

Manipulating Economic Incentives to Improve Farm Animal Welfare Standards

I. Executive Summary

There is currently no federal legislation in the United States protecting the welfare of farm animals, leaving them subject to crowding in filthy conditions, painful procedures performed without anesthesia, disease and premature death. In contrast, the legal protection given to farm animals is much stronger in Europe and the United Kingdom, where many practices still common in the US have been banned.¹

The major reasons underlying the dearth of US farm animal protections include low public awareness of farming practices² and a strong agricultural lobby opposed to an increase in production costs.³ Another roadblock concerns the lack and weakness of scientific research on farm animal welfare standards, as a small fraction of agricultural programs at US universities include courses on animal welfare.⁴

Solving the farm animal welfare issue in the US necessitates cooperation from consumers, retailers, and producers. Consumers must be educated on modern farm conditions, as studies show that knowledge of agricultural procedures positively correlates with support of reform,⁵ while retailers and producers can be affected through manipulation of economic incentives.

¹ Matheny, Gaverick and Cheryl Leahy. "Farm-Animal Welfare, Legislation, and Trade." *Law and Contemporary Problems*, Vol. 325, 2007. Pg. 339-41.

² Ibid. Pgs. 341-342.

³ Ibid. 341.

⁴ Ibid. Pg. 342.

⁵ Ibid, Pg. 333.

First, retailer campaigns entail a consumer boycott and media campaign against a company based on an objection to its practices or policies. Campaigns aimed at retailers are speedier than those aimed at legislators, as retailers move faster than governments, can ignore international trade agreements and thus can easily end transactions with suppliers that don't meet animal welfare standards.⁶

Second, producers can be affected through the use of the moral exception in Article XX (a) of the World Trade Organization's General Agreement on Trade and Tariffs. This passage allows import restrictions on non-humane products if it is based on protecting the public good. Once the WTO agrees that regulation of non-humane imports is necessary to the moral goal of protecting farm animal welfare, food producers compliant with animal welfare standards can be protected from competition with non-compliant producers, whether through subsidies for animal-friendly practices, tariffs for non-compliant practices, or an outright ban.⁷

Both of these methods manipulate economic incentives in that they shift a private firm's focus away from cost-effective production and financial profit to production which is sensitive to social externalities and also seeks a social profit. In other words, rather than viewing ethical concerns as separate from competing on the market, retailers and suppliers will insist on addressing these concerns in order to be competitive. Broadly, this is done through an emphasis on production method rather than on the finished product, effectively improving the lives of the 50 billion-plus farm animals that are used annually worldwide to create animal products.⁸

⁶ Ibid, Pg. 355.

⁷ Ibid, Pg. 353.

⁸ Available at: Vegan Society of Peace. <<http://www.vegansocietyofpeace.org/animals-for-food.php>>.

II. Capstone Thesis

The vast majority of farm animals in the United States reside in barren sheds or pens among tens of thousands of other animals. Painful procedures such as debeaking, dehorning, and castration are performed without anesthesia. As many animals are unable to turn around or fully stretch their limbs, natural behaviors such as foraging, perching, nesting, and mating are replaced by stress-induced aggression and cannibalism.⁹

These conditions are entirely legal, as there is no federal legislation in the United States protecting the welfare of farm animals. There is one law, the Humane Slaughter Act, which regulates slaughtering procedures, and another, the Twenty-Eight Hour Law, which regulates the transport of farm animals, but both are weak and scarcely enforced due to sneaky loopholes¹⁰ and lax government inspections.¹¹ In contrast, the legal protection given to farm animals is much stronger in Europe and the United Kingdom, where many practices still common in the US have been banned.¹²

Below is a chart of welfare reforms that have been adopted in Europe and the UK, further highlighting the disparity in farm animal welfare standards between the rest of the Western world and the U.S.:

⁹ Matheny, Pg. 334-36.

¹⁰ Ibid. Pg. 329.

¹¹ A January 2004 report by the Government Accountability Office (GAO) concluded that incomplete and inconsistent inspection records had made it difficult to determine the extent of humane handling and slaughter violations; that the Food Safety and Inspection Service (FSIS) took inconsistent enforcement actions to address noncompliance; and that it lacked data on numbers of inspectors and time devoted to HMSA enforcement: Becker, Geoffrey S. "Nonambulatory Livestock and the Humane Methods of Slaughter Act," p. 5. Congressional Research Service. March 24, 2009. Accessed: March 3, 2010.
< <http://www.nationalaglawcenter.org/assets/crs/RS22819.pdf>>.

¹² Matheny, Pgs. 339-341.

Agricultural Practice	US	UK	Sweden	Netherlands	Denmark	Germany	Finland	Switzerland	Norway
Density and Housing Limits		X	X	X	X	X	X	X	X
Humane Poultry Slaughter		X	X	X	X	X	X		X
Gestation Crates		X	X	X	2013	2013	X		X
Sow Tethers		X	X	X	X	X	X	X	X
Veal Crates		X	X	X	X	X	X	X	X
Veal Tethers		X	X	X	X	X	X	X	X
Battery Cages		X	X	X	X	X	X	X	X
Furnished Cages						X		X	
Beak Trimming		X	X				X		X
Castration w/o Anesthesia								x	x

Adapted from "Table 2" in Matheny, Pg. 341.

Why the disparity? The major reason is low public awareness of farming practices, as animal advocacy groups in the US have historically focused on laboratory animals and companion animals,¹³ in contrast to European and British groups, which have targeted farm animals for decades.¹⁴ Once informed of standard agricultural procedures, studies show that the majority of Americans object to these practices and are in favor of stricter farm animal

¹³ Ibid. Pg. 343.

¹⁴ Ibid. Pgs. 341-342.

welfare protections.¹⁵ Without first explaining agricultural procedures, however, the same poll found that seventy-one percent of American respondents felt that farm animals are generally treated well in the United States.¹⁶ This lays to rest an argument I often hear from those hostile to the idea of animal rights – that farm animal welfare concerns are the result of urban ignorance about agriculture. The exact opposite appears to be true.

This point is driven home further by the fact that respondents to the same poll in the EU, generally well-informed on farm animal treatment, believe domestic welfare protections are insufficient.¹⁷ Another poll sponsored by European Parliament indicates that a majority of Europeans—fifty-five percent—think not enough importance is given to animal welfare in agricultural policy. In Greece, three quarters of respondents agreed with this view. Even in Finland, where respondents held the least concern for this issue, forty percent of respondents said animal welfare should be accorded more attention. Finally, In Holland and Denmark, which hold the most intensive egg farms in the EU, seventy-seven percent in both countries are critical of current welfare standards.¹⁸

Additional factors contributing to scant farm animal welfare protection in the US include a strong agricultural lobby opposed to an increase in production costs,¹⁹ and the United States Department of Agriculture's well-documented practice of offering former industry representatives high-level employment.²⁰ In addition, the majority of states have laws referred to as Common Farming Exceptions (CFEs) that allow any method of raising farm animals to

¹⁵ Ibid. Pg. 333.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Thomas, Edward M. "Playing Chicken at the WTO: Defending an Animal Welfare-Based Trade Restriction Under GATT's Moral Exception." *Boston College Environmental Affairs Law Review*; 2007, Vol. 34 Issue 3. Pgs. 606-07.

¹⁹ Marcus, Erik in Meat Market: Animals, Ethics and Money. Boston: Brio Press, 2005. Pgs 21-22.

²⁰ Nestle, Marion. Food Politics. Berkeley: University of California Press, 2002. Pgs. 97-102.

continue, regardless of the welfare impact, so long as it is commonly practiced in the industry.²¹

For example, the Nevada CFE states that welfare laws cannot be enforced to “...prohibit or interfere with established methods of animal husbandry, including the raising, handling, feeding, housing, and transporting of livestock.”²² Thus, if the industry adopts a practice, it automatically becomes legal and the producers cannot be prosecuted for cruelty. These practices make reform politically difficult if not impossible.

Further, agricultural industries hold the power to shape public opinion of farm animal issues. The National Cattlemen’s Beef Association claims that in order for animals to be cost-effective, food producers must treat them well: “[Humane care is] an economic necessity, since animals who are cared for properly perform more effectively as meat-producing animals.”²³ This statement would likely be readily accepted by an American public largely ignorant about farm procedures. In reality, the statement is inaccurate on both theoretical and practical grounds. Theoretically, even modern farm animals whom are rescued and placed in sanctuaries where they are given space, affection and individual veterinary care eventually develop crippling diseases due to disproportionately large bodies and fast metabolisms from decades of selective breeding.²⁴ In other words, the animals are genetically predetermined to effectively produce meat, milk and eggs, regardless of standards of care, negating the Cattlemen’s argument. Practically, a brief examination of modern farm conditions indicates that humane care standards are nonexistent, revealing the Cattlemen’s statement as a complete fabrication.

²¹ Marcus, pgs 57-58.

²² Nev. Rev. stat. ann. S 574.200.6

²³²³ Taken from a statement on the National Cattlemen’s Beef Association website from October 1, 2003 (no longer available) as qtd by Marcus, Pg. 21.

²⁴ Marcus, pgs. 11-13.

Another roadblock to farm animal welfare protections in the US concerns the lack and weakness of scientific research on what farm animal welfare standards should contain, as a small fraction of agricultural programs at US universities include courses on animal welfare,²⁵ and the governmental committee charged with examining farm animal welfare, the Agricultural Research Service, has no legislative powers²⁶ (in contrast, in 2004 the EU awarded twenty million dollars to universities and institutes to research farm animal welfare, and considers the reports produced by its Scientific Committee on Animal Health and Welfare to be an authoritative base for policy).²⁷ Non-governmental scientific associations in the US have also lagged behind those in Europe, as the first North American Symposium on Poultry Welfare was held in 1995, while the First European Symposium on Poultry Welfare was held in 1977.²⁸ Equally important as the scale of research is its approach – farm animal welfare research in the US has measured welfare by production levels, in sharp contrast to the EU approach of studying what animals choose to do when given options.²⁹ A survey published in the *Journal of Animal Science* on the lack of farm animal welfare research in the US found that “the acceptance of animal welfare science in its own right [in the US] is still relatively new,” and that the demand for information from the field has outpaced its science.³⁰ The article suggested one solution as having animal science and veterinary medicine employ faculty trained in farm animal welfare.³¹

²⁵ Matheny. Pg. 342.

²⁶ Ibid. Pg. 343.

²⁷ Ibid. Pgs. 342-343.

²⁸ Appleby, Michael. “The EU Ban on Battery Cages: History and Prospects.” *State of the Animals* Vol II Issue 159, 2003. Pg. 254.

²⁹ Matheny, pg. 343.

³⁰ Johnson, A.K. Farm animal welfare science in the United States. *Journal of Animal Science*; June 2009, Vol. 87 Issue 6, Pg. 2175.

³¹ Ibid. Pg. 2177.

Solving the farm animal welfare crisis in the US necessitates cooperation from consumers, retailers and producers. Education campaigns directed at consumers are carried out by animal advocacy groups such as Mercy for Animals, People for the Ethical Treatment of Animals, and the Humane Society of the United States, or by filmmakers such as those responsible for “Food Inc.,” “Fast Food Nation” and “Super Size Me.” Public awareness is essential to reform, as demonstrated by the aforementioned poll that found knowledge of agricultural practices positively correlates with support of reform. Indeed, without consumer awareness retailer campaigns are a moot point, as boycotts of non-humane products would never occur, and public opinion could not be used to reform international trade standards of non-humane products.

While recognizing the importance of consumer education, this paper is concerned with the role of retailers, producers, and trading partners, arguing that farm animal welfare reform must be seen through an economic lens in order to be effective. In short, it is often cheaper for producers to accept losses due to disease and mortality than to prevent those losses: “It is more economically efficient to put a greater number of birds into each cage, accepting lower productivity per bird but greater productivity per cage...Chickens are cheap, cages are expensive.”³² In other words, there is no longer a connection between animal welfare and efficiency. When animals are sick, injured or “spent,” there is no economic incentive for producers to care for them, revealing why most farm animals receive no individual veterinary attention.³³

³² Matheny Pg. 343

³³ Ibid.

In light of this, this paper will discuss two welfare reforms rooted in an economic framework. The first such solution is retailer campaigns, in which bottom-line thinking leads a major retailer to end relations with a non-humane supplier. The second solution involves invoking the moral exception of an international trade treaty that binds all members of the World Trade Organization.

Let's look first at the power of retailer campaigns. Matheney, et al. relates:

"Retailers are becoming the most potent force in setting animal welfare standards and will be the major engine for influencing animal welfare change. They can move faster than governments, can cut off a supplier's livelihoods by stopping contracts and can ignore international trade agreements."³⁴

These advantages are illustrated in the quick decision of Leprino Foods, a Denver-based cheese producer that supplies fast-food giants Papa John's, Dominos and Pizza Hut, to drop an Ohio dairy farm from its supplier list following an undercover investigation that led to a criminal conviction for animal abuse.³⁵ The harsh economic blow led the dairy farm to end its practice of tail-docking, in which calves have their tails cut off without anesthesia, and to begin providing local anesthesia prior to dehorning, in which the calves' horns are burned off their heads.³⁶

Thus, the Mercy for Animals undercover investigation that educated and shocked consumers

³⁴ Ibid. Pg. 355.

³⁵ Mercy for Animals. "Leprino Foods Drops Willet Dairy in Response to Cruelty Video!" Runkle, Nathan. January 30, 2010. Available at: <http://www.mfablog.org/2010/01/leprino-foods-drops-willet-dairy-in-response-to-cruelty-video.html>

³⁶ Mercy for Animals. "MFA Willet Dairy Farm Investigation Leads to Criminal Animal Cruelty Conviction." Runkle, Nathan. March 30, 2011. Available at: <http://www.mfablog.org/2011/03/mfa-willet-dairy-investigation-leads-to-criminal-animal-cruelty-conviction.html>

resulted in three major fast-food chains no longer using a supplier because of animal welfare concerns, and in the farm in question electing to reform some of its practices.

We can compare these impressive results to those following the year-long efforts of animal advocates to improve Ohio farm animal welfare protections (which rank among the weakest in the country³⁷) through legislative and/or regulatory reforms, namely a ballot initiative.³⁸ While admirable in dedication, their efforts proved only mildly successful, resulting not in a legislative vote but a last-minute agreement among activists and industry representatives to create a panel called the Ohio Livestock Care Standards Board.³⁹ The board, chaired by the director of the Ohio Department of Agriculture and composed almost entirely of farm owners and executives from the meat and dairy industries (save for a lone animal advocate – the president of the Society for the Prevention of Cruelty to Animals of Cincinnati⁴⁰), passed several reforms such as a ban on strangulation as a method of death for sick animals and the phasing out of sow gestation crates over fifteen years.⁴¹ However, I fear that these reforms will go the way of the USDA's welfare regulations – enacted on paper but not in practice due to poor accountability. When an industry is regulating itself and has the backing of government, *there is no one left to ensure standards are being met*. Thus, the Board will likely function instead to maintain the status quo of subpar farm animal welfare standards and strong industry influence. Diermeir discusses the advantages campaigns aimed at retailers offer over those aimed at legislators:

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ohio Livestock Care Standards Board. Available at:

http://ohiolivestockcarestandardsboard.gov/content/board/about_board.aspx

⁴¹ Mercy for Animals. "Progress for Ohio's Farmed Animals." Available at:

<http://www.mercyforanimals.org/progress-for-ohio.aspx>

“Traditionally, concerned citizens ... have used public institutions such as legislatures, executive agencies, and courts to advance their agenda. In recent years, however, many activists have concluded that public processes respond too slowly and can be blocked too easily by special interest. In response they have turned to ‘private politics’ instead. Private politics refers to actions by private interests such as activists that target private agents... [They felt they] could create more democracy in the marketplace than in the government.”⁴²

Indeed, in the United States, the largest animal-welfare reforms have been initiated not by government, but by retailers.

What are the dynamics of a retailer campaign? Simply put, the campaign involves a consumer boycott and media campaign against a retailer based on an objection to its practices or policies. For example, an environmental protection group might boycott a particular gas station for reckless disposal of post-drilling waste that harms ocean life. While calling attention to the larger issue of the environmental dangers of oil dependency, the focus of the campaign is on a particular practice of a single retailer, making its goals more feasible than say, ending all oil drilling. Most importantly, the campaign cleverly manipulates the very reason the oil companies chose that method of waste disposal – economic efficiency. Basic economics tell us that a private firm will always choose the most cost-effective means of production. However, if consumer demand dwindles due to a boycott and negative press coverage, profits will dwindle and that method of waste disposal will no longer be cost-effective – it will be far too expensive due to its social and environmental externalities. Thus, the same incentive that once drove the

⁴² Diermeir, Daniel and Jan A. Van Mieghem. “Voting with your pocketbook – a stochastic model of consumer boycotts.” *Mathematical and Computer Modeling*. Volume 48, Issues 9-10, Nov. 2008, Pgs.1497-1509.

oil company to pollute the ocean – the desire to meet consumers’ demands in order to make profit – now drives the company to choose a more sustainable method of waste disposal.

Now, let’s examine some examples. Environmental protection group Rainforest Action led a 1987 campaign against Burger King due to the company’s importing of cheap beef from countries where rainforests are razed to provide pasture for cattle. After sales dropped 12% during the boycott, Burger King cancelled \$35 million worth of beef contracts in Central America and announced that they had stopped importing rainforest beef.⁴³

Animal advocacy group People for the Ethical Treatment of Animals (PETA) has long used retailer campaigns to pressure companies to adopt more humane production methods. In October 1999, following two years of failed negotiations with McDonald’s, PETA launched its “McCruelty” campaign that involved a website, media coverage and over 400 activist demonstrations portraying the retailer as cruel and deceptive. At the demonstrations, brochures were handed out that replaced the retailer’s famous “I’m lovin’ it” slogan with “I’m hatin’ it,” re-labeled happy meals as “unhappy meals,” and generally depicted Ronald McDonald as a vicious killer.⁴⁴ These graphic tactics are “cognitively simple and emotionally appealing,” the keys to a successful boycott.⁴⁵ Below are two examples to illustrate:

⁴³ Rainforest Action Network. “Our mission and history.” Available at: <<http://ran.org/content/our-mission-and-history>>.

⁴⁴ See generally, <http://www.Mcruelty.com>. People for the Ethical Treatment of Animals.

⁴⁵ Marcus, Pg. 83.



Images taken from McCruelty.com.

In September 2000, after eleven months of campaigning that marred the retailer's image, McDonald's informed its suppliers of new animal welfare requirements, including audits of slaughterhouses, increased cage space per egg-laying hen, and a ban on forced molting by feed withdrawal.⁴⁶ In response, PETA placed a moratorium on its campaign.

Following McDonald's announcement, Burger King exceeded some of McDonald's standards and in 2001 petitioned the USDA to actively enforce the HMSA⁴⁷ -- making the campaign a huge success. Matheny discusses this domino effect:

"The visibility and name recognition of retailers make them sensitive targets of animal-welfare campaigns. As retailers compete with each other over public perception, successfully negotiating welfare gains with a major retailer can lead to a 'race to the top,' and to a push for harmonizing regulation so that costs are shared."⁴⁸

Although McDonald's new standards are certainly a step in the right direction, PETA is not done with their campaign. In February 2009, the group relaunched the McCruelty campaign after failed negotiations to further improve slaughtering conditions for chickens, and it is still

⁴⁶ Ibid.

⁴⁷ Matheny. Pg. 354.

⁴⁸ Matheny, Pg. 356.

active today.⁴⁹ Perhaps PETA should point out that McDonald's uses only free-range eggs in the UK, Germany, Austria, and Switzerland – a large undertaking.⁵⁰ If such a drastic change can work in Europe – with the retailer still holding the title of Europe's most powerful food service provider⁵¹ – why not in the US?

PETA has also targeted KFC (formerly known as Kentucky Fried Chicken) with mixed results. In April 2001, PETA began discussions with KFC, resulting in a pledge from the executives to improve welfare conditions and the hiring of four of PETA's five suggested animal welfare scientists as advisors. However, nearly two years later, KFC hadn't made any changes, and on January 6, 2003, PETA called for an international boycott of the retailer, launching its "Kentucky Fried Cruelty" campaign. The campaign involved a website, media coverage including a long list of celebrity supporters, and more than 12,000 activist demonstrations outside of KFCs⁵² (full disclosure: I attended one such demonstration at a KFC in Hempstead, New York in 2004). Again, the group used simple, evocative graphics to illustrate its campaign to a mass audience:



Images taken from KentuckyFriedCruelty.com.

⁴⁹ See note 39.

⁵⁰ Matheny. Pg. 355.

⁵¹ Ibid.

⁵² See generally, <http://www.Kentuckyfriedcruelty.com>. People for the Ethical Treatment of Animals.

In May 2003, KFC President Cheryl Bachelder met with PETA President Ingrid E. Newkirk at PETA's Virginia headquarters. PETA reports that Bachelder was "deeply moved" upon learning the conditions chickens endure on her suppliers' farms and promised to make improvements. However, KFC reneged on these promises and Bachelder resigned shortly afterward, which, PETA believes, is not a coincidence.⁵³

For six weeks in early February 2005, PETA held several meetings with top KFC executives, including chief operating officer Harvey Brownlee and general counsel Scott Toop. In exchange for a moratorium on PETA's campaign, KFC agreed to solicit advice from a panel of five mutually agreed-upon animal welfare scientists. The advisors sent their recommendations to KFC but, just like Bachelder, they resigned in frustration after KFC refused to adopt a single guideline. One former advisor, Adele Douglass, revealed that "[KFC] never had any meetings. They never asked any advice, and then they touted to the press that they had this animal-welfare advisory committee. I felt like I was being used." Dr. Ian Duncan, another former advisor, told the press that "Progress was extremely slow, which is why I resigned. It was always going to be happening later. They just put off actually creating standards. ... I suspect that upper management didn't really think that animal welfare was important." Currently, KFC's animal welfare council consists mostly of its suppliers' executives.⁵⁴

Although the Kentucky Fried Cruelty campaign in the US has so far seen limited success, PETA was able to reach a historic agreement with the supplier of chickens for Canadian KFCs,

⁵³ Ibid.

⁵⁴ Ibid.

dramatically improving welfare standards. In fact, some KFCs in Canada even offer a vegan faux-chicken option on their menus.⁵⁵

Indeed, the reform process in the US is often still quite slow compared to other countries, for all the reasons previously mentioned. Retailer campaigns in the EU have been largely successful and speedy. In Switzerland, compliance with animal-welfare standards was limited until the country's major egg retailers, following pressure from consumers and NGOs, announced they would sell only cage-free eggs. Sweden's ban on battery cages has also been helped by retailers' refusal to stock battery eggs, while all major Austrian supermarkets have volunteered to end the sale of cage eggs.⁵⁶ Regardless of this disparity, it is important to keep in mind that US campaigns aimed at retailers *are still speedier* than those aimed at legislators.

Finally, no economic analysis would be complete without an examination of the potential costs of reform. Production costs associated with farm animal welfare improvements are generally offset by increased prices to consumers, although farm costs typically represent less than half of the retail price of meat or eggs as wholesalers and retailers add their own margins to each product.⁵⁷ While some humane reforms would be costly (potentially offset by subsidies), others are shockingly cheap, considering the industry's often stubborn resistance to adoption. Below is a chart of common welfare reforms and their cost to producers:

⁵⁵ Ibid.

⁵⁶ Matheny, Pg. 356.

⁵⁷ Ibid.

Production Cost of Selected Humane Agricultural Reforms		
Humane Reform	Animal Affected	% Increase in Cost
Group housing	Sows	0-3
	Calves	1-2
Slow growth	Broiler chickens	5
Free range	Turkeys	30
	Hogs	8-47
	Layer hens	26-59
Furnished cages	Layer hens	8-28
Barn	Layer hens	8-24

Adapted from "Table 3: Costs of welfare improvements" in Matheny, Pg. 347.

Whatever the cost of humane production, the playing field can be leveled by regulation of adoption by producer or retailer associations, a process made easier by the fact that the WTO is currently formulating international voluntary care standards for farm animal welfare to take the guesswork out of choosing care guidelines.⁵⁸ Until regulation of adoption happens, the good news for humane producers in the US is that price increases are not expected to decrease profits because demand for meat, eggs, and dairy products is price inelastic.⁵⁹ Producers and retailers can, as a group, pass increased costs on to consumers without a loss in profits, as the decrease in demand is more than compensated by the increase in unit price.⁶⁰ One study by

⁵⁸ Ibid. Pg. 351.

⁵⁹ Ibid, Pgs. 346-47.

⁶⁰ Ibid.

North Carolina State University found that increases in egg prices of 40% would reduce American consumption by less than 10%.⁶¹ Most importantly, surveys show consumers are willing to pay extra for humanely produced products.⁶² Those that aren't will benefit from the competitive marketplace created by regulation of adoption – meaning, once humane production is the norm, the marketplace will naturally offer products at a price consumers are willing to pay.

Of course, humanely produced products need accurate labeling. There are numerous labeling systems already available, such as USDA Organic, the pig-welfare standards of the Animal Welfare Institute, or the Certified Humane label of Humane Farm Animal Care modeled after the RSPCA's Freedom Food certification.⁶³ In order to be meaningful, accurate labeling should be required by government. In the EU, labels describing farming methods are mandatory for shell eggs. Since 2004, all egg cartons produced in the EU must be labeled "eggs from caged hens," "barn eggs," or "free-range eggs." Imported eggs must also bear country of origin and production method.⁶⁴ It is essential that labels are third-party certified, however, as illustrated in the case of the United Egg Producers' "Animal Care Certified" label. The US Federal Trade Commission forbid the label after the Better Business Bureau found that the supplying hens were starved and intensively confined.⁶⁵

⁶¹ Sumner, et al. "Economic and market issues on the sustainability of egg production in the United States: Analysis of alternative production systems." *Poultry Science*, Jan 2011, Vol. 90 Issue 1. Pg 241.

⁶² Ibid. Pg. 348.

⁶³ Matheny, Pg. 345.

⁶⁴ Ibid.

⁶⁵ Ibid., Pgs. 351-52.

The Moral Exception of the General Agreement on Trade and Tariffs

The second powerful market-based solution to improved farm animal welfare standards involves invoking the moral exception of the General Agreement on Trade and Tariffs (GATT).

GATT is an international free-trade treaty binding all member-nations of the World Trade Organization. The share of the world's meat traded across national boundaries is rising, around nine percent of the total produced⁶⁶, thus, domestic animal welfare standards may be a moot point if they are undermined on the market by cheap imports from non-compliant suppliers.

Thomas relates: "If an animal welfare law is passed, foreign products will likely be more competitive than their domestic counterparts, as domestic producers must abide by higher, and often more costly, production standards. For these reasons, proposed animal welfare laws are unlikely to survive domestic industry opposition."⁶⁷ One example involves the UK, which maintains high sow welfare standards. Since its ban on sow gestation crates and tethers went into effect in 1999, UK pork costs increased and imports of fresh and frozen pork products increased by seventy-seven percent.⁶⁸ By 2005, more than half of all pork products in British supermarkets were imported, and more than two-thirds of these imports were produced using systems illegal in the UK.⁶⁹ Citizens of the UK polled on the topic believe imported meat should be produced to UK minimum standards.⁷⁰ In a similar EU-wide poll, 95 percent of respondents

⁶⁶Ibid., Pg. 348.

⁶⁷ Thomas, Pgs. 608-09.

⁶⁸Brit. Pig Executive, "An Analysis of Imported Pork and Pork Products into the United Kingdom 2," 2006. Available at: http://www.npa-uk.net/ds_portal/library by searching for "pork" and "welfare."

⁶⁹Quality Meat Support, *Meat News*, Jan. 19, 2005. Available at <http://www.meatnews.com/index.cfm?fuseaction=Article&artNum=8882>.

⁷⁰ Ibid.

said imported products should be produced under animal-welfare regulations at least as demanding as those applied in their own countries.⁷¹

How can the situations like the one in the UK be avoided? Under GATT, a member-nation cannot restrict imports from another member-nation, forbidding nations attempting to promote animal welfare from setting tariffs or other regulations on non-humane imports. To override the ban on import restriction, a member-nation must invoke GATT's "moral exception" described in Article XX. In addition, there are several GATT passages that could be argued to be friendly to farm animal welfare protections, each of which will be discussed below.

Article XX of GATT states: "Nothing in this agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures a) necessary to protect public morals; b) necessary to protect human, animal or plant life or health."⁷² We'll return to part (a) later. Part (b) might appear to clearly indicate a potential concern for farm animal health, but in fact the clause has so far only been used to refer to sanitary concerns that affect human health.⁷³ Thomas relates:

"Measures necessary to protect animal life or health are typically confined to preventing the spread of diseases or to ensure the safety of food products for humans. Animal welfare advocates are arguing for the inclusion of the term 'animal welfare' in article XX(b) in order to make it more feasible to enact laws that lessen animal suffering using this exception. In addition, some advocates argue for a more expansive definition of

⁷¹ "Shoppers Want Better Welfare." *Poultry World*, March 2006. Available via Lexis-Nexis.

⁷² Ibid.

⁷³ Thomas, pg. 150.

‘animal health’ under XX(b), which would define an animal's health by how much pain it suffers.”⁷⁴

Thus, though XX (b) has the potential to promote animal welfare standards, there is no precedent of its use as such. Animal welfare advocates would do better to focus on XX (a) – an exception in order “to protect public morals.” Persaud makes an important distinction in discussing the use of Article XX(a) to promote ethical production – namely, the difference between GATT’s traditional concern for the effect of the finished product versus many environmental NGOs’ concern for the process and production methods (PPMs) used to create the product.⁷⁵ Some in the WTO are open to PPM distinctions, while others aren’t, as Persaud discusses in relation to environmental protection:

“What those who object to environmental concerns in the WTO are really worried about is avoiding use of the WTO in a primary or direct role to promote environmental objectives. In other words, they do not see a need for the WTO to go beyond its present role, where trade restrictions may apply only when the product ... could have environmentally damaging effects in the importing country.”⁷⁶

This assumption of this paper is that the WTO can and should use its highly influential role to promote ethical production. In relation to farm animal welfare, the traditional GATT concern would be for the safety for humans of the finished animal product, while this paper is arguing two points further: a) It matters how the animal product was produced; and 2) It matters

⁷⁴ Thomas, Pgs. 618-19.

⁷⁵ Ibid, pg. 624.

⁷⁶ Persaud, B. “Environment and the WTO.” *Round Table*, Oct. 2003, Vol. 92, Issue 372. Pg. 633.

because modern agricultural conditions are a threat to farm animal welfare, separate from any concern for human welfare.

So far, Article XX(a) has been used to regulate the trade of a variety of products, some related to animal welfare, others not. The US forbids imports made by forced or indentured child labor, while in Thailand, religious images of the Buddha cannot be exported for religious reasons.⁷⁷ Other bans have been temporary, such as the 1987 US ban on trade with Panama until the country guaranteed freedom of speech and due process to its citizens.⁷⁸ Examples related to animal welfare include: the US Marine Mammal Protection Act, which bans the importation of any marine mammal if his or her capture is deemed inhumane by the Secretary of Commerce; and the European Commission's bans on the importation of baby seal skins because of public outrage over their killing, and of animal pelts unless the country of origin has banned leghold traps and the trapping methods used meet "internationally agreed humane trapping standards."⁷⁹

In order to be approved by the WTO, all of these bans had to pass the legal test involved with invoking the moral exception in Article XX(a). This test determines whether the regulation 1) "advances a policy goal that fits within the scope of a public moral," 2) "is necessary to protect that moral," and 3) is not a form of trade discrimination or protectionism.⁸⁰ A WTO member discusses the use of the legal test on animal welfare regulations:

"[Article XX (a)] could justify measures regarding inhumane treatment of animals, if such measures applied equally to domestic and foreign animal products; a panel could not

⁷⁷ Charnovitz, Thomas. "The Moral Exception in Trade Policy." *Virginia Journal of International Law* 38, 689, 1998, Pg. 4.

⁷⁸ Ibid.

⁷⁹ Ibid., Pg. 5.

⁸⁰ Thomas, pg. 620.

judge the morals of the party taking the measure, but it could judge the necessity of taking measures inconsistent with the General Agreement, and their consistency with the Preamble of Article XX.”⁸¹

In other words, the WTO cannot debate the moral merits of protecting farm animal welfare; rather, it can only debate the necessity of an import ban in assuring this protection, and ensure that the regulation is not discriminatory to foreign nations. Thus, “passing” Test 1 merely entails the regulation in question being a matter of public morals and thus belonging under subsection (a) of Article XX (as opposed to say, subsection (b) which is concerned with protecting public health).

Nonetheless, as WTO arbitrary panels often use case law to determine decisions, it may be helpful to have similar moral precedents. In this sense, passing test 1 is not an issue for animal welfare regulations in general, as precedents have already been set, and further, most if not all countries consider animal welfare of at least some importance as evidenced by domestic cruelty prevention laws. However, passing test 1 for farm animal welfare regulations specifically could potentially pose a problem, as there is no precedent and not all countries are as progressive in this respect as those in the EU (for example, as stated early in the paper, the US has no federal legislation protecting the welfare of farm animals).

Although it is not the goal of this paper to argue that farm animals deserve humane treatment (as the paper assumes this position), my arguments may be served by briefly pointing out that in a philosophical sense, it is irrational for a country to protect cats and dogs while inhumanely killing cows, pigs and chickens (and other livestock as varies by country).

⁸¹ Charnovitz, Pg. 17.

Choosing to domesticate one species for companionship and another for food does not change the fact that all of the species involved are sentient (and, it is becoming widely recognized, often quite intelligent) beings that are capable of suffering. Thus, any country that agrees to offer welfare protection to companion animals should rationally offer at least minimum protections to farm animals as well.

For all of the above reasons, we can assume that farm animal welfare regulations will pass Test 1. As for Test 2, protecting the welfare of farm animals necessitates allowing countries to ban non-humane imports because, as stated earlier, non-humane products are cheaper and thus would result in an unfair market advantage and undermine the welfare efforts of the importing country. Charnovitz agrees, saying that “Import measures to safeguard the morals of a domestic population would probably receive the lightest scrutiny [by the WTO].”⁸² Finally, Test 3 should easily pass as long as the importing country imposes the same welfare standards on its own producers as it does on foreign producers; however, WTO members that for economic reasons are hostile to a certain moral regulation may try to impede this process. Such was the case with the European Commission’s leghold trap ban, which was met with hostility from the US. Charnovitz describes how the discussion would likely go:

“Both sides would probably appeal to the principle of sovereignty. The U.S. government might argue that how animals are treated within its territory is a matter of American sovereignty. The European Commission, however, could counter that sovereignty

⁸² Charnovitz, Pg. 21.

implies that a state should be able to exercise control over what is imported across its borders.”⁸³

Fortunately, the WTO panel sided with the European Commission,⁸⁴ proving the potential for the moral exception in Article XX (a) to be used to regulate agricultural products created through the inhumane care of farm animals.

The EU provides the first case study of this method in action. On February 14, 2006, the European Parliament mandated increased welfare protections for chickens used in meat production, called “broilers.” The proposal would require higher standards for broilers on sanitation, stocking densities, ventilation, and surgical procedures such as debeaking and castration.⁸⁵ On the topic of international trade, the mandate says the following: “Imports of chicken from third countries, which come from holdings that do not observe rules on the welfare of chickens for meat production equivalent to those effective in the E.U., should also be regulated and, where appropriate, prohibited.”⁸⁶ Thus, the EU is the first entity to attempt restricting trade on the basis of farm animal welfare concerns.

The likelihood of such an import restriction surviving challenge at the WTO is good, for the reasons discussed above. Matheny is similarly optimistic, arguing that “PPM-based import bans are increasingly accepted by the WTO” and that the EU “need not back down from its trade ban in the face of a foreign challenge, but should move forward to open the door to more animal welfare-based trade regulations.”⁸⁷ If passed, this mandate would represent a major victory for animal advocates, as it is the first time that farm animal welfare has officially been

⁸³ Charnovitz, Pg. 24.

⁸⁴ Ibid.

⁸⁵ Thomas, Pg. 605.

⁸⁶ As qtd. in Thomas 607.

⁸⁷ Matheny, Pg. 611.

declared equally if not more valuable than the promotion of free trade. Most importantly, as a major economic power, the EU's passage of such an import ban would force exporting nations without welfare standards to adopt some quickly.

This positive domino effect, however, would likely be met with challenges from developing nations, which often view developed countries' environmental and animal welfare protections as disguised protectionism.⁸⁸ While intensive factory farming is growing in developing countries⁸⁹ trying to stay competitive in a technology-driven market, it can be argued that returning to more traditional farming methods may actually offer these countries greater benefit. Extensive production methods, which are more humane, tend to be more labor-intensive, while intensive systems tend to be more capital-intensive. As labor is cheaper than capital in developing countries, so is simpler, more animal-centered agriculture. Matheny discusses: "Developing countries should recognize their advantage in supplying a share of humanely raised meat, eggs and milk, particularly in EU where there is increasing demand."⁹⁰

In addition to the export market, another method to deter intensive farming in developing countries is the influence of organizations that provide grants or loans to livestock projects. In 2001, the World Bank committed to avoid funding large-scale, commercial milk, pork, and poultry production.⁹¹ In addition, in 2004, the United Nations Food and Agriculture Organization began drafting animal welfare standards to be used in its technical assistance programs, and is working with Humane Society International to introduce humane transport

⁸⁸ Matheny, Pg. 353.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Matheny. Pg. 354.

and slaughter techniques to developing countries.⁹² Finally, in 2006, the International Finance Corporation, the private financial arm of the World Bank, began drafting animal welfare criteria for its assistance programs.⁹³

What about other GATT passages? While Article XX is the passage most relevant to animal welfare, other passages have potential. Article III of GATT states that imported products should be treated no less favorably than “like products” of domestic origin. Disagreement has focused on the interpretation of “like products,” understood as “directly competitive or substitutable products.” Generally, because products with animal-welfare assurances may be physically identical to products without such assurances, they could be considered “like products” by the WTO, revealing the difficulty of countering “a global free trade regime that, in general, treats all products equally, regardless of their process and production methods.”⁹⁴ However, because consumers concerned about animal welfare do not view humane and inhumane products as “substitutable,” there may be room for differentiating products according to PPMs. No GATT rule explicitly forbids PPM distinctions, and the criteria for what constitutes “like products” continues to evolve in WTO case law.⁹⁵ If humanely-produced and non-humanely-produced products are proven to be different, then a WTO member can tax, label or otherwise regulate non-humane imports so long as domestic products are subject to the same regulations.⁹⁶

Finally, GATT allows for “Green Box” provisions. Subsidies for more animal-friendly housing, equipment, training and certification could be defended under these provisions of the

⁹² Ibid.

⁹³ Id. Pg. 355.

⁹⁴ Thomas, Pg. 608-09.

⁹⁵ Matheny, Pgs. 349-350.

⁹⁶ Thomas, Pg. 614.

WTO Agreement on Agriculture, in which payments are “limited to the extra costs or loss of income involved in complying with the government program,”⁹⁷ and thus are not trade-distorting.

III. Methodology

In writing this paper during the spring of 2011, my research consisted almost entirely of articles from peer-reviewed academic journals, which I found through using the “Academic Search Complete” function in the EBSCOHost database. If listed articles were not available in full text, I used Google to find them elsewhere. Finally, there are a handful of sources from online newspapers and relevant books, some of which I owned and others I came upon in bookstores.

IV. Conclusion

Farm animal welfare standards in the United States are in desperate need of reform. Campaigns aimed at legislators are often extremely slow and marred by the political difficulty of a powerful agriculture lobby. Rather, those who want reform should view the issue through an economic lens, as the key to change lies with producers and retailers. Of course, the first step in achieving change is educating consumers on modern farm conditions. Once educated, polls indicate consumers will support reform, which is essential to employing reform tactics which manipulate economic incentives through consumer demand. The first such tactic is retailer campaigns, in which educated consumers choose to

⁹⁷ Matheny, Pgs. 349-350.

reject a company due to concern over non-humane production methods. A boycott of that company's products coupled with negative media coverage will lead retailers to end its supplier relationship with that company as a response to consumer demand. The second tactic involves restricting the import of non-humane products by invoking the moral exception clause of the World Trade Organization's General Agreement on Tariffs and Trade. For example, the European Union responded to public demand for higher welfare standards by introducing a mandate on improved chicken welfare. Once accepted by the WTO, one country's import ban will result in a worldwide domino effect in which all of that country's trading partners will be forced to adopt welfare protections. Both of these tactics manipulate the most basic economic incentive – to respond to consumer demand. Retailers will respond to customers' demand, while nations will respond to their trading partners' demands. Rather than focusing on cost-effective production in order to produce a cheap, in-demand final product, producers, retailers and trading nations will focus on ethical production methods in order to produce a humane, in-demand final product. It is this manipulation of bottom-line thinking that will produce the quickest and most far-reaching effect for improving the lives of farm animals worldwide.

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