives (CCPA) argue that the procurement rules in the CETA would likely be violated by any "buy-local food purchasing programs at the provincial and municipal level," jeopardizing food sovereignty.<sup>222</sup> They also point out that despite having the opportunity to make reservations with respect to the MASH

<sup>216</sup> *Ibid*, Annex 502.4; MacRae, *supra* note 2.

<sup>217</sup> *AIT*, *supra* note 215.

<sup>218</sup> *Supra* note 2.

<sup>219</sup> *Ibid*; *AIT*, *supra* note 215, Art 507.

<sup>220</sup> *Canada-European Union: Comprehensive Economic and Trade Agreement*, 2014-09-26, online: Foreign Affairs, Trade, and Development Canada <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/toc-tdm.aspx?lang=eng>> [CETA].

<sup>221</sup> Trew, Stuart & Scott Sinclair. "Public Procurement" in Scott Sinclair, Stuart Trew & Hadrian Mertins-Kirkwood, eds, *Making Sense of the CETA: An Analysis of the Final Text of the Canada-European Union Comprehensive Economic and Trade Agreement* (Toronto, ON: Canadian Centre for Policy Alternatives, 2014) 24 at 25.

<sup>222</sup> Sinclair, Trew & Mertins-Kirkwood, in Sinclair, Trew & Mertins-Kirkwood, *supra* note 221 at 12.

sector, which would allow Canada “to adopt minimum local food requirements in publicly run institutions,” it “failed to do so.”<sup>223</sup>

The non-discrimination principles set forth in Article IV of Chapter X include the requirement that “within Canada, [procuring entities must grant foreign suppliers] treatment no less favourable than that accorded by a province or territory, including its procuring entities, to goods and services of, and to suppliers located in, that province or territory.”<sup>224</sup> Further, Article IV.2 states:

With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not: (a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.<sup>225</sup>

According to Trew and Sinclair, the language used in Article IV.2 of CETA “applies standard free-trade rules on non-discrimination to public procurement in ways that the GATT does not”<sup>226</sup>; in essence, paragraph 2(a) prohibits a procuring entity (i.e. the government entity giving the contract) from treating foreign-owned, though locally-situated, suppliers differently from those that are domestically-owned. Despite Trew and Sinclair’s assertion, it seems to me that both the NAFTA and the GPA contained this same restriction. Nonetheless, in order to determine the effect of this provision on incorporating a ‘local food’ requirement into the procurement process, it is worth examining how this process operates: a governmental body will make a call for proposals; in this call, there will be a number of criteria, including technical requirements, that a bidder must meet in order to be considered for the contract, and only one of these requirements would relate to ‘local food.’ For example, the criterion could require increasing the percentage of local food that must be used in order to fulfil the contract; at this point, there is no discrimination under paragraph 2(a) because the tender does not indicate that only local bidders can apply; rather, any party can bid, as long as it sources its products in the manner dictated. However, paragraph 2(b) prohibits different treatment based on where the actual good is produced (i.e. in which country). Trew and Sinclair state that, in effect, this means “Canadian municipal governments would be

---

<sup>223</sup> *Ibid.*

<sup>224</sup> CETA, *supra* note 220, Art IV:1(a).

<sup>225</sup> *Ibid.*, Art IV:2.

<sup>226</sup> *Supra* note 221 at 27.

prohibited from considering local content, or establishing a premium on local content at the outset in the request for proposals...”<sup>227</sup>

According to the CETA, the above rules regarding procurement will only apply if the contracts fall above certain financial limits: for federal entities, the valuation threshold is 130,000 SDRs (\$227,590 CDN as of March 10, 2015); for provincial entities (including provincial ministries and the MASH sector), the threshold is 200,000 SDRs (\$350,138 CDN as of March 10, 2015); and for “all provincial and municipal government-owned entities of a commercial or industrial nature [...] except for Hydro One and Ontario Power Generation,” the threshold is 355,000 SDRs (\$621,495 CDN as of March 10, 2015).<sup>228</sup> Trew and Sinclair argue that the provincial threshold of 200,000 SDRs means that many “municipal governments, utilities and MASH sector entities will be prohibited from adopting minimum local content requirements, insisting on local training quotas, or applying any other ‘offsets’”<sup>229</sup> It is also important to note that these commitments were made by provinces on behalf of municipal governments, and are much lower valuation thresholds for sub-national entities than is required by the WTO’s GPA (which uses 355,000 SDRs).

On top of the aforementioned monetary thresholds, the valuation rules set out in Article II.7 specify that a municipal government cannot “divid[e] a proposed contract into separate procurements” and that this applies to recurring contracts, which are considered a single purchase if they take place within 12 months of each other.<sup>230</sup> Unfortunately, this means that the procuring entity cannot allocate a number of small contracts between local suppliers for the same project in order to fall below the financial thresholds and uphold a local content requirement. However, Collins notes that when the GPA was revised in 2014, it included similar limitations in its Article 6.<sup>231</sup>

Trew and Sinclair also note that, in the CETA, Canada has given up the right to “set aside a portion of contracts for minority or small businesses,” though it did reserve this right in the context of Aboriginal companies and communities.<sup>232</sup> According to Collins, under the CETA both federal and provincial governments are able to exclude any “measures relating to aboriginal peoples” from the procurement

<sup>227</sup> *Ibid* at 28.

<sup>228</sup> CETA, *supra* note 220, Annexes X-01 - X-03.

<sup>229</sup> *Supra* note 221 at 26.

<sup>230</sup> *Ibid* at 29; CETA, *supra* note 220, Art II.6-7.

<sup>231</sup> David A Collins, “Globalized Localism: Canada’s Government Procurement Commitments Under the CETA,” online: (2015) Social Science Research Network <<http://ssrn.com/abstract=2568629> or <http://dx.doi.org/10.2139/ssrn.2568629>>.

<sup>232</sup> *Supra* note 221 at 28

practices set out in the Act (though the division of powers may prohibit provincial governments such as Ontario from creating specific measures in the first place).<sup>233</sup>

Despite the CCPA's concerns, Collins argues that the "CETA is meant to control relatively large scale public contracting only, allowing governments to give preference to local suppliers in small contracts as they wish."<sup>234</sup> He also notes that governments can "continue to use procurement as an instrument to support community development and to assist small and medium-sized enterprises" and points out that the AIT's monetary thresholds are, in fact, lower than the CETA's.<sup>235</sup>

Article IX outlines the "Technical Specifications and Tender Documentation" required under the CETA; paragraph 1 states that no specifications or conformity assessment procedures can be used "with the purpose or the effect of creating unnecessary obstacles to international trade."<sup>236</sup> Further, Article IX.2 requires technical specifications be related to "performance and functional requirements, rather than design or descriptive characteristics" and that these specifications be based on international standards where possible; however, should a procuring party use design or descriptive characteristics, the entity must stipulate "that it will consider tenders of equivalent goods or services that demonstrably fulfil the tender."<sup>237</sup> Finally, Article IX.4 prohibits technical specifications that require any of a number of criteria, including "specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements..."<sup>238</sup> According to Wood, however, "Buying 'local' food could be legally permissible if labels or technical specifications do not make reference to political boundaries... Thus, social and environmental criteria, such as carbon footprint limits, could arguably be defensible"; organic labelling and freshness are other examples of requirements that might be permissible.<sup>239</sup> There is also an exception in Annex X-07 that states that the procurement rules will not apply "in respect of agricultural goods made in furtherance of agricultural support programs or human feeding programs."<sup>240</sup>

---

<sup>233</sup> *Supra* note 231.

<sup>234</sup> *Ibid* at 9.

<sup>235</sup> *Ibid* at 10.

<sup>236</sup> CETA, *supra* note 220, Art IX.1.

<sup>237</sup> *Ibid*, Arts IX.2, IX.4,

<sup>238</sup> *Ibid*.

<sup>239</sup> Amy Wood, "Local Food Support Programs" in Sinclair, Trew & Mertins-Kirkwood, *supra* note 221, 92 at 94.

<sup>240</sup> CETA, *supra* note 220, Annex X-07.

Finally, Maltais also points out that CETA imports all of the GATT Article XX exceptions so that they apply to all Chapters of the CETA, including the procurement rules set out above.<sup>241</sup> As such, technical requirements which are “necessary to protect the health of humans, animals, and plant life” or which are “relating to the conservation of exhaustible natural resources” may be permissible if justified under the Article XX *chapeau*.<sup>242</sup>

This concludes the overview of relevant trade agreements; the following chapter discusses these agreements in the context of creating a Local Food Act, and analyses how CELA incorporated these trade commitments into its Model Bill (or failed to do so).

---

<sup>241</sup> Maltais, “Cultural Exceptions” in Sinclair, Trew & Mertins-Kirkwood, *supra* note 221, 49.

<sup>242</sup> GATT 1994, *supra* note 122, Arts XX(b), (g).

## 5. DISCUSSION

This chapter analyses CELA's Model Bill in relation to the trade agreements outlined above to determine where there are opportunities for developing local food initiatives, and whether the Bill directly or indirectly takes advantage of them.

First, the drafters of the Bill were correct not to include any provisions that would place quantitative limits on imports or require the use of import licenses; any attempts to include such restrictions in a Local Food Act would necessarily violate the trade rules. Consequently, Article XI of the GATT is not relevant to this discussion.

Second, as mentioned in the previous chapter, MacRae believes that bundling local and sustainable initiatives “reduces the likelihood that such foods will be considered ‘like’ with conventional foods”; further, he believes that “the two main opportunities for supporting local/sustainable systems are targeted support programs and procurement rules and processes.”<sup>243</sup> How these areas are addressed in the Model Bill is discussed in what follows; however, it is important to note that the Bill was written prior to the conclusion of negotiations for the CETA.

### A. Targets

Section 8(1) of the Model Bill provides that “the Minister shall [...] establish targets in relation to: (a) local food procurement; (b) local food distribution; and (c) local food education.”<sup>244</sup> Subsection (2) requires the Minister to “establish qualitative or quantitative targets relating to local food”; these inform the development of a Local Food Strategy and the Minister must also indicate which of the purposes of the Act each target seeks to promote.<sup>245</sup> Qualitative targets could include, for example, sustainability criteria related to freshness, organic production, and environmental performance; quantitative targets would likely include requirements that a certain percentage of the food procured and distributed in Ontario be local, local sustainable, or local organic. Consequently, it is likely that these targets would need to be consistent with the trade rules governing procurement and distribution (as addressed below), in addition to conforming to the National Treatment rules regarding non-discrimination.

<sup>243</sup> *Supra* note 2 at 117.

<sup>244</sup> *Supra* note 5, s 8(1).

<sup>245</sup> *Ibid.*, ss 8(2), (4).

## B. Distribution Measures

It seems obvious that a Local Food Act as a whole would, inherently, violate the National Treatment requirements under Article III:4 of the GATT (and similar rules in other trade agreements); this is the reason MacRae asserts initiatives must be framed in accordance with sustainability requirements, as opposed to localism alone. To reiterate, a violation of Article III:4 will occur when a law, regulation or requirement has a negative impact on “the internal sale, offering for sale, purchase, transportation, distribution, or use of imported products” as compared to ‘like’ domestic products, consequently according the imported product less favourable treatment.<sup>246</sup> The key factor in determining likeness is whether the products are competitive in the marketplace, and “whether a measure modifies the *conditions of competition* in the relevant market to the detriment of imported products.”<sup>247</sup>

The Model Bill provides that special distribution measures, including regional food hubs, will be developed for local food<sup>248</sup>; if these food hubs do not sell or distribute “like” imported products, thus according them less favourable treatment in the marketplace, a violation may be found. The Appellate Body in *Korea-Various Measures on Beef* determined that a law requiring that imported and domestic beef be sold separately (at least in separate sections of the same store, or in different stores altogether) had the effect of treating imports less favourably than domestic products; this was not because of the separation of the products alone, but rather the fact that consumers were favouring domestic products.<sup>249</sup> Thus, there must be an actual adverse effect on the foreign competitor – if a completely separate consumer base is purchasing local/sustainable food, then there is no competition, and thus no adverse effect on the imported goods. As set out above, MacRae argues that disparate supply chains and consumer bases, as well as their separate environmental and economic ends, mean that products that are both local and sustainable (npr-PPMs) are not in direct competition with conventional products. Further, even if they are competitive products, the fact that there exists a separate distribution centre for local food does not necessarily mean that the products themselves will be sold in different locations, nor does it necessarily have an impact on the distribution of conventional goods; I find it difficult to imagine

<sup>246</sup> Lester, Mercurio & Davies, *supra* note 131 at 287.

<sup>247</sup> *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef (Complaint by the United States & Australia)* (2000) WTO Doc WT/DS161, 169/AB/R (Appellate Body Report), online: <[https://www.wto.org/english/tratop\\_e/dispu\\_e/161-169abr\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/161-169abr_e.pdf)> at para 137 [*Korea-Various Measures on Beef*].

<sup>248</sup> *Supra* note 5, s 11.

<sup>249</sup> *Korea-Various Measures on Beef*, *supra* note 247.

that the existence of such food hubs would have a negative or adverse effect on imports. However, if a bid required that these hubs were used in order to source food for procurement contracts, this section may become problematic; this is particularly true if the focus is solely on the 'local' aspect, and not on local sustainable.

Since a violation of Article III:4 is to be determined on a case-by-case basis, and not in the abstract, it is difficult to know whether one would be found in this case. As was discussed in Chapter 3, the actual capacity of the province of Ontario to produce sustainable and/or organic food is considerably limited and the consumer base for such products is relatively small. The Model Bill acknowledges these limitations: subsection 10(a) requires the Minister to undertake a local food assessment that includes an "examination of Ontario's baseline agricultural production output" that consists of data related to how much food is produced, processed, distributed, purchased, consumed and procured locally<sup>250</sup>; subsections (b) and (c) require that limits "to production distribution and consumer markets" and "access by consumers" be identified.<sup>251</sup> Only once this baseline assessment is completed will the Minister establish distribution hubs, which would reflect Ontario's capacity. Nonetheless, even for products where Ontario's production is limited, it is possible that imported sustainable or imported organic products could be affected by specialty distribution hubs; thus, there may still be a violation of Article III:4.

Since the distribution measures are unrelated to the protection of "human, animal or plant life or health," it is unlikely that they could be justified under subsection XX(b) of the GATT. However, because section 11 emphasizes that the regional food hubs must be sustainable, the violation could potentially be justified under Article XX(g); nevertheless, it would have to be shown that the primary objective of establishing regional food hubs is the "conservation of exhaustible natural resources."<sup>252</sup> Returning to the *US-Shrimp* dispute: it was not that the shrimp themselves were causing an ecological problem; rather, in the process of producing them, an ecological problem was created for the sea turtles. In the context of a Local Food Act, if the npr-PPM used to produce or distribute food is causing ecological problems, then the measure might be justified under Article XX(g); since the reasoning behind creating sustainable hubs is to conserve natural resources throughout the processing and distribution activities within the food

---

<sup>250</sup> Model Bill, *supra* note 5, s 10(a).

<sup>251</sup> *Ibid*, ss 10(b)-(c).

<sup>252</sup> GATT 1994, *supra* note 122, Art XX(g).

system. In *US-Shrimp*, the Appellate Body determined that, in addition to plant life and minerals, living animals (in that case, sea turtles) could be considered “exhaustible natural resources”<sup>253</sup>; however, it is important to note that, thus far, conservation policies have only been justified in the context of a select number of aquatic animal species and in relation to clean air.<sup>254</sup> Though soil conservation and seed heterogeneity, for example, could potentially be legitimate resources in need of conservation, in relation to distribution, the protection of clean air may be the most effective argument to be made under the Bill by providing that “sustainable food hubs” require producers to meet specific carbon footprint restrictions. This will be discussed further below.

### C. Procurement

The only direct mention of international trade rules in the Model Bill is in relation to procurement: subsection 12(3)(c) requires public sector organizations and ministries to “[draft] requests for proposals for food tenders that respect the terms of trade agreements to which Ontario is bound by agreement with Canada”<sup>255</sup>; subsection 12(4) similarly states that the entirety of section 12 “does not apply to procurements that are contrary to national or international trade agreements to which Ontario is bound by agreement with Canada.”<sup>256</sup> From my analyses in the previous chapter, it is clear that the WTO’s GPA, the NAFTA, the AIT, and the CETA all provide rules on how the procurement process must operate in the relevant jurisdictions. These agreements all contain different valuation thresholds and apply to different entities; Table 1 provides a summary of the procurement restrictions and exceptions contained in these agreements, as well as the GATT.

---

<sup>253</sup> *Supra* note 158.

<sup>254</sup> World Trade Organization, *WTO rules and environmental policies: GATT exceptions*, online: World Trade Organization <[https://www.wto.org/english/tratop\\_e/envir\\_e/envt\\_rules\\_exceptions\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/envt_rules_exceptions_e.htm)>.

<sup>255</sup> *Supra* note 5, s 12(3)(c).

<sup>256</sup> *Ibid*, s 12(4).

**Table 1: Procurement Restrictions**<sup>257</sup>

AGREEMENT	ENTITIES AFFECTED	VALUATION THRESHOLDS	TECHNICAL REQUIREMENTS	EXCEPTIONS
GATT	Federal Governments	- N/A	- Art III Non-discrimination (national treatment)	- Art III:8 Measures for government purposes not for resale - Art XX(b) Measures necessary to protect human, animal and plant life/health - Art XX(g) Measures relevant to conserving exhaustible natural resources
GPA	- Federal Government - Provincial Ministries - Agricorp Agency - Food and beverage serving services	- 130,000 SDRs - 355,000 SDRs - 355,000 SDRs - 355,000 SDRs	- Art IV.2 Non-discrimination - Art VI.2 Technical specifications should be based on performance and based on international standards - Art VI.3 No reference to specific origin	- Measures necessary to protect human, animal or plant life or health - Set-asides for small and minority business or contracts for agricultural products made in the furtherance of agricultural support programs or human feeding programs
NAFTA	- Federal Government	- \$25,000 USD	- Art 1003.2 Non-discrimination - Art 1007.2 Technical specifications should be based on performance and based on international standards - Art 1007.3 No reference to specific origin	- Programs designed to benefit small and minority business - Measures necessary to protect human, animal or plant life or health - Measures relating to goods or services of handicapped persons, of philanthropic institutions or of prison labor
AIT	- Provincial Entities - MASH sector - Broader public service sector	- \$25,000 CDN - \$100,000 CDN	- Art 401.1 Non-discrimination - Art 504.4 Cannot impose or consider local content criteria in favour of the goods or suppliers of a particular province or region	- MASH sector contracts for less than \$100,000 - Contracts with NGOs and public bodies - Art 507 Procurement of goods intended for resale to the public - Art 404 "Legitimate objectives" including regional development and environmental protection
CETA	- Federal Entities - Provincial Ministries - MASH sector - All Other Provincial- and Municipal-owned Entities	- 130,000 SDRs - 200,000 SDRs - 200,000 SDRs - 355,000 SDRs	- Art IV.2 Non-discrimination - Cannot divide contracts - Art IX.2 Performance and functional requirements, not design or descriptive, and based on international standards - Art IX.4 No reference to specific origin	- Set-asides for Aboriginal companies and communities - Agricultural goods made in furtherance of agricultural support programs or human feeding programs - Art II.2(a) Procurement of goods intended for commercial resale - Art III.2(b) Measures necessary to protect human, animal and plant life/health - Potentially social or environmental criteria - GATT Article XX(b) and (g)

<sup>257</sup> Modified from Kyra Bell-Pasht, "Possibilities for Local Food Procurement in Ontario: Trade Agreement Restrictions and How Other Jurisdictions Have Avoided Them" (Paper delivered at the Policies From the Field Series, 11 February 2013) online: Sustain Ontario <<http://sustainontario.com/wp2011/wp-content/uploads/2013/02/PFTF-Kyra-Bell-Pasht-Local-Food-Procurement-Feb.2013-FINAL.pdf>> at 13.

Bell-Pasht examines the space available within the trade agreements for local food procurement in Ontario.<sup>258</sup> She argues that many of the limitations that exist within the trade agreements can be avoided through the careful formulation of local food procurement policies – they must simply be “fair and transparent and non-discriminatory.”<sup>259</sup> Bell-Pasht suggests that incorporating technical stipulations into requests for procurement proposals (such as local/sustainable, seasonality, organic, and freshness) may get around trade restrictions.<sup>260</sup> Additionally, she points to Europe’s use of geographic criteria as a possibility. She further proposes that policymakers focus on the MASH sector, which has higher monetary thresholds, and non-profit organizations, which have no valuation limits at all. MacRae also suggests “Using technical specifications of procurement contracts, related to the performance of the product or the process by which it is produced [PPMs], to favour local food systems development [...] and to redefine value for money within procurement processes to include wider environmental and social benefits.”<sup>261</sup> He suggests criteria such as: freshness; stipulating the use of regional crops; limiting distance travelled; and environmental performance.<sup>262</sup> MacRae’s other suggestions include: the creation of rules based on the underlying principles that are typically used to create eco-labels (in lieu of creating a label itself); splitting up food contracts so that small local producers can benefit; “Creating procurements with set-asides for small and minority businesses or contracts for agricultural products that further agricultural support programs or human feeding programs”; taking advantage of the exemptions allowed for products purchased by the government that are not being resold to the public; and “designing programs to fall under thresholds, and paying particular attention to which units are covered by the agreement.”<sup>263</sup> Though promising, a number of these suggestions may no longer be possible (or may be quite limited) due to the CETA.

A prominent concern for critics of the CETA is that, though it technically only applies to procurements involving EU bidders, in practice it might inform all calls for tenders. To elaborate, where a State is a party to numerous bilateral or multilateral agreements regarding the same subject matter, it is up to that sovereign state to decide how to deal with any inconsistencies between agreements; most will

---

<sup>258</sup> *Supra* note 257.

<sup>259</sup> *Ibid* at 12.

<sup>260</sup> *Supra* note 257.

<sup>261</sup> *Supra* note 2 at 118.

<sup>262</sup> *Ibid*.

<sup>263</sup> *Ibid* at 119.

resolve any tension by following the agreement that sets out the strictest obligation. The state can, however, choose the lesser obligation, though by doing so it will open itself up to complaints when obligations to other states are not followed. The CETA applies to the MASH sector, has more rigid rules regarding the inclusion of technical requirements and granting contracts, and has lower monetary thresholds for its application; thus, regardless of whether there is actual participation from an EU bidder, subnational governments are likely to follow the CETA rules as opposed to other agreements, including the NAFTA and the GPA, which have lesser obligations.

Following MacRae's argument, there are two ways in which a local content requirement could be included in the Model Bill without running afoul of the trade agreements: contracts could be designed to fall below the CETA's monetary thresholds; or technical regulations can be crafted so as to comply with the potential exceptions for local sustainable food. Each of these will be addressed in turn in relation to the Model Bill.

### ***i. Monetary Thresholds***

Subsection 12(1) of the Bill makes it mandatory for 'public sector organizations' and ministries to "aim to increase the percentage of their food budgets spent on local, local sustainable, or local organic food, annually until such local food procurements constitute a percentage of their overall food budgets specified through relevant targets."<sup>264</sup> With respect to provincial ministries, the GPA threshold is 355,000 SDRs, the CETA threshold is 200,000 SDRs, and the AIT threshold is \$25,000 CDN.

The Model Bill defines a 'public sector organization' as: a provincial agency; a municipality; a post-secondary institution; an education board; a hospital or long-term care facility; "a corporation described in clause (f) of the definition of 'designated broader public sector organization' in subsection 1(1) of the *Broader Public Sector Accountability Act, 2010*, or (h) another organization prescribed by regulation."<sup>265</sup> Thus, a public sector organization would consist of the MASH sector, which is exempt from the GPA and the NAFTA, though will be subject to the rules of the AIT if the contract is for more than \$100,000 CDN and to the CETA if the contract is for more than 200,000 SDRs ((\$350,138 CDN as of March 10, 2015). Thus, if a MASH sector contract is valued between \$100,000 and \$350,000, the AIT will be the only trade

---

<sup>264</sup> *Supra* note 5, s 12(1).

<sup>265</sup> *Ibid.*, s 3.

agreement that applies, and there will be more options for including local content requirements. Further, if the contract is being given by a provincial entity, the \$25,000 limit imposed by the AIT is also more restrictive than the CETA.

With respect to the valuation thresholds set out in all of the trade agreements, there are two possible ways in which they might be interpreted: either the threshold applies to the entire contract, or it applies to the actual value of the “goods” that are being contracted for. For example, the ‘local food’ aspect of a contract will be significantly smaller budget-wise than the contract as a whole: in a proposal for a \$1 million contract, only \$200,000 of its budget might be allocated to food, and if only 10% of the food needs to be procured locally, only \$20,000 of the entire contract would be for ‘local food.’ In other words, if any mention of the word ‘local’ refers to the contract as a whole, the valuation thresholds would be much more stringent than if each element is considered separately. Further, even if ‘local food’ cannot be distinguished from food generally, the value for the good itself remains far lower than for the contract on the whole. Thus, it is possible that using non-specific language would allow the local content aspect of a contract to fall well below the threshold in a number of institutional situations. However, as far as I can tell, this interpretation has not been put in front of any dispute settlement bodies, and therefore remains untested.

Subsection 12(2) of the Model Bill states that a procurement contract made by a public sector organization or ministry “for the purchase of food may give preference to an otherwise qualified bidder who provides local, local sustainable, or local organic food, provided that the cost included in the bid is not more than 10% greater than the cost included in a bid that is not for local, local sustainable, or local organic food.”<sup>266</sup> Though this subsection might appear to mandate a local content requirement, and thus violate National Treatment obligations, there is, in fact, no discrimination based on the bidders in this situation. In actuality, the requirement is simply that a tendering agency cannot select a bidder (regardless of nationality) who, though sourcing products locally, is asking for more than a 10% premium over a bidder who is not offering local, local sustainable, or local organic food. For example, if a bidder is sourcing from conventional producers at a cost of \$100,000, a second bidder procuring food from local sources cannot ask for more than \$110,000, provided that the rest of the contract is similar.

---

<sup>266</sup> *Ibid*, s 12(2).

Nonetheless, it is likely that it would be impermissible to include food that is merely local, not local sustainable or local organic, as a technical regulation in the Model Bill unless the contract fell below the monetary thresholds set out in the trade agreements, particularly the AIT and the CETA. As a result, the criteria set out in the tendering process would need to exploit the exceptions that might exist for sustainable initiatives; these are explored below.

## ***ii. Exceptions***

### ***(a) Contracts with NGOs and public bodies***

This exception only exists within the AIT: any procurement contracts given to non-governmental organizations and public bodies are exempt from the procurement rules; thus, as Bell-Pasht suggests, “it is also possible to create local food procurement policies that are exempt from trade agreements altogether,” including creating measures that encourage “non-profit organizations to facilitate procurement deals with the public sector.”<sup>267</sup> Though there might be a way to structure a measure that will not conflict with the trade agreements if the NGO activity is unconnected to the bidding process, this is a potentially risky exception to use because, as Vranes notes, government bodies can be held accountable for NGO actions, especially if the NGO has been given direction through government regulations.<sup>268</sup> Though there could be a scenario where local NGOs are committed to procuring locally, it is difficult to imagine a measure that could be structured to comply with the trade agreements.

### ***(b) Procurement of goods intended for commercial resale***

Both the AIT and the CETA contain an exception for the procurement of goods purchased for the purpose of being resold to the public. This exception is important because it would apply to food sold in hospital or school cafeterias, government workplaces, homes for the aged, and daycares, to name a few examples. This would mean a lot of food procurement is actually exempt from CETA at the municipal level, since most food purchased is for resale to the public. Thus, the Model Bill should stipulate that contracts for the procurement of goods being purchased for resale to the public contain a higher percentage of local, local sustainable, and local organic food than contracts that fall outside this category.

---

<sup>267</sup> *Supra* note 257 at 12.

<sup>268</sup> *Supra* note 1.

(c) Aboriginal communities and corporations

All trade agreements described above contain exemptions for procurement for aboriginal businesses and communities (where these are the end recipients of the goods). As was argued in chapter 2, a key component of a shift to food sovereignty in Canada rests on indigenous knowledge of food systems in different regions; since the establishment of a Local Food Act is an exercise of food sovereignty, it seems natural to integrate production and procurement in relation to indigenous communities. Because aboriginal communities are not significantly involved in commercial farming in Ontario, it is not realistic to craft a measure that requires a certain percentage of food be procured from indigenous communities; however, a low target could be used to encourage more indigenous participation. Regardless of the level of involvement of indigenous communities throughout the supply chain, the aforementioned exemption in the procurement process means that there could be a local content requirement for these contracts that would not violate the trade agreements.

(d) Agricultural goods made in furtherance of agricultural support programs or human feeding programs

The exception in Annex X-07 of the CETA, mentioned above, wherein goods procured from agricultural support programs and human feeding programs are exempt from the procurement rules, means that governments can potentially design programs that allow the market to better support producers rather than relying on hand-outs from the State. Though most human feeding programs are emergency aid programs aimed at helping the Global South, an argument could be made to include school food programs in Canada. For example, Bell-Pasht highlights a similar exemption exercised by the United States in relation to the GPA and NAFTA. Under this exemption, she states that the US passed a Rule under the 2008 US Farm Bill permitting “institutions operating Child Nutrition Programs [...] to apply a geographical preference in the procurement of unprocessed locally raised agricultural products.”<sup>269</sup> She also notes that geographical preferences such as this, which are “deemed to be applied in a manner that is non-discriminatory” serve as evidence that “the term ‘local’ may qualify as a legitimate technical specification criteria.”<sup>270</sup>

---

<sup>269</sup> *Supra* note 257 at 10.

<sup>270</sup> *Ibid.*

Subsection 17(3) of the Model Bill, which relates to Healthy Food and Education in Schools, stipulates that “A school may apply to the ministers for a grant award to... (e) “purchase food products to complement food, agriculture, and garden-based curricular for the purpose of student tasting and sampling of Ontario foods [...and] (i) “offset the cost of buying local products for use in school cafeterias or, to implement, or improve existing school nutrition programs.”<sup>271</sup> Though this constitutes a green box domestic support program (as addressed below), it could potentially be redesigned in a way to not only support local producers and further educational objectives, but also to serve feeding objectives through a Farm to Cafeteria program in a similar way as the US measure.

(e) Social and Environmental Criteria

Bell-Pasht observes that, in the UK, “Public bodies can specify in their contracts various sustainability criteria set by national or regional bodies or run by voluntary organizations. Certification can be evidence of compliance with the criteria; however, equivalent products that also meet the criteria must also be considered.”<sup>272</sup> As outlined in the previous chapter, Article IX.2 of the CETA allows the procuring party to employ performance and functional requirements (preferably based on international standards), and design/descriptive characteristics so long as it considers tenders of equivalent goods. This Article thus creates an opening for environmental performance requirements, with a linking of local and sustainable. Article IX.4 also leaves room for social and environmental criteria.

One environmental criterion that could be incorporated into the Bill is a carbon footprint specification: it could state that bidders must limit greenhouse gas emissions from the production, processing, and transportation activities to a certain amount in order to be considered for the contract; this would qualify as an npr-PPM. Transportation alone is difficult to justify, but limiting emissions along the entire supply chain may be workable; the result could be that local food is more practicable to procure.

Another sustainability criterion could be a freshness requirement; for example, a Local Food Act could require that procurement contracts stipulate timeframes between e.g. when a product is harvested and processed to when it is distributed to the procuring party. Once again, this would limit the options

---

<sup>271</sup> *Supra* note 5, s 17(3).

<sup>272</sup> *Supra* note 257 at 9.

available to bidders as to where they source their food. In combination with a carbon footprint requirement, long distance travel of food would be unsuitable.

The AIT also provides exceptions for “legitimate objectives” including regional development and environmental protection.<sup>273</sup> Thus, a requirement in the Bill that procurement contracts support the regional development of organic farms, for example, might be workable; however, organic food would be subject to the TBT rules (as set out below).

(f) GATT Articles XX(b) and (g)

Recall that Maltais asserts that CETA imports GATT Article XX exceptions, allowing for the linking of local and sustainable in relation to environmental conservation and protection of human/plant/animal health.<sup>274</sup> These will be explored more below, in relation to technical regulations.

#### **D. Targeted Support Programs**

MacRae provides six suggestions for formulating targeted support programs in order to reduce the probability of a trade challenge. First, he suggests that programs “adhere to the green box criteria, with framing based on GATT Article XX [and the] conservation of natural resources. To do this properly means linking environmental measures along the supply chain so that the product benefits are enhanced by their regionality” and which “allows for additional GHG reductions and energy use efficiencies.”<sup>275</sup> Recall that under the AoA, direct payments for environmental and regional assistance programs are exempt from restrictions so long as they are not based on production levels or prices, nor are they price supports.

Part IV of the Model Bill focuses on the ‘local’ aspect of food sovereignty and relates to local food assessment, distribution and procurement. As noted above, section 11(1) requires the Minister to “establish regional distribution measures including, but not limited to, regional food hubs that are locally developed, sustainable, and based in the community.”<sup>276</sup> Though distribution was addressed above in relation to non-discrimination, it is also relevant to the creation of domestic support programs: in order to support the establishment of these food hubs, subsection 11(2) allows the Minister to “establish a funding

---

<sup>273</sup> *Supra* note 215, Art 404.

<sup>274</sup> *Supra* note 241.

<sup>275</sup> *Supra* note 2 at 117-118.

<sup>276</sup> Model Bill, *supra* note 5, s 11(1).

program to provide cost-sharing” in the expense; further, subsection (4) allows the Minister to “establish a mini-grant program to provide incentives for alternative distribution methods by farmers and food processors.”<sup>277</sup> Generally, where a program involves cost-sharing, the sector also needs to provide something; thus, if these grant programs were set up in a way that prevents the funds from going directly to one firm, they would probably fit under the green box and not be subject to any restrictions. Section 17(3), which sets the criteria for the awarding of grants for food education programs in schools (discussed above), is an example of a green box program that would serve to support local farmers through market measures without violating any trade agreements.<sup>278</sup>

MacRae also asserts that amber box measures (which are mildly trade-distorting) can still be employed, so long as they account for less than five percent of the total farm income for that product. He further argues that import substitution programs should be developed, as they are not explicitly covered under the AoA, and thus could be placed in the amber box.<sup>279</sup> Import substitution programs are those that aim to replace imports with domestic production – though potentially violating the National Treatment requirements, such programs could be established within the confines of the trade laws through the Local Food Act and the measures addressed elsewhere in this paper. MacRae also points out “even more expensive programs could still be designed and counted in Canada’s permitted amber box commitment because spending is significantly below the established limit, as long as a large number of expensive measures were not adopted at the same time.”<sup>280</sup> Thus, the Bill could potentially include a clause stipulating the development of a program that subsidizes local organic and/or sustainable farmers as they break into the market (providing price supports) or that provides funding if a certain quantity or percentage of their product is organically or sustainably produced.

MacRae asserts many actors should be involved in domestic support programs, with NGOs in particular taking the helm as they are not subject to the AoA; nor is the MASH sector. To take advantage of this exception, it would be beneficial for the Model Bill to incorporate a clause requiring the Minister to engage with non-governmental organizations in the development of domestic support programs. For example, it could require the Minister to partner with an NGO that specializes in the transition from

---

<sup>277</sup> *Ibid*, s 11(4).

<sup>278</sup> *Ibid*, s 17(3).

<sup>279</sup> *Supra* note 2.

<sup>280</sup> *Ibid* at 118.

conventional to organic or sustainable farming practices; this sort of language would potentially exempt the measure from AoA coverage, and even if it does not, the program would likely fall under the green box because it would constitute an environmental programme, and is not based on price supports or production levels.

Additionally, “the more effective the measure is at accomplishing its objectives, the less contested it may be” so measures should be necessary for the attainment of the goal.<sup>281</sup> In other words, there should be a strong link between the sustainability goals and the domestic support program employed. Part V of the Model Bill pertains to the “sustainable” aspect of food sovereignty; subsection 13(1) states that “The Minister shall maintain, and establish where necessary, programs to encourage, (a) ecological farming practices; (b) ecological goods and services markets for farmers; and (c) healthy food production and processing practices [PPMs] by food producers and processors.”<sup>282</sup> These types of domestic support programs would presumably qualify as falling under the green box. Section 13(3) provides examples of the types of programs and measures that may be established under subsection (1), including: “(b) financing; (c) tax incentives; [and] (d) grants.”<sup>283</sup> Financing, tax incentives and grants may be prohibited if they are deemed to be price supports; however, if they are tied to sustainability requirements, they may be allowed under the AoA. They could fall under either the green or amber boxes; however, if the latter, they would need to account for less than five percent of the value of production (the *de minimis* rule) to avoid being counted as part of the amber box reduction commitments.

Subsection 13(3) of the Model Bill also suggests certification and labelling schemes to encourage ecological farming and markets, and healthy food production. Certification and labeling schemes would likely fall under the purview of the TBT Agreement, and be subject to challenges under Article 2.1 (which is interpreted in the same manner as Article III:4 of the GATT relating to like products). This fits with MacRae’s suggestion that domestic support programs “should rely on private standards to drive change, which may be more suitable than state standards, unless an international body such as Codex is

---

<sup>281</sup> *Ibid.*

<sup>282</sup> *Supra* note 5, s 13(1).

<sup>283</sup> *Ibid.*, s 13(3).

developing an international version.”<sup>284</sup> These will be addressed in the next section, related to technical regulations and standards.

## E. Technical Regulations and Standards

Any technical regulations set out under domestic support programs and procurement contracts would need to comply with the TBT Agreement, including the ‘like products’ clause under Article 2.1. The CELA Bill refers only to the Minister making ‘regulations,’ not standards. Further, section 25 of the Bill also allows the Lieutenant Governor in Council to make regulations in relation to the governance of a number of matters, including the development of: targets; the Local Food Strategy; local distribution measures; and “ecological farming practices, ecological goods and services markets for farmers, and healthy food production and processing practices by food producers and processors.”<sup>285</sup> However, since standards are not mandatory, they are less likely to be susceptible to a trade challenge; thus, it is potentially preferable for the Bill as a whole to speak of standards, not regulations.

As noted above, because local and sustainable production methods do not leave any physical traces in the final product, they are npr-PPMs. As Daugbjerg notes<sup>286</sup>:

Though in some respects ecological sustainability probably may be considered a legitimate PPM concern, in most specific situations, it would not, because most ecological rules in organic production are based on ethical considerations rather than on scientifically based risk assessment [...] Similarly, standards associated with social and economic sustainability are based on ethical principles.

Therefore, he notes that because there is no definitive “scientific evidence [that] demonstrates that the consumption of non-organic food threatens the public health,” measures that require the sale of organic food are unlikely to be justified under Article XX(b) of the GATT or the SPS Agreement.<sup>287</sup> On the basis of Vranes’ assertion that the TBT Agreement does not per se prohibit npr-PPM based requirements, Daugbjerg assumes that Annex 3, the *Code of Good Practice*, covers organic food trade; however, this means that any standards should be based on international standards if possible. These observations are also true of ‘sustainable’ food.

---

<sup>284</sup> *Supra* note 2 at 118.

<sup>285</sup> Model Bill, *supra* note 5, s 25(k).

<sup>286</sup> *Supra* note 1 at 59.

<sup>287</sup> *Ibid.*

The Bill could include, when referring to domestic support programs and procurement, specific references to international sustainability and certification schemes or their equivalents. For example, where it refers to “organic” food, the Bill does not explicitly state that food should be *certified* organic; any references to organic food would likely be more acceptable if there was a specific international organic scheme chosen (preferably the Codex Alimentarius). Because organic certification is traditionally voluntary, it would fall under “standards” not “regulations”; so long as the Bill does not specify whether it is local organic or international organic, there would be no direct discrimination. As *US-Shrimp* indicates, a state can unilaterally require certain production and processing measures, so long as it also accepts imports produced through equivalent means.<sup>288</sup> The use of Codex standards, in particular, would not violate the trade rules, and other provisions in the Bill will make local production more desirable (thus clarifying that local certified organic is the “best” option).

If regulations were developed as opposed to standards, thus making them mandatory, they would likely need to be justified under Article XX of the GATT. As was indicated above (regarding both certified organic production as well as in the section on distribution measures), it is unlikely that the Article XX(b) exception will be workable unless it can be proven that human health/animal/plant life is at risk. However, the environmental benefits of organic are more definitively proven, especially lower pollution and higher biodiversity; thus, Article XX(g) is potentially useful if it can be applied in a non-discriminatory way. Recall that Article 2.2 of the TBT Agreement prohibits technical regulations that are “more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create”<sup>289</sup>; the only regulation that might be justifiable as being “related to the conservation of exhaustible natural resources” would be one that has a carbon footprint restriction.<sup>290</sup> The protection of the environment is also listed as a legitimate objective under the TBT. If foreign producers could modify their production and processing practices to limit emissions in such a way that transportation accounts for the majority of their carbon footprint, this may not be considered “more trade-restrictive than necessary.”<sup>291</sup> However, since production is almost always the greatest source of emissions, it would be hard in absolute terms to make transport the biggest percentage of emissions. Further, due to the different processes and capabilities in

---

<sup>288</sup> *Supra* note 158.

<sup>289</sup> *Supra* note 124, Art 2.2.

<sup>290</sup> GATT 1994, *supra* note 122, Art XX(g).

<sup>291</sup> TBT Agreement, *supra* note 124, Art 2.2.

different locations, as well as the distance imports must travel, there would likely need to be different emissions standards for different importers. Generally, it would be more practicable to use standards in the short-term to avoid trade complaints.

Finally, section 23 of the Model Bill provides for a situation where other Acts, regulations or by-laws deal with the same subject matter (local food, procurement, distribution, etc.) as the Bill, and states that “the provision that is the most protective of human health or the environment prevails.”<sup>292</sup> This stipulation appears to be related to the GATT Article XX(b) exception and the SPS Agreement, but may not be relevant to the workability of a Local Food Act in relation to the trade agreements. If the Bill is rooted in a local sustainable supply chain that does not conflict with the trade agreements, any provision that is more protective of the environment would only strengthen the supply chain; however, it may be necessary to stipulate that the provision that prevails is the one that is “most protective of human health or the environment” and does not violate any trade agreements to which Canada and Ontario is a party.

---

<sup>292</sup> *Supra* note 5, s 23.

## 6. CONCLUSION

This paper has discussed the potential for creating a Local Food Act in Ontario, as an exercise of food sovereignty, without violating the trade agreements to which Canada and Ontario are parties. Chapter 2 provided an overview of the concept of food sovereignty, and established a set of criteria by which the Canadian Environmental Law Association's (CELA) Model Local Food Act could be assessed. In Chapter 3, it was determined that, though there were some improvements to be made, the Model Bill was generally informed by a food sovereignty framework and could be seen as an exercise of food sovereignty. Chapter 4 then provided an overview of the trade provisions within the WTO Agreements, the NAFTA, the AIT, and the CETA that might prohibit or inhibit Ontario (or any province) from enacting a Local Food Act. Chapter 5 examined the CELA's Model Bill from a trade lens, and provided a number of recommended changes; these changes, as well as the transition stage at which they might occur, are summarized in Table 2. The transition categorization is designed to identify the challenges of implementing each of the measures if they were to be included in a modified bill.

Though it is clear that trade commitments do pose problems for crafting local content requirements, specifically because of their non-discrimination clauses in relation to National Treatment, these issues are not insurmountable. As this paper has shown, crafting measures in a way that emphasizes sustainability, in addition to locality, may provide more possibilities for local procurement and distribution. Through this exercise, it has become evident that, although these measures are possible in theory, it is much more difficult to formulate them in practice. While my goal was initially to suggest specific language in order to craft or amend the provisions of the Model Bill, I found that the case-by-case basis by which the Dispute Settlement Body of the WTO (and similar dispute panels) operates meant that it was difficult to know what would be acceptable and what would not. Further, the Model Bill does not actually contain many regulations; rather, it provides that the Minister (primarily, but also other persons/bodies) either may or shall make regulations. As a result, it was complex to make amendments and suggestions, since there was nothing specific to build on, and only general recommendations were possible.

Table 2: Recommended Changes to the Model Bill

MODEL BILL	RECOMMENDATIONS	ESR STAGE
<b>General</b>	Modify any reference of “local, local organic or local sustainable” food to read simply “local organic or local sustainable”; without reference to sustainability, any local content requirement on its own is much more susceptible to complaints under the trade regimes	S
<b>Section 3: Definitions</b>	The definition of “local food” should reflect a specific radial distance, rather than the province as a whole	E
	The definition of “local organic” in section 3 should specify that organic food is that which meets organic certification under the Codex Alimentarius	E
	The definition of “local sustainable,” currently refers to food whose “production meets standards of environmental and social sustainability prescribed by regulation” – it would be better to indicate that it is food that meets either a specific international certification program or that meets the <u>standards</u> set out in the Act	S
<b>Section 8: Development of targets</b>	Targets must not be so ‘lofty’ so as to violate the trade agreements; they must simply be consistent with the recommendations set out below	E
<b>Section 11: Distribution (regional food hubs)</b>	Incorporate a carbon footprint restriction in order to justify the potential discrimination arising out of separate food sales; this may be justified under the GATT XX(g) exception	S
	Grant programs related to the development of regional food hubs must be structured in a way that prevents funds from going directly to one firm	E
<b>Section 12: Procurement</b>	Attempt to structure bids so that the monetary threshold applies only to the good itself, not the contract as a whole (though this will need to be tested and will likely be subject to a trade challenge)	S
	Structure contracts to fall > \$25,000 (so no trade agreement applies) or between \$25,000 - \$100,000 for MASH sector (so only AIT applies)	E
	Set higher section 8 targets with respect to contracts for food being resold to the public in the MASH sector	S
	Create a low and increasing target in relation to sourcing food from Aboriginal communities and companies (exempt)	E – S - R
	Create a measure for Farm to Cafeteria programs similar to the US measure: “unprocessed locally raised agricultural products” for Children’s Nutrition programs	S
	Create a measure stating that bidders must limit GHG emissions from production, processing, and transportation measures to a specified amount (related to targets) in order to be considered for a contract	S - R
	Establish timeframes between when food is harvested and when it is to be distributed to a procuring party (in essence, a ‘freshness’ requirement)	S
	Create a measure that requires eligible procurement contracts to support the development of organic and/or sustainable farms	S
<b>Section 13: Healthy Food and Farm Programs</b>	Incorporate a measure requiring NGO engagement for the development of support programs (for example, to help with the transition from conventional to organic or sustainable farming practices)	E - S
	In subsection (3), if financing, tax incentives and grants and grants are considered price support programs, ensure that they are below the <i>de minimis</i> level (though there is still ample room)	E
	In subsection (3), specify that certification and labeling programs comply with the Codex Alimentarius (organic) and a similar internationally-approved sustainability scheme	E;
<b>Section 17: Education</b>	Incorporate the Farm to Cafeteria requirement for procurement, as indicated above (section 12)	S
<b>Section 23: Conflict</b>	Amend to read: “If there is a conflict between this Act or regulations and a provision of another Act, regulation, or municipal by-law dealing with local food, food education, ecological farming practices, food production, procurement, or distribution, the provision that is the most protective of human health or the environment, <b>and does not violate any trade agreements to which Canada and Ontario is a party</b> , prevails” (emphasis on amended portion)	E

## 7. BIBLIOGRAPHY

### LEGISLATION

*Agreement on Agriculture, Marrakesh Agreement Establishing the World Trade Organization*, 15 April 1994, Annex 1A, 1867 UNTS 410 (ratified by Canada 30 December 1994).

*Agreement on the Application of Sanitary and Phytosanitary Measures, Marrakesh Agreement Establishing the World Trade Organization*, 15 April 1994, Annex 1A, 33 ILM 28 (ratified by Canada 30 December 1994).

*Agreement on Internal Trade*, 18 July 1994 (entered into force 1 July 1995).

*Agreement on Government Procurement, Marrakesh Agreement Establishing the World Trade Organization*, 15 April 1994, Annex 4B, 1915 UNTS 105 (ratified by Canada 22 December 1995).

*Agreement on Subsidies and Countervailing Measures, Marrakesh Agreement Establishing the World Trade Organization*, 15 April 1994, Annex 1A, 1869 UNTS 14 (ratified by Canada 30 December 1994).

*Agreement on Technical Barriers to Trade, Marrakesh Agreement Establishing the World Trade Organization*, 15 April 1994, Annex 1A, 1868 UNTS 120 (ratified by Canada 30 December 1994).

*Canada-European Union: Comprehensive Economic and Trade Agreement*, 2014-09-26, online: Foreign Affairs, Trade, and Development Canada <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/toc-tdm.aspx?lang=eng>>.

*Food and Drug Regulations*, CRC, c 870.

*General Agreement on Tariffs and Trade 1994, Marrakesh Agreement Establishing the World Trade Organization*, 15 April 1994, Annex 1A, 1867 UNTS 190, 33 ILM 1153 (1994).

*International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976, accession by Canada 19 May 1976).

*International Covenant on Economic, Social, and Cultural Rights*, 16 December 1966, 993 UNTS 3, Can TS 1976 No 46 (entered into force 3 January 1976, accession by Canada 19 May 1976).

*Marrakesh Agreement Establishing the World Trade Organization*, 15 April 1994, 1867 UNTS 154, 33 ILM 1144 (entered into force 1 January 1995).

*North American Free Trade Agreement Between the Government of Canada and the Government of Mexico and the Government of the United States*, 17 December 1992, Can TS 1994 No 2, 32 ILM 289 (entered into force 1 January 1994).

*Universal Declaration of Human Rights*, GA Res 217(III), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810, (1948) 71.

### JURISPRUDENCE

*Brazil – Measures Affecting Import of Retreaded Tyres (Complaint by the European Communities)* (2007) WTO Doc WT/DS332/AB/R (Appellate Body Report) online: WTO <[https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds332\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds332_e.htm)>.

*European Communities – Measures Affecting Asbestos and Products Containing Asbestos (Complaint by Canada)* (2001), WTO Doc WT/DS135/AB/R (Appellate Body Report), online: WTO <[https://www.wto.org/english/tratop\\_e/dispu\\_e/135abr\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/135abr_e.pdf)>.

*European Communities – Measures Affecting the Approval and Marketing of Biotech Products (Complaint by the United States, Canada & Argentina)* (2006) WTO Doc WT/DS291-293/R (Panel Report) online: WTO <[https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S006.aspx?Query=\(%40Symbol%3d+wt%2fds291%2fr\\*+not+rw\\*\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(%40Symbol%3d+wt%2fds291%2fr*+not+rw*)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true)>.

GATT. *Report of the Working Party on Border Tax Adjustments*, L/3464, adopted December 2, 1970, BISD 188/97.

*India – Measures Affecting the Automotive Sector (Complaint by European Communities)* (2001) WTO Doc WT/DS146/R (Panel Report), online: WTO <[https://www.wto.org/english/tratop\\_e/dispu\\_e/146\\_175r\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/146_175r_e.pdf)>.

*Japan – Taxes on Alcoholic Beverages (Complaint by the European Communities, Canada & the United States)* (1997) WTO Doc WT/DS8, 10, 11/AB/R (Appellate Body Report), online: WTO <[https://www.wto.org/english/tratop\\_e/dispu\\_e/8-17.pdf](https://www.wto.org/english/tratop_e/dispu_e/8-17.pdf)>.

*Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef (Complaint by the United States & Australia)* (2000) WTO Doc WT/DS161, 169/AB/R (Appellate Body Report), online: <[https://www.wto.org/english/tratop\\_e/dispu\\_e/161-169abr\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/161-169abr_e.pdf)>.

*United States – Import Prohibition of Certain Shrimp and Shrimp Products (Complaints by India et al.)* (1998) WTO Doc WT/DS58/AB/R (Appellate Body Report), online: WTO <[https://www.wto.org/english/tratop\\_e/dispu\\_e/58abr.pdf](https://www.wto.org/english/tratop_e/dispu_e/58abr.pdf)>.

*United States – Standards for Reformulated and Conventional Gasoline (Complaint by Venezuela & Brazil)* (1996) WTO Doc WT/DS2, 4/AB/R (Appellate Body Report), online: WTO <[https://www.wto.org/english/tratop\\_e/dispu\\_e/2-9.pdf](https://www.wto.org/english/tratop_e/dispu_e/2-9.pdf)>.

## SECONDARY MATERIAL

Altieri, Miguel A, ed. *Agroecology: The Science of Sustainability*, 2nd ed (Boulder, CO: Westview Press, 1995).

Altieri, Miguel A. “Scaling Up Agroecological Approaches for Food Sovereignty in Latin America” in Hannah Wittman, Annette Aurélie Desmarais, & Nettie Wiebe, eds, *Food Sovereignty: Reconnecting Food, Nature and Community* (Black Point, NS: Fernwood, 2010) 120.

Beingessner, Naomi. “Getting to Food Sovereignty: Grassroots Perspectives From the National Farmers Union” in Hannah Wittman, Annette Aurélie Desmarais, & Nettie Wiebe, eds, *Food Sovereignty in Canada: Creating Just and Sustainable Food Systems* (Black Point, NS: Fernwood, 2011) 43.

Bell-Pasht, Kyra. “Possibilities for Local Food Procurement in Ontario: Trade Agreement Restrictions and How Other Jurisdictions Have Avoided Them” (Paper delivered at the Policies From the Field Series, 11 February 2013) online: Sustain Ontario <<http://sustainontario.com/wp2011/wp-content/uploads/2013/02/PFTF-Kyra-Bell-Pasht-Local-Food-Procurement-Feb.2013-FINAL.pdf>>.

Campbell, Alissa Mae & Rod MacRae. “Local Food Plus: The Connective Tissue in Local/Sustainable Supply Chain Development” (2013) 18:5 Local Environment 557.

Canadian Environmental Law Association. *Ontario Local Food Act, 2013: A model bill*. (Toronto, ON: CELA, 2013), online: CELA <[http://s.cela.ca/files/891ModelLocalFoodBill\\_0.pdf](http://s.cela.ca/files/891ModelLocalFoodBill_0.pdf)>.

Canadian Environmental Law Association. Media Release, "Model Local Food Act sets out much needed support for Ontario's local food systems" (27 February 2013) online: CELA <[http://www.cela.ca/sites/cela.ca/files/MR270213\\_0.pdf](http://www.cela.ca/sites/cela.ca/files/MR270213_0.pdf)>.

Centre for Studies in Food Security. "The Five A's of Food Security" online: Ryerson University <<http://www.ryerson.ca/foodsecurity/our-approach.html>>.

Collins, David A. "Globalized Localism: Canada's Government Procurement Commitments Under the CETA," online: (2015) Social Science Research Network <<http://ssrn.com/abstract=2568629> or <http://dx.doi.org/10.2139/ssrn.2568629>>.

Daugbjerg, Carsten. "The World Trade Organization and Organic Food Trade: Potential for Restricting Protectionism?" (2012) 2:1 Organic Agriculture, 55.

De Schutter, Olivier. "The World Trade Organization and the Post-Global Food Crisis Agenda Putting Food Security First in the International Trade System," (2011) Briefing Note 4 by the Special Rapporteur on the Right to Food, online: WTO <[http://www.wto.org/english/news\\_e/news11\\_e/deschutter\\_2011\\_e.pdf](http://www.wto.org/english/news_e/news11_e/deschutter_2011_e.pdf)>.

Desmarais, Annette Aurélie. "Building Food Sovereignty: A Radical Framework for Alternative Food Systems" in Mustafa Koç, Jennifer Sumner & Anthony Winson, eds, *Critical Perspectives in Food Studies* (Toronto, ON: Oxford University Press, 2012) 359.

Dowler, Elizabeth A & Deirdre O'Connor. "Rights Based Approaches to Addressing Food Poverty and Food Insecurity in Ireland and UK" (2012) 74:1 Social Science and Medicine 44.

Fairbairn, Madeleine. "Framing Resistance: International Food Regimes & the Roots of Food Sovereignty" in Hannah Wittman, Annette Aurélie Desmarais, & Nettie Wiebe, eds, *Food Sovereignty: Reconnecting Food, Nature and Community* (Black Point, NS: Fernwood, 2010) 15.

Harvey, David. *A Brief History of Neoliberalism* (New York: Oxford University Press, 2005).

Hecht, Susanna B. "The Evolution of Agroecological Thought" in Miguel A Altieri, ed, *Agroecology: The Science of Sustainability*, 2nd ed (Boulder, CO: Westview Press, 1995) 1.

Hill, Stuart B & Rod J MacRae "Conceptual Framework for the Transition from Conventional to Sustainable Agriculture" (1996) 7 JL Sustainable Agriculture 81.

Horst, Megan et al. "Toward a More Expansive Understanding of Food Hubs" (2011) 2:1 Journal of Agriculture, Food Systems, and Community Development 209.

Kloppenburg Jr, Jack, John Hendrickson & GW Stevenson. "Coming in to the Foodshed" (1996) 13:3 Agriculture and Human Values 33.

Larsen, Kristian & Jason Gilliland. "Mapping the Evolution of 'Food Deserts' in a Canadian city: Supermarket Accessibility in London, Ontario, 1961–2005," (2008) 7:16 Int'l JL of Health Geographics, doi: 10.1186/1476-072X-7-16

Lester, Simon, Bryan Mercurio & Arwel Davies. *World Trade Law: Text, Materials and Commentary*, 2nd ed (Portland, OR: Hart, 2014).

Louden, Fiona N & Rod J MacRae. "Federal Regulation of Local and Sustainable Food Claims in Canada: A Case Study of Local Food Plus" (2010) 27:2 Agric Hum Values 177.

- MacRae, Rod. "Do Trade Agreements Substantially Limit Development of Local/Sustainable Food Systems in Canada?" (2014) 1:1 Canadian Food Studies 103.
- MacRae, R et al. "Ten Percent Organic Within 15 Years: Policy and Program Initiatives to Advance Organic Food and Farming in Ontario, Canada" (2009) 24:2 Renewable Agriculture and Food Systems 120.
- Magnan, André. "The Limits of Farmer-Control: Food Sovereignty and Conflicts Over the Canadian Wheat Board" in Hannah Wittman, Annette Aurélie Desmarais, & Nettie Wiebe, eds, *Food Sovereignty in Canada: Creating Just and Sustainable Food Systems* (Black Point, NS: Fernwood, 2011) 114.
- Maltais, Alexandre L. "Cultural Exceptions" in Scott Sinclair, Stuart Trew & Hadrian Mertins-Kirkwood, eds, *Making Sense of the CETA: An Analysis of the Final Text of the Canada-European Union Comprehensive Economic and Trade Agreement* (Toronto, ON: Canadian Centre for Policy Alternatives, 2014) 49.
- Morrison, Dawn. "Indigenous Food Sovereignty: A Model for Social Learning" in Hannah Wittman, Annette Aurélie Desmarais, & Nettie Wiebe, eds, *Food Sovereignty in Canada: Creating Just and Sustainable Food Systems* (Black Point, NS: Fernwood, 2011) 97.
- Norgaard, Richard B & Thomas O Sikor. "The Methodology and Practice of Agroecology" in Miguel A Altieri, ed, *Agroecology: The Science of Sustainability*, 2nd ed (Boulder, CO: Westview Press, 1995) 21.
- Peoples' Food Sovereignty Statement. (2007) online: Nyéléni  
<[http://www.nyeleni.org/IMG/pdf/Peoples\\_Food\\_Sovereignty\\_Statement.pdf](http://www.nyeleni.org/IMG/pdf/Peoples_Food_Sovereignty_Statement.pdf)>.
- Qualman, Darrin. "Advancing Agriculture By Destroying Farms? The State of Agriculture in Canada" in Hannah Wittman, Annette Aurélie Desmarais, & Nettie Wiebe, eds, *Food Sovereignty in Canada: Creating Just and Sustainable Food Systems* (Black Point, NS: Fernwood, 2011) 20.
- Read, Robert. "Process and Production Methods and the Regulation of International Trade" in Nicholas Perdikis and Robert Read (eds), *The WTO and the Regulation of International Trade. Recent Trade Disputes between the European Union and the United States* (Cheltenham: Edward Elgar, 2005) 239.
- Rosset, Peter M. *Food is Different: Why We Must Get the WTO Out of Agriculture* (Black Point, NS: Fernwood, 2006).
- Shaw, D John. *World Food Security: A History Since 1945* (New York: Palgrave MacMillan, 2007), online: <[http://observatorioseguridadalimentaria.org/sites/default/files/publicaciones/archivos/Shaw\\_A\\_History\\_of\\_Food\\_Security\\_since\\_1945\\_2007.pdf](http://observatorioseguridadalimentaria.org/sites/default/files/publicaciones/archivos/Shaw_A_History_of_Food_Security_since_1945_2007.pdf)>.
- Sands, Philippe & Jacqueline Peel. *Principles of International Law*, 3d ed (New York: Cambridge University Press, 2012).
- Sinclair, Scott, Stuart Trew & Hadrian Mertins-Kirkwood, eds. *Making Sense of the CETA: An Analysis of the Final Text of the Canada-European Union Comprehensive Economic and Trade Agreement* (Toronto, ON: Canadian Centre for Policy Alternatives, 2014).
- Skogstad, Grace. "Introduction: Internationalization and Canadian agriculture: Policy and governing paradigms" in *Internationalization and Canadian Agriculture: Policy and Governing Paradigms* (Toronto, ON: University of Toronto Press, 2008) 3.
- , "Canadian Agricultural Programs and Paradigms: The Influence of International Trade Agreements and Domestic Factors" (2008) 56:4 Canadian Journal of Agricultural Economics 493.

Sustain Ontario. Media Release, "The Law Leaves Room for Local Food" (27 February 2015) online: <<http://sustainontario.com/2015/02/27/26028/news/media-release-the-law-leaves-room-for-local-food>>.

Swinbank, Alan. "Like Products, Animal Welfare and the World Trade Organization" (2006) 40:4 *JL of World Trade* 687.

Toronto Food Policy Council. "Health, Wealth and the Environment: The Impacts of the CUSTA, GATT and NAFTA on Canadian Food Security" (Toronto: TFPC, 1994), online: <[http://www1.toronto.ca/city\\_of\\_toronto/toronto\\_public\\_health/healthy\\_families/nutrition/toronto\\_food\\_policy\\_council/files/pdf/tfpc\\_environment.pdf](http://www1.toronto.ca/city_of_toronto/toronto_public_health/healthy_families/nutrition/toronto_food_policy_council/files/pdf/tfpc_environment.pdf)>.

Trew, Stuart & Scott Sinclair. "Public Procurement" in Scott Sinclair, Stuart Trew & Hadrian Mertins-Kirkwood, eds, *Making Sense of the CETA: An Analysis of the Final Text of the Canada-European Union Comprehensive Economic and Trade Agreement* (Toronto, ON: Canadian Centre for Policy Alternatives, 2014) 24.

Vranes, Erich. "Climate Labeling and the WTO: the 2010 EU Ecolabelling Programme as a Test Case Under WTO law" in Christoph Hermann & Jörg Phillipp Terhechte, eds, *European Yearbook of International Economic Law*, vol 2 (2), (Springer, Berlin, 2011) 205.

Wiebe, Nettie & Kevin Wipf. "Nurturing food sovereignty in Canada" in Hannah Wittman, Annette Aurélie Desmarais, & Nettie Wiebe, eds, *Food Sovereignty in Canada: Creating Just and Sustainable Food Systems* (Black Point, NS: Fernwood, 2011) 1.

Wittman, Hannah, Annette Aurélie Desmarais & Nettie Wiebe. (2010). The Origins & Potential of Food Sovereignty" in Hannah Wittman, Annette Aurélie Desmarais, & Nettie Wiebe, eds, *Food Sovereignty: Reconnecting Food, Nature and Community* (Black Point, NS: Fernwood, 2010) 1.

Wood, Amy. "Local Food Support Programs" in Scott Sinclair, Stuart Trew & Hadrian Mertins-Kirkwood, eds, *Making Sense of the CETA: An Analysis of the Final Text of the Canada-European Union Comprehensive Economic and Trade Agreement* (Toronto, ON: Canadian Centre for Policy Alternatives, 2014) 92.

World Trade Organization. *WTO rules and environmental policies: GATT exceptions*, online: World Trade Organization <[https://www.wto.org/english/tratop\\_e/envir\\_e/envt\\_rules\\_exceptions\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/envt_rules_exceptions_e.htm)>.