

The CAP, a European Farm Bill?

A comparative analysis of the detrimental effects of US and EU agricultural policies on animal welfare, and solutions to address them

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Abstract

By enacting agricultural subsidies and support programs, the Farm Bill and the Common Agricultural Policy (CAP) in the EU determine which agricultural industries are likely to thrive in North America and Europe. Because farm animals account for roughly half of US and EU's agricultural value, the CAP and the Farm Bill therefore greatly impact the conditions in which billions of farm animals are bred, raised on farms, transported, and slaughtered. Despite the staggering quantity of animal production in the EU and the US, both their respective agricultural policies fail to adequately address the conditions in which billions of animals are raised.

Over the last few decades, the CAP has degraded the welfare of farm animals by supporting the development of factory farming throughout the 28 EU member states. Replicating the model developed in the US, where factory farming is now the predominant way of producing animals, the effects of industrial farm animal production extend beyond matters of animal cruelty as this method devastates the environment, negatively impacts public health, curtails rural development, and degrades farmers' and workers' rights. As a result, the CAP has been fueling unprecedented anti-EU sentiment even within founding member states of the EU. The CAP reform in 2020 will thus be an opportunity for animal welfare groups to get involved in the public debate, in a context where the EU needs to regain the trust of its citizens.

This paper attempts to outline commonalities between EU and US agricultural policies by analyzing their involvement in the dramatic deterioration of farm animal welfare. Further, this paper argues that, based on the experiences of animal protection advocacy in the US, the European animal protection movement urgently needs to challenge the proliferation of factory farming by joining with other advocate groups already engaged in such struggles.

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Introduction

In 2014, 16.6 billion animals were slaughtered for food in the 28 European Union (EU) member states and the US combined,² excluding aquatic animals. The US is the world's largest producer of chicken, beef, turkey, and cow milk,³ and animal products account for over half the value of the US's agricultural products.⁴ Animal outputs constitute 41% of EU agricultural production.⁵ The EU is also one of the world's largest producers and consumers of beef, pork, and poultry.⁶ France and Germany are the two largest producers of animal products in the EU.⁷

Despite the staggering numbers of US animal production, the Farm Bill does not contain any provisions that account for the welfare of farmed animals. Rather, this legislation treats animals as any other non-sentient commodity. The Common Agricultural Policy (CAP), the chief instrument of agricultural policy of the European Union, likewise falls short of adequately addressing the conditions in which billions of animals are raised across the 28 EU member-states.

The US "Farm Bill" is an omnibus legislation that has been passed every five years since 1933. The Farm Bill authorizes agricultural services and programs administered by the United States Department of Agriculture (USDA). The most recent Farm Bill (The Agricultural Act of 2014) was signed into law by President Obama on February 7, 2014 and funds federal farm programs through 2018. The CAP has functioned as the EU's agricultural policy since 1962, establishing an array of agricultural subsidies and support programs.⁸ The

² 9.1 billion of animals were slaughtered in the US, 7.5 billion in the EU 28.

Source: Farm Animal Statistics, The Humane Society of the United States, *U.S. Slaughter Totals, by Species (1950 - 2016)*, http://www.humanesociety.org/news/resources/research/stats_slaughter_totals.html? (last visited May 6, 2016) (USA)

Eurostat, *Statistics explained, Statistics On Slaughtering, All Species, By Country, 2014*, available at:

http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Statistics_on_slaughtering_all_species_by_country_2014.png (last visited May, 6 2016)

³ FAO, *Faostat*

⁴ USDA, Economic Research Service, *Animal Products*, <https://www.ers.usda.gov/topics/animal-products/> (last visited on Mar. 3, 2017)

⁵ Eurostats, *Agriculture, Forestry And Fishery Statistics*, 70-71, Luxembourg, Publications Office of the European Union, 2016

⁶ USDA, Economic Research Service, *Animal Products*, <https://www.ers.usda.gov/topics/animal-products/> (last visited on Mar. 3, 2017)

⁷ France is the largest EU 28 producer of beef cattle, the second largest dairy producer and third largest hog producer. Germany is the largest dairy and hog producer, and the fourth largest producer of beef cattle.

Source : Infographie - L'Union Européenne, 2ème puissance agricole mondiale, Ministère de l'agriculture, de l'agroalimentaire et de la forêt, Feb. 2, 2015, available at: <http://agriculture.gouv.fr/infographie-lunion-europeenne-2eme-puissance-agricole-mondiale> ; Agreste, *Les Productions Animales*, Juin 2006, Les Dossiers n°1, available at: http://agreste.agriculture.gouv.fr/IMG/File/dossiers_europe_animales.pdf

⁸ Concurrent to the creation of a common market in 1957, guaranteeing the free movement of goods within European Union countries, the Treaty of Rome (since renamed the TFUE) established a common agricultural policy to be adopted by all member states. Article 39 of the Treaty on the Functioning of the EU (TFUE) of 2009 sets the objective of the CAP as follows: "increase[e] agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilization of the factors of production, in particular labor; ensur[e] a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in

CAP replaced respective EU member states' national agricultural policies through legislation at the European level. The most recent CAP, passed by the European Parliament in 2013, covers the period from 2014 until 2020.

By enacting agricultural subsidies and support programs, the Farm Bill and the CAP determine which agricultural industries are likely to thrive, thereby influencing food consumption patterns in North America and Europe. Because farm animals account for roughly half of US and EU agricultural value, the CAP and the Farm Bill therefore greatly impact the amount of animals produced for food, as well as the conditions in which those animals are bred, raised, transported, and slaughtered.

The CAP and the Farm Bill have been subject to various criticisms leveled by a broad range of advocacy groups. However, the origin of such critiques tends to be different in the US, as compared to Europe. In Europe, mostly small-scale farmers and environmentalists have called for reform of the CAP, pressing for more sustainable and diversified farming. Farmers and environmental advocates inside the EU oppose current policies aimed at intensifying industrialized models of production that utilize that which Americans refer to as Concentrated Animal Feeding Operations (CAFOs). European animal protection movements on the other hand have, for the most part, opted to remain on the sidelines of the debate surrounding the issue of agricultural policies. Instead, European animal protection advocates have focused their energy outside the CAP, an unsuccessful strategy so far, which has failed to account for the underlying systemic and economic features of the European agricultural policies. Such an omission from European animal advocates is unexpected because, like their North-American counterparts, they too have often identified factory farming as the main threat to animal welfare.

The European situation stands in sharp contrast to the approach taken by animal welfare advocates in the US. Joining forces with groups representing environmental protection, food safety, public health, and environmental justice; the animal protection movement in the US has identified that (1) animal production has been inadequately regulated; and that (2) the rise of CAFOs, the predominant and inherently cruel mode of farming animals, has come as a direct consequence of US agricultural policies. As a result of these findings, the recent progress for the welfare of farm animals in the US has been proportionally more effective than efforts in EU. Animal advocates have been able to employ

agriculture; stabiliz[e] markets; assur[e] the availability of supplies; ensur[e] that supplies reach consumers at reasonable prices.”

efficient strategies that focus on improving the lives of a greater number of individual animals.

This paper attempts to outline commonalities between EU and US agricultural policies by analyzing their involvement in the dramatic deterioration of farm animal welfare. Further, this paper argues that, based on the experiences of animal protection advocacy in the US, the European animal protection movement urgently needs to challenge the proliferation of factory farming by joining with other advocate groups already engaged in such struggles. More importantly, this paper aims to correct misperceptions about the superiority of EU animal welfare standards by showing that such standards only divert the attention of advocates away from the steady trend of deregulation of animal production within the EU.

The first section of this paper attempts to direct European animal welfare advocates' attention to the role agricultural policies have played in the degradation of farm animal welfare. In so doing, this section highlights similarities between the Farm Bill and the CAP, as both legislative acts fall short in a number of crucial ways. Both fail to properly address the issue of animal welfare, both worsen the conditions in which farm animals are raised, and both directly subsidize CAFOs, thus contributing to their expansion.

Building on the experience of the American animal protection movement, the second section of this paper seeks to demonstrate the necessity and the urgency for European animal protection groups to change strategy, away from lobbying for surface regulations. Instead, EU and national groups in Europe would see better results by engaging in coalition-building to challenge the status of animal welfare under European agricultural policies. The second section also explores the concept of animal welfare as a merit good in agricultural policies, as a solution to further advance farm animals' interests in the US and the EU.

Most of the study in this paper focuses on the emergent animal protection movement in France, as the country is the largest producer of animal commodities in the EU and has been a traditional champion of sustainable farming.

I. The role of US and EU agricultural policies in the development of factory farming

This first section identifies key issues at stake in the way agricultural policies fail to properly regulate the welfare of farm animals, and the extent to which both EU and US agricultural policies participate in degrading the welfare of animals used for food.

Even if the CAP distinguishes itself from the Farm Bill by including animal welfare standards, such measures are limited and often at odds with the objectives of the CAP. The CAP's main goal is to increase agricultural productivity by way of supporting large, industrial, specialized modes of production. Furthermore, just like the Farm Bill, the complex support mechanisms available under the CAP have the effect of indirectly subsidizing CAFOs, thereby actively developing mass-scale animal cruelty.

1. Animal welfare regulations in the CAP: incomplete and unsatisfactory

Article 13 of the Treaty on the Functioning of the EU (TFEU) defines animals as sentient beings⁹ and requires member states to “pay full regard to the welfare requirements of animals in formulating *and* implementing European policies, including agriculture and fishery policies.” However, the CAP itself does not contain any provision relating to the welfare of animals. Additionally, even though the CAP is not entirely exempt from taking animal welfare into account in its implementation, animal welfare requirements are minimal and unsatisfactorily enforced.

a) Animal welfare in the “formulation” of the CAP

The CAP's objectives as set in article 39 of the TFUE have remained unchanged since 1962 and were never amended to include ethical consideration of the treatment of animals used for food. From an animal welfare perspective, it could therefore be argued that the CAP is in breach of Article 13, as the CAP fails to formulate policies that take into consideration animal welfare. Yet, by determining that there was no general principle of animal welfare in European law, a 2001 European Court of Justice (ECJ) decision considerably diminished the influence that article 13 of the TFUE could have on future agricultural policies.

In *Jippes*,¹⁰ the ECJ gave a narrow interpretation of animal welfare requirements in the context of the CAP, summarized as follows by Rasso Ludwig and Roderic O’Gorman, “[R]ather than being understood as a clash between two competing norms [welfare

⁹ See generally Jean-Pierre Marguénaud, *La promotion des animaux au rang d’êtres sensibles dans le Traité de Lisbonne*, *Revue Semestrielle de Droit Animalier* 2/2009

¹⁰ *H. Jippes, Afdeling Groningen van de Nederlandse Vereniging tot Bescherming van Dieren and Afdeling Assen en omstreken van de Nederlandse Vereniging tot Bescherming van Dieren v Minister van Landbouw, Natuurbeheer en Visserij*, Case C-189/01(ECJ)

requirements versus the functioning of the CAP], in cases such as *Jippes*, animal welfare [...] will be ‘merely a public interest to be taken into account in the exercise of discretion in agricultural cases.’”¹¹ Such holding by the ECJ has the consequence of setting a low degree of scrutiny when a measure adopted under the CAP conflicts with animal welfare.¹² As a result, the court interpretation essentially voids Article 13 of its substance.

Far from a requirement, animal welfare standards within European agricultural policies are merely considered a public interest to be taken into account among others. Based on the ECJ’s reasoning, the absence of reference to animal welfare in the CAP would therefore not be considered a breach of article 13 of the TFUE.

b) Animal welfare in the “implementation” of the CAP

The policy instruments aiming to implement the CAP include animal welfare by way of reference to minimum standards laid out in the Council Directive on the protection of animals kept for farming purposes. Such directives cover all animals kept for farming purposes in the EU as well as other species-based directives on the welfare of laying hens,¹³ broilers,¹⁴ pigs,¹⁵ and calves.¹⁶ Not only do such regulations provide very minimal protection to farm animal from routine abuses on farms, they are improperly integrated into the CAP.

- EU Directives on the welfare of animals kept for farming purposes

The Council Directive on the protection of animals kept for farming purposes was a transposition of the European Convention for the Protection of Animals Kept for Farming Purposes, a European Convention intended to apply specifically to “animals in intensive stock-farming systems.”¹⁷ However, far from addressing factory farming as the structure providing for systemic animal cruelty, the Council Directive only reflects the “Five Freedoms” guideline, a basic set of animal welfare principles¹⁸ which fail to grant animals meaningful protections from routine abuses. The fact that the intensive livestock farm

¹¹ R. Ludwig and R. O’Gorman, *A Cock And A Bull Story? Problems With The Protection Of Animal Welfare In EU Law And Some Proposed Solutions*, p. 366-367 2008, *Journal of Environmental Law*

¹² *id.* p. 369

¹³ Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens

¹⁴ Council Directive 2007/43/EC of 28 June 2007 laying down minimum rules for the protection of chickens kept for meat production

¹⁵ Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs

¹⁶ Council Directive 2008/119/EC of 18 December 2008 laying down minimum standards for the protection of calves

¹⁷ European Convention for the Protection of Animals kept for Farming Purposes, Strasbourg 1976

¹⁸ Council Directive 98/58/EC of 20 July 1998 Concerning The Protection Of Animals Kept For Farming Purposes
The EU also enacted rules specific to certain species for pigs, calves, broilers and laying hens. The Council directives are available on the European Commission website, “Animal Welfare on the farm”:
http://ec.europa.eu/food/animals/welfare/practice/farm/index_en.htm (last visited May 2, 2016)

operations can easily implement such standards without fundamentally changing their system shows that the Council Directives do not fundamentally inhibit the expansion of CAFOs.

Additionally, a closer look at the EU directives suggest that protections afforded to animals remain limited as these directives do not even fully comply with the Five Freedom model. For example, while the directive laying down minimum standards for the protection of pigs restricts the use of farrowing crates, their use is still legal under EU law for three weeks during pregnancy, and as long as the sow is able to turn around.¹⁹ Similarly, the EU regulations still allow the use of battery cage systems for egg-laying hens, merely requiring that the cages be enriched.²⁰

Furthermore, EU law does not provide species-based standards for all animals. As a result, the conditions in which dairy cows, beef cattle, ducks, and geese²¹ are raised are only covered under the general standards of the directive for the protection of animals kept for farming purposes.²² Given that the EU is one of the world's largest milk producers,²³ the lack of a directive that adequately and specifically addresses the welfare of dairy cows leaves almost 23 million animals excluded from adequate coverage.²⁴ The lack of species-based animal welfare standards for dairy cows also raises additional concerns. The recent expiration of milk quotas in the EU, mandated in the 2014 CAP, is expected to accelerate farm consolidation,²⁵ involving more confinement of animals on factory-farms.²⁶ Similarly, member-states of the EU are not required to abide by species-based regulations for the production of cattle, which leaves an additional 25 million animals outside adequate coverage.²⁷ Finally, ducks and geese remain likely to be exposed to specific types of abuse such as live plucking and force-feeding. Although *foie gras* production is limited under EU

¹⁹ Article 3 paragraph 4 of the Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs.

Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0120&from=EN>

²⁰ Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens

²¹ Eurogroup For Animals, Areas Of Concern Analysis Of Animal Welfare Issues In The European Union, 2010

²² Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes

²³ 5 countries out of the 15 top world milk producers are EU member state.

Source: Statistics: Dairy Cows, Compassion in World Farming. Available at:

<https://www.ciwf.org.uk/media/5235182/Statistics-Dairy-cows.pdf> (last visited May 3, 2016)

²⁴ *Id.*

²⁵ Laurence Girard, *L'Europe face à la fin des quotas laitiers*, *Le Monde*, March 30, 2015

http://www.lemonde.fr/economie/article/2015/03/30/l-europe-face-a-la-fin-des-quotas-laitiers_4605490_3234.html (last visited May, 6 2016)

²⁶ The recent expansion of dairy CAFOs has affected countries traditionally championing sustainable and small-scale agriculture, such as France.

Marie-Josée Cougard, *Ferme Des 1 000 Vaches: Le Lait De La Colère*, *Les Echos*, Sept. 3, 2015,

https://www.lesechos.fr/09/03/2015/lesechos.fr/0204193645657_ferme-des-1-000-vaches---le-lait-de-la-colere.htm (last visited May, 6 2016)

²⁷ Eurostat, Statistics explained, Statistics On Slaughtering, All Species, By Country, 2014, available at:

http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Statistics_on_slaughtering,_all_species,_by_country,_2014.png (last visited May, 6 2016)

law, force-feeding remains a widespread practice in some EU countries. The EU contains three of the world's top *foie gras* producing nations, whose output accounts for roughly 96% of global production.²⁸ The raising of dairy cows, beef cattle, ducks, and geese each represent important sectors of European animal production and there is no justification accounting for the absence of specific directives for them, other than exploitation in the pursuit of profit.

- Improper integration of EU Directives within the CAP: cross-compliance payments

Cross-compliance is the only measure under the CAP that integrates animal welfare. Cross-compliance requires that farmers comply with environmental and animal welfare regulations to receive agricultural payments. A seemingly powerful enforcement tool, cross-compliance actually ends up being a weak measure because cross-compliance only partially includes already minimal animal welfare regulations, thus furthering the shortcomings of EU law.

Animal welfare cross-compliance includes directives that detail basic standards in the treatment of calves, pigs, and the more general directive for animals kept for farming purposes. However, cross-compliance payments exclude the directive on the protection of laying hens.²⁹ A second limitation from an animal welfare perspective is that enforcement rules allow member-states to implement immediate sanctions against farmers only in situations where non-compliance threatens public or animal health. Moreover, a farmer who violates animal welfare regulations might only receive a warning before a sanction.³⁰

Finally, small farming operations are exempted from animal welfare regulations. Not only is such exemption based on the unsupported argument that small farmers should not be burdened by additional administrative requirements, the exemption also contradicts the obligation member states have to transpose EU law in national law and properly enforce the requirements set forth in the animal welfare directives, regardless of the size of farming operations.³¹ More importantly, the EU policy-makers did not seem to take into account the expansion of American agribusinesses in Poland and Romania, like Smithfield, which

²⁸ Animal Equality, *Foie Gras, How Much Cruelty Can You Swallow*, 5, available at:

http://www.foiegrasfarms.org/report_foiegras_eu.pdf

²⁹ European Commission Agriculture and Rural Development, *The CAP, "Cross-Compliance"*, http://ec.europa.eu/agriculture/direct-support/cross-compliance/index_en.htm

³⁰ Diane Ryland, *id.*

³¹ Diane Ryland, *id.*

precisely rely on small farming operations to raise thousands of animals in inhumane conditions.³²

c) Lack of enforcement and lost opportunities

Not only are farm animal welfare standards limited under EU law, inadequate enforcement along with the lack of efforts to expand animal welfare requirements beyond cross-compliance suggests that animal welfare, contrary to rhetoric stating otherwise, is not a priority for European lawmakers.

Enforcement and monitoring of cross-compliance regulations is still lacking. In 2016, the animal protection organization Compassion in World Farming reported that farms in violation of the regulations imposed by the CAP would still receive payments due to insufficient compliance monitoring and enforcement.³³ The European Commission themselves admitted that they had failed to enforce animal welfare directives across the 28 member-states.³⁴ One of the reasons for such inadequate enforcement is structural: in absence of a European enforcing authority, member-states remain in charge of enforcing EU regulations.³⁵ Such an enforcement system entails important discrepancies between the 28 member-states, as each nation prioritizes animal welfare differently and has access to disparate financial resources to ensure controls, monitoring, and punitive enforcement.

Lawmakers also failed to extend measures and instruments that could promote animal welfare more efficiently, through disincentivizing industrial agricultural production, in accordance with the general public's wishes.³⁶ One example of this failure would be green direct payments. Green direct payments grant farmers a certain amount of subsidies based on the area they cultivate, provided the farmer implements environmentally friendly practices such as crop diversification and the maintenance of permanent grassland.³⁷ The CAP could

³² Doreen Carvajal, Stephen Castle, *A U.S. Hog Giant Transforms Eastern Europe*, The New York Times, May 5, 2009, <http://www.nytimes.com/2009/05/06/business/global/06smithfield.html>

³³ “Even Agriculture Commissioner Hogan offered a noticeable example of how CAP funds are not delivering on animal welfare, when he visited a pig farm in Romania partly funded by the EU Rural Developments Programme, where tail docked pigs were housed without enrichment materials, clearly in breach of Directive 2008/120 on the welfare of pigs.” in Olga Kikou (Compassion in World Farming), *CAP And Animal Welfare: Simply Incompatible*, Euractiv.com, Feb.22, 2016 <http://www.euractiv.com/section/agriculture-food/opinion/cap-and-animal-welfare-simply-incompatible/> (last visited May 2, 2016)

³⁴ *Id.*

³⁵ European Commission, *Communication From The Commission To The European Parliament, The Council And The European Economic And Social Committee on the European Union Strategy for the Protection and Welfare of Animals 2012-2015*, 4, January 2012, available at:

http://eur-lex.europa.eu/resource.html?uri=cellar:4ef28104-3fd5-4e07-ad6c-e3f4ca9faea3.0002.03/DOC_1&format=PDF

³⁶ “A strongly held view, particularly among the general public is that ‘industrial’ agriculture should have little place in the CAP” in European Commission Agriculture and Rural Development, *The Common Agricultural Policy after 2013 Public Debate: Summary Report*, 7

³⁷ European Commission Agriculture and Rural Development, The CAP, “Greening”, http://ec.europa.eu/agriculture/direct-support/greening/index_en.htm

have integrated animal welfare to greening by incentivizing practices that both improve animal welfare *and* reduce the carbon footprint of farms. For instance, husbandry practices that limit indoor confinement as well as increase outdoor access satisfy both higher environmental and animal welfare standards.³⁸

Those limitations reveal doublespeak in the CAP policy. While the European Commission – the executive branch of the EU - claims that it considers animal welfare when designing the CAP,³⁹ and supposedly prides itself in “promoting animal welfare for over 40 years gradually improving the lives of farm animal,”⁴⁰ the way policies are actually designed and implemented would suggest the opposite.

2. Promoting CAFOs through subsidization

The CAP and the Farm Bill produce similar effects on animal welfare, further demonstrating the incompatibility of mass-production and animal welfare, despite rhetoric to the contrary from industry and European officials. The priority of both US and EU agricultural policies is the intensification and concentration of agricultural production. This economic mandate entails the development of factory farming and creates conditions in which CAFOs, a synonym for large-scale animal suffering, thrive.

a) *Subsidization of factory farming in the US: the Farm Bill*

The Farm Bill provides CAFOs with three main types of implicit subsidies: low-cost animal feed, buy-back programs to divert production surpluses and support prices, and environmental support programs that alleviate the costs of compliance with already lax environmental regulations.

³⁸ Diane Ryland, *Animal Welfare In The Reformed Common Agricultural Policy: Wherefore Are Thou?*, Environmental Law Review, 2015, Vol.17(1) 22-43

³⁹ European Commission Agriculture and Rural Development, *The CAP and Animal Welfare: High Standard in the EU*, available at:

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0ahUKEwjtm92Gw7zMAhVixGMKHb12DsgQFggwMAM&url=http%3A%2F%2Fbookshop.europa.eu%2Fen%2Fthe-cap-animal-welfare-pbKF8108462%2Fdownloads%2FKF-81-08-462-EN-D%2FKF8108462END_002.pdf%3Bpgid%3Dy8dIS7GUWMdSR0EAlMEUUsWb0000YqWBVcEN%3Bsid%3D13XK485h1_K5IHuMYxURKxEmhbUkYMCyQc%3D%3Ffile%3DKF8108462END_002.pdf%26SKU%3DKF8108462END_PDF%26CatalogueNumber%3DKF-81-08-462-EN-D&usq=AFQjCNE73Zq66gQm9p02HgrYpo2aOR4IJA

(last visited on May 2, 2016)

⁴⁰ European Commission, “Animal Welfare,” https://ec.europa.eu/food/animals/welfare_en (last visited May 2, 2016)

- Low-cost animal feed

In the US, the bulk of agricultural subsidies⁴¹ available under the Farm Bill go to support the prices of grains. Corn and soybeans, two of the most subsidized crops since 1996,⁴² compose most of the feed given to animals in industrial agricultural settings. Corn is by far the most subsidized crop, receiving just over \$2 billion in 2014 under the Crop Insurance Title in 2014,⁴³ while soybeans received roughly \$1 billion in crop insurance subsidies.⁴⁴ As a result of these subsidies, corn and soybean prices have been so cheap since 1996 that their prices have fallen below production costs every year, up to the present, with the exception of a five-year period of market fluctuations between 2007 and 2012.⁴⁵

Animal feed accounts for a sizeable percentage of a CAFO's input: between 1997 and 2005, studies estimate that feed accounted for about 60% of broiler,⁴⁶ pork,⁴⁷ and egg⁴⁸ production costs; 15 to 20% of feedlot cattle production costs;⁴⁹ and 35 to 45% of dairies' production costs.⁵⁰ Over the same period, the purchase of corn and soybeans at a price below production costs reduced the livestock industry's operating costs by 5% to 15%, which economists at the Global Development and Environment Institute at Tufts University have estimated to be around \$3.9 billion per year during that period, for a total of nearly \$35 billion between 1996 and 2005.⁵¹

Since 2014, when corn prices fell below costs of production again; industrial meat, poultry, egg, and dairy producers⁵² have continued to make savings at their pre-2006 levels. The Farm Bill, through commodity programs and crop insurance directed at certain crops, provides industrial animal production with discounted animal feed, one of the largest inputs of CAFOs.

⁴¹ Agricultural subsidies in the Farm Bill are available under the form of insured crops (Crop Insurance, Title XI) and commodity support programs (Commodities, Title I).

⁴² Philip. H. Howard, Concentration And Power In The Food System, Who Controls What We Eat, 91, Figure 6.1, Bloomsbury, Contemporary Food Studies, 2016

⁴³ The Environmental Working Group, EWG's Farm Subsidy Database, "Corn Subsidies," <https://farm.ewg.org/progdetail.php?fips=00000&progcode=corn> (last visited May 2, 2016)

⁴⁴ The Environmental Working Group, EWG's Farm Subsidy Database, "Soybean Subsidies," <https://farm.ewg.org/progdetail.php?fips=00000&progcode=soybean> (last visited May 2, 2016)

⁴⁵ Corn prices inflated following a high demand for ethanol production, and progressively dropped back in 2012, until to reaching pre-2007 low prices, below costs of production, in 2014.

Source: Randy Schnepf, Dairy provisions in the 2014 Farm Bill, 2, CRS, September 2014

⁴⁶ Elanor Starmer, Aimee Witteman and Timothy A. Wise, Feeding The Factory Farm: Implicit Subsidies to the Broiler Chicken Industry, GDAE, June 2006

⁴⁷ Doug Gurian-Sherman, CAFOs Uncovered, The Untold Costs of Confined Animal Feeding Operations, 2, Union of Concerned Scientists, April 2008

⁴⁸ Elanor Starmer and Timothy A. Wise, Feeding at the Through, Industrial Livestock Firms Saved \$36 billion From Low Feed Prices, Global Development and Environment Institute, Tufts University, 2, Dec. 2007

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* 1

⁵² Processed animal feed mostly go to CAFOs as small-scale sustainable farmers either grow their own animal feed, or engaged in pasture-based raising.

- Buy-back programs

Commodities purchases by the United States Department of Agriculture (USDA) represent a significant form of support for agricultural producers under the Farm Bill. Producers in a situation of oversupply can ask the USDA to buy their products to prevent the collapse of retail prices. USDA commodity purchases therefore aim at stabilizing retail prices by diverting stocks from the market and using them to assist low-income communities with discounted foodstuffs in the form of food assistance. The largest federal food assistance is the National School Lunch Program (NSLP), which provides discounted meals to low-income children in public schools. One third of the budget of the NSLP is authorized under the Farm Bill.⁵³ There are two kinds of purchase: (1) planned purchases before the school year based on available funds, school needs, and expected surpluses; (2) and emergency removals, at the request of producers during the year.

Both planned purchases and emergency removals are disproportionately comprised of animal products. In 2015, 63% of all USDA planned purchases for the NSLP included animal products (45% excluding cheese and dairy), and that figure even excludes eggs and fish.⁵⁴ In 2014, the portion of animal products in the emergency removals was only 21%, but it was 62.4% the year before when the USDA bought \$124,934,035 worth of animal products, mostly poultry.⁵⁵ Moreover, the Farm Bill provides additional support programs for dairy to support producers when the price of milk falls below a determined amount. These additional support programs enable milk producers to donate fluid milk to be processed and distributed in food assistance programs, including in the NSLP.⁵⁶

The animal products the USDA purchases as part of support programs mandated by the Farm Bill are likely to originate from CAFOs. CAFOs produce more than half of animal products in the US,⁵⁷ and they are the only facilities capable of producing such important surpluses. In fact, the profitability of CAFOs relies on overproduction: because food producers rely on tight margins to keep retail prices down, producers have no choice but to produce massive amounts of animal products to ensure profits. Without the Farm Bill buy-back programs, markets could not absorb oversupply, and we would be in a situation where supply exceeds demand. In such a scenario, producers would be forced to reduce retail prices

⁵³ USDA, Food And Nutrition Service, USDA Foods In The National School Lunch Program, 8, Feb. 2016

⁵⁴ USDA, Food And Nutrition Service, USDA Foods In The National School Lunch Program, 8, Feb. 2016

⁵⁵ USDA, AMS, 2015 Explanatory Notes, 69, available at <http://www.obpa.usda.gov/21ams2015notes.pdf>

⁵⁶ USDA, 2014 Farm Bill Fact Sheet Dairy Product Donation Program, fsa.usda.gov, https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/MPP-Dairy/dairy_prod_donate_prog.pdf

⁵⁷ Doug Gurian-Sherman, CAFOs Uncovered, The Untold Costs of Confined Animal Feeding Operations, 2, Union of Concerned Scientists, April 2008

to levels below production costs, consequently eliminating their margins. With agricultural supports in the form of buy-backs, CAFOs remain profitable by diverting oversupply on secondary markets (e.g. the NSLP) while keeping prices high enough to preserve their margins on the primary, regular market (i.e. the grocery stores). Therefore, Farm Bill agricultural support programs not only incentivize CAFOs, they provide the conditions that allow the very existence of industrial animal production.

- Conservation programs

Lastly, a final way in which the Farm Bill subsidizes CAFOs is by providing payment for equipment necessary to comply with environmental regulations. The Environmental Quality Incentives Program (EQIP) available under the Conservation Title of the Farm Bill allows CAFOs to externalize the costs of management of animal manure, one major polluting by-product of factory farms, by obtaining payments for the construction and maintenance of manure storage facilities, also called “lagoons.”⁵⁸ Making EQIP payments available to CAFOs allows industrial animal producers to save on management costs. Additionally, subsidizing the construction and maintenance of animal manure lagoons incentivizes the expansion of already existing and new factory farms, as new operations can discount the price of costly equipment from the overall costs of installation.

It is estimated that CAFOs benefited from at least \$100 million of EQIP payments per year from 2002 to 2008.⁵⁹ Furthermore, even though EQIP payments are available to all types of farms, including small sustainable operations, CAFOs disproportionately benefit from EQIP payments compared to mid-size operations. For example, industrial dairies, representing less than 4% of all dairies in the U.S., received about 54% of all EQIP payments (\$144 million) made to dairies between 2003 and 2007.⁶⁰ Hogs operations are estimated to have received a total of \$35.6 million in EQIP payments between 2003 and 2007 whereas smaller operations only received a total of \$4.8 million in EQIP payments over the same period.⁶¹ Poultry, beef cattle, sheep, goat, bison, and aquaculture operations also received EQIP payments for an unknown amount.⁶²

⁵⁸ Elanor Starmer, Industrial Livestock at the Taxpayer Trough: How Large Hog and Dairy Operations are Subsidized by the Environmental Quality Incentives Program, 6, Campaign for Family Farms and the Environment, December 2008, available at: http://www.inmotionmagazine.com/ra08/EQIP_report_1208.pdf

⁵⁹ Doug Gurian-Sherman, Cafos Uncovered, The Untold Costs Of Confined Animal Feeding Operations, 3, April 2008, Union of Concerned Scientists

⁶⁰ Elanor Starmer, Industrial Livestock at the Taxpayer Trough: How Large Hog and Dairy Operations are Subsidized by the Environmental Quality Incentives Program, 12, Campaign for Family Farms and the Environment, December 2008, available at: http://www.inmotionmagazine.com/ra08/EQIP_report_1208.pdf

⁶¹ *Id.* 10 -11

⁶² *Id.* 12

The 2014 Farm Bill did not make a substantial amendment to the EQIP program, which continues to disproportionately benefit CAFOs. As a result, most recent estimates indicate that CAFOs received more than \$100 million in EQIP funding for livestock-related practices in 2015,⁶³ the same amount CAFOs were estimated to receive between 2002 and 2008. More specifically, overall projects related to waste storage and management facilities received close to \$81 million in EQIP funding for the year 2015.⁶⁴

b) Pushing for factory farming in the EU through the CAP

Since its creation in 1962, the CAP has shifted from supporting small-scale and diversified farms to promoting intensification of agricultural production, resulting in the decrease of farm operations in Europe and further confinement for animals. Such shift in EU policies is the result of global trade agreements and the growing influence of countries championing an industrial production model. The end of quotas on milk production in the EU since 2015 provides an example of how the CAP pushes for further farm concentration and degrades animal welfare on farms as a consequence. As a result of farm concentration, the number of farm operations has declined in conjunction with the proliferation of CAFOs across the EU. Since the early 2000s, the CAP has provided such advantageous conditions for industrial farm animal production that large American agribusiness have been enticed to launch operations in European member states. Large agribusinesses, both foreign and domestic, benefit from CAP subsidies, and thus replicate the model food corporations utilize in the US.

- The evolution of the CAP towards industrial farm animal production

Compliance with General Agreement on Tariffs and Trade (GATT)⁶⁵ regulations in 1992 and the increasing influence of countries in favor of industrialization of animal production within the EU pushed the CAP policies towards incentivizing larger mechanized livestock operations to the detriment of smaller-scale farms.

⁶³ *Id.*

⁶⁴ \$48, 718, 300 for waste storage facility, \$23, 979, 393 for waste storage facility closure and \$7,924,843 on manure transfer.

Source: National Agriculture Sustainable Agriculture Coalition, *CAFOs And Cover Crops: A Closer Look At 2015 EQIP Dollars*, "Support for Animal Feeding Operations Continues", Nov. 20, 2015, NSAC's Blog, <http://sustainableagriculture.net/blog/fy15-general-eqip-update/> (last visited May 6, 2016)

⁶⁵ The GATT became the World Trade Organization in 2015.

Paradoxically, the integration of animal welfare in the CAP occurred right around the same time it began to promote large-scale production in the 1980s.⁶⁶ The CAP's function shifted away from ensuring food security on the European continent in a post-World War context and towards carrying out intensification of agriculture.⁶⁷ Before 1992, subsidies were market-based mechanisms aimed at guaranteeing minimum prices for farmers.⁶⁸ In 1992, as the CAP had to comply with the provision of the GATT, EU agricultural policies reduced intervention prices and favored supports that were “decoupled” from production and price by basing assistance instead on the size of cultivated areas.⁶⁹ Such a shift became what is still today a major obstacle to animal welfare and remains so into the present. The CAP model favoring concentration incentivizes farmers to expand production on larger agricultural lands to receive more payments, rather than providing support to smaller-scale and diversified farming.

More recently, the CAP has been shaped by the growing influence of Germany - a proponent of industrial farm animal production - as well as emerging Eastern European member-states also in favor of a more intensive farm animal production.⁷⁰ Since the German reunification in 1990, Germany, the second largest agricultural economy in the EU after France, advocates for more support to large farms in the eastern part of the country.⁷¹ Such a vision of agriculture contradicts with the French view that agricultural policies should be a rural development tool and a way to preserve biodiversity, in addition to being purely a food source. Animal production in Germany is much more specialized than in France as the German model relies heavily on CAFOs⁷² and concentration in meatpacking.⁷³ The trend

⁶⁶ D.B. Wilkins, *Animal Welfare in Europe: European Legislation and Concerns*, 1997, Kluwer Law; Dominique Bureau, Sylvie Thoyer, *La Politique Agricole Commune*, Chapitre 1: Le Mécanisme De Dominique Bureau, Sylvie Thoyer, *La Politique Agricole Commune*, Chapitre 1: Le Mécanisme De L'intervention, Au Cœur De La Pac Historique, La Découverte, 2014

⁶⁷ Pauline Lecole, Sophie Thoyer, *La Pac Responsable De Tous Les Maux Agricoles ?* Le 1 Hebdo, Feb. 24, 2015

⁶⁸ Dominique Bureau, Sylvie Thoyer, *La Politique Agricole Commune*, Chapitre 1: Le Mécanisme De L'intervention, Au Cœur De La Pac Historique, La Découverte, 2014

⁶⁹ René Johnson, Charles E. Hanrahan And Randy Schnepf, *Comparing U.S. And EE Program Support For Farm Commodities And Conservation*, 3-4, Congressional Research Service, April 20, 2009.

⁷⁰ Catherine Darrot and Béatrice Von Hirschhausen, *PAC Et Transition Agricole En Pologne Et Roumanie : Les Nouveaux Termes Du Processus*, 69-84, *Economie Rurale*, Septembre-décembre 2011, available at:

<https://economierurale.revues.org/3257>

Euractiv.fr, *La Grande-Bretagne Et La Pologne Souhaitent Une Réforme « Radicale » De La PAC*, 22 septembre 2011, <http://www.euractiv.fr/section/priorites-ue-2020/news/la-grande-bretagne-et-la-pologne-souhaitent-une-reforme-radicale-de-la-pac/> (last visited May 6, 2016)

⁷¹ Heinz Ahrens, Christian Lippert, *Politiques Agricoles Comparées De L'Allemagne Et De La France*, 15-18, *Économie rurale*, 2002, Volume 268, Numéro 1, 8-19, available at

http://www.persee.fr/doc/ecoru_0013-0559_2002_num_268_1_5306

⁷² Susanne Amann, Michael Fröhlingsdorf and Udo Ludwig, *The True Price of a Pork Chop*, Oct. 23, 2013, Spiegel Online, <http://www.spiegel.de/international/germany/analysis-of-the-hidden-cost-of-the-german-meat-industry-a-929251.html> (last visited May 6, 2016)

⁷³ Marie-Cécile Hénard-Damave, *Allies and Opposites*, 16, *AgriFuture*, Autumn-Winter 2014, available at: http://www.agrifuture.com/fileadmin/agrifuture/binary/14_autumn/af0314_14-17.pdf

towards more concentration and more competitiveness is also supported by more recent member-states, like Poland, who also chose to develop its post-communist agricultural economy on intensive livestock production.⁷⁴

These disparate visions promoted by France and Germany clashed during the last CAP negotiation in 2013. More particularly, France unsuccessfully advocated for the preservation of the overall CAP budget,⁷⁵ progressively reduced since the GATT.⁷⁶ The most recent CAP also harmonized the amounts of subsidies and support payments among member-states.⁷⁷ While a more equitable redistribution of CAP support payments is desirable to ensure fairness among countries, with the CAP budget continuing to decrease, this entails less support for small farms all over the EU as large farms capture most of the subsidies. Although the French government obtained a higher level of funding to be disbursed discretionarily at the national level, monies it traditionally has used to support small farms to counteract the systemic impact of the CAP on small operations, the overall reduction of farm support payments in the CAP since 1992 has disproportionately affected small livestock operations in France and all over the EU. As a result, animal production consolidated further, which greatly deteriorated the conditions in which animals are raised.

The shift towards industrial animal production over the last decade was particularly acute in France, suggesting an alignment on the German agricultural production model, dominated by CAFOs. According to the French government, the number of farms (crop and animal production) in France dropped by 26% between 2000 and 2010.⁷⁸ The decrease in the number

On the life conditions of immigrant labor in German meatpacking facilities, see also: Odile Benyahia-Kouider, *Crise de l'élevage: en Allemagne, avec les forçats de la "ceinture de graisse,"* July 23, 2015, L'Obs, <http://tempsreel.nouvelobs.com/economie/20150723.OBS3045/crise-de-l-elevage-en-allemand-avec-les-forcats-de-la-ceinture-de-graisse.html> (last visited May 6, 2016)

⁷⁴ Johan Van Zyl, Andrew N. Parke, Bill R. Miller, *The Myth Of Large Farm Superiority: Lessons From Agricultural Transition In Poland*, 357-358, *The Journal of Policy Reform*, Volume 3, 2000, Issue 4, 353-372; and generally Dorota Komorowska, *Changes In Polish Agriculture In The Period 2002-2010 In The Light Of Central Statistical Office Census Data*, *Scientific Journal Warsaw University of Life Sciences – SGGW Problems of World Agriculture* volume 14 (XXIX), number 4, 2014: 92–100

⁷⁵ *Réforme De La PAC: L'accord Franco-Allemand Remis En Question Par Berlin*, Oct. 12, 2012, *Le Monde*, http://www.lemonde.fr/europe/article/2012/10/12/reforme-de-la-pac-l-accord-franco-allemand-remis-en-question-par-berlin_1774966_3214.html (last visited May 6, 2016)

⁷⁶ The overall budget for the PAC represents 37.8% of the EU budget for the 2014-2020 period, compared to an average of 70% in the 1960s. Compliance with the WTO requirements in 1992 (The MacSharry Reforms) and the progressive enlargement of EU contributed to the decrease of the CAP budget.

Source: European Parliament, Fact Sheets on the European Union, “Financing of the CAP”, available at: http://www.europarl.europa.eu/atyourservice/fr/displayFtu.html?ftuld=FTU_5.2.2.html and see generally: Arlindo Cunha, Alan Swinbank, *An Inside View of the CAP Reform Process: Explaining the MacSharry, Agenda 2000, and Fischler Reforms*, 2011

⁷⁷ For an explanation of “convergence” in the last CAP, see OECD, *Agricultural Policy Monitoring and Evaluation 2015*, 140-141, Aug. 2015, available at: http://www.keepeek.com/Digital-Asset-Management/oecd/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2015_agr_pol-2015-en#.WPvrylPytE4#page142

⁷⁸ *La France A Perdu Le Quart Des Ses Exploitations Agricoles En 10 Ans*, Sept. 13, 2011, *Le Monde*, http://www.lemonde.fr/economie/article/2011/09/13/la-france-a-perdu-le-quart-de-ses-exploitations-agricoles-en-10-ans_1571795_3234.html (last visited May 6, 2016)

of farms disproportionately affected small and diversified farms, which are typically more sustainable and abide by higher animal welfare standards. Concurrently, the number of large and very large farms specialized in animal production kept increasing in France.⁷⁹

Dairy production suffered from one of the highest consolidation rates as the number of French dairy farms decreased 84% between 1984 and 2015,⁸⁰ with 37% of that reduction occurring between 2000 and 2010,⁸¹ while remaining operations grew.⁸² The consolidation in the dairy industry is expected to rise after the end of quotas on milk production as part of the 2014 CAP. French pork production also gradually shifted between 2000 and 2010 from traditional rearing to intensive production that involves high levels of confinement for animals.⁸³ The percentage of hog operations in France with less than 100 hogs dropped to 52% in 2010, compared with 72% in 2000.⁸⁴ In 2010, 99% of all swine population was concentrated on farms comprised of 100 animals or more.⁸⁵ Highly intensive pig operations in Brittany, although smaller, are similar to American CAFOs in the way that they routinely abuse animals through genetic engineering, mutilations, extreme indoor confinement in unnatural conditions, and brutal handling by farm workers.⁸⁶

This trend towards more farm consolidation is also reflected at the EU level, although to a lesser extent. Between 2005 and 2010, the European Commission reported that the average farm size in the EU grew by 3.8% per year,⁸⁷ and that largest farms had the highest livestock densities, indicating high-intensity operations,⁸⁸ even though small farms are still predominant across the 28 countries.⁸⁹

⁷⁹ *Id.*

⁸⁰ France Agrimer, *Evolutions Des Structures De Production Laitière En France, Dernière Image Sous Le Régime Des Quotas Laitiers, Lait De Vache*, 7, March 2016, available at:

<http://www.franceagrimer.fr/content/download/43268/404381/file/ETU-LAI-%C3%89volution%20des%20structures%20de%20production%20laiti%C3%A8re%20en%20France%20-%202015.pdf>

⁸¹ La France Agricole, *Baisse De Plus D'un Tiers Du Nombre D'exploitations En Dix Ans (Ministère)*, April 1, 2014, http://www.lafranceagricole.fr/actualites/lait-baisse-de-plus-d-un-tiers-du-nombre-d-exploitations-en-dix-ans-ministere-1_0_88583401.html (last visited May 6, 2016)

⁸² Agreste Champagne-Ardenne, *L'élevage Bovin Laitier : Des Exploitations Plus Grandes Avec Une Augmentation De La Taille Des Troupeaux* (recensement agricole 2010) n° 4, June 2012, available at:

<http://www.agreste.agriculture.gouv.fr/IMG/pdf/R2112A07.pdf>

⁸³ Agreste Primeur, *Les Elevages De Porcs En France Métropolitaine En 2010*, (recensement agricole 2010) n° 300, April 2013, available at: <http://www.agreste.agriculture.gouv.fr/IMG/pdf/primeur300.pdf>

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Audrey Garric, *L'élevage Porcin, Étranglé Entre Productivité Et Bien-Être Animal*, *Le Monde*, Feb. 24, 2012, http://www.lemonde.fr/planete/article/2012/02/24/l-elevage-porcin-etrangle-entre-productivite-et-bien-etre-animal_1647938_3244.html (last visited May 6, 2016)

⁸⁷ European Commission, *Structure And Dynamics Of EU Farms: Changes, Trends And Policy Relevance*, 3, EU agricultural Economics Briefs, N° 9 October 2013, available at http://ec.europa.eu/agriculture/sites/agriculture/files/rural-area-economics/briefs/pdf/09_en.pdf

⁸⁸ *Id.* 11

⁸⁹ *Id.* 4

Because of the way the CAP is designed, large operations (animal and crop production) also have disproportionately benefitted from agricultural subsidies, compared to smaller operations, reinforcing concentration in the animal production industry. It is estimated that in 2005, the 30 largest farm operations in France received more than €319,000 in payments, which represents 217 times the average amount small operations receive.⁹⁰ In 2007, 16.5% of French farm operations received half of the payments available under the CAP.⁹¹

- The end of quotas on milk production

Milk quotas, introduced in 1984, capped the production of milk with the objective of avoiding overproduction and price instability. The CAP gradually eroded milk quotas until conclusively ending them in 2015. The justification for prohibiting milk production quotas is threefold: quotas (1) fail to stabilize prices, (2) prevent European farmers from selling overproduction outside the EU market, and (3) prevent younger farmers from entering domestic production markets.⁹²

The end of milk quotas mark the change from public to private regulation, as milk producers are now in charge of auto-regulating their production and negotiating prices with the industry.⁹³ Because farmers are free to produce as much as they want, the competition between European milk producers has been restored. Even if overproduction can now be traded on the world market, farmers face major competitors, such as New Zealand,⁹⁴ which puts pressure on milk producers to lower the price.⁹⁵ To remain competitive under the fierce global competition intra and extra-EU, producers must increase milk yield. One way producers decrease their input is to increase the size of the farms, a measure that area-based payments under the CAP incentivize, all of which drives down production costs. The farmers then increase their output by intensifying production, yielding more milk out of fewer cows, which invariably harms the cows. Therefore, the end of quotas directly impacts the welfare of

⁹⁰ Pierre Boulanger, *Les Réalités De La Distribution Des Subventions Agricoles En France*, 2, Novembre 2015, Groupe d'Economie Mondiale, Sciences Po, available at: http://gem.sciences-po.fr/content/publications/pdf/subventions_agricoles.pdf

⁹¹ *Id.* 48

⁹² Fischer Boel, *Le système des quotas disparaîtra en 2015*, Le Figaro, Sept. 29, 2009, <http://www.lefigaro.fr/conjoncture/2009/09/23/04016-20090923ARTFIG00062-fischer-boel-le-systeme-des-quotas-disparaitra-en-2015-.php> (last visited May, 3 2016)

⁹³ B. Lelyon, V. Chatellier, K. Daniel, *Fin des quotas laitiers, contractualisation et stratégies productives: enseignements d'une modélisation bioéconomique*, INRA Prod. Anim., 2012, 25(1), 67-75

⁹⁴ Fischer Boel, *Le système des quotas disparaîtra en 2015*, Le Figaro, Sept. 29, 2009, <http://www.lefigaro.fr/conjoncture/2009/09/23/04016-20090923ARTFIG00062-fischer-boel-le-systeme-des-quotas-disparaitra-en-2015-.php> (last visited May, 3 2016)

⁹⁵ *End Of Milk Quotas: A New Dawn For Farmers?*, The Irish Time, March 7, 2015 <http://www.irishtimes.com/life-and-style/end-of-milk-quotas-a-new-dawn-for-farmers-1.2129196> (last visited May 3, 2016)

dairy cows, already vulnerable given the absence of European legislation regarding their welfare.⁹⁶

The effects of such policy are already tangible as mega-dairy farms start to appear in countries culturally attached to sustainable agriculture, such as France, despite the strong opposition of civil society and farmer unions.⁹⁷ The investigations led by animal activists revealing the living conditions of animals on intensive production systems in Europe⁹⁸ reinforced the public's hostility towards the development of CAFO-like mega-farms across the EU.

- Smithfield in Europe: preying on farmlands and EU subsidies

US pork producer Smithfield, the world largest pork producer and processor,⁹⁹ exclusively relies on the business model of factory farming. Smithfield was reportedly installing CAFOs and contracting with Polish farmers as early as 2004,¹⁰⁰ only four years after gaining control over a state-owned Polish pork conglomerate.¹⁰¹ Smithfield's decision to expand in Poland was based on several factors: corruptible officials, lax enforcement of environmental regulations, under-developed agriculture production, and the expectation that Poland would shortly become an EU member-state, thereby becoming eligible for farm subsidies under the CAP, increasing opportunities for profits.¹⁰² In 2004, CAFOs belonging to Polish subsidiaries of Smithfield were already operating despite the absence of environmental permits.¹⁰³ A similar story unfolded in Romania, who joined the EU in 2007. That same year, Smithfield was already fully operational in Romania, despite its CAFOs

⁹⁶ Olga Kikou (Compassion in World Farming), *Milk Production In The EU: Holding On To The Fantasy, Or Facing The Truth?*, Euractiv, Oct. 7, 2015 <http://www.euractiv.com/section/agriculture-food/opinion/milk-production-in-the-eu-holding-on-to-the-fantasy-or-facing-the-truth/> (last visited May 3, 2016)

⁹⁷ La ferme des « 1000 vaches » pour les nuls, Le Figaro, Oct. 10, 2014 <http://www.lefigaro.fr/conjoncture/2014/10/28/20002-20141028ARTFIG00166-la-ferme-des-1000-vaches-pour-les-nuls.php> (last visited May, 2 2016)

Après La Ferme Des 1000 Vaches, Mobilisation Contre La Ferme Des 1000 Veaux, Paris Match, Aug. 1, 2015, <http://www.parismatch.com/Actu/Societe/Mobilisation-contre-la-ferme-des-1000-veaux-dans-la-Creuse-791948> (last visited May, 3 2016)

⁹⁸ Investigations led by Compassion in World Farming during 2012, in more than 50 dairy farms, available here: <http://action.ciwf.org.uk/ea-action/action?ea.client.id=119&ea.campaign.id=17811> (last visited May, 3 2016)

⁹⁹ Smithfield, "Company Profile and History," <http://www.smithfieldfoods.com/about-smithfield/company-profile> (last visited May, 3 2016)

¹⁰⁰ Felicity Lawrence, *Poles Fear The Yoke Of Agri-Giants*, April 29, 2004, The Guardian, <https://www.theguardian.com/world/2004/apr/29/eu.politics> (last visited May, 3 2016)

¹⁰¹ Arunas Juska And Bob Edwards, *Resisting the Trojan Pig: The U.S.–Poland Coalition against Corporate Pork Production*, 187, in *Coalitions Across Borders, Transnational Protest And The Neoliberal Order*, edited by Joe Bandy and Jackie Smith, 187-208, Rowman and Littlefield Publishers, Inc., 2005

¹⁰² Felicity Lawrence, *Poles Fear The Yoke Of Agri-Giants*, April 29, 2004, The Guardian, <https://www.theguardian.com/world/2004/apr/29/eu.politics> (last visited May, 3 2016)

¹⁰³ *Id.*

being out of compliance with local regulations.¹⁰⁴ In less than five years, Smithfield became the largest pork producer in Romania.¹⁰⁵

Although Smithfield refused to disclose the amount of subsidies they receive, it is estimated that the company benefitted from €50 million worth of European subsidies in 2008.¹⁰⁶ Coverage on Smithfield activities in the EU by the European press has remained minimal. Except for the British newspaper *The Guardian*, only *The New York Times* and other American-based newspapers have investigated on Smithfield's activities in Poland and Romania. This has led to a situation where Americans find themselves warning Europeans against the dubious practices of their own multinational firms. Only one organization actively challenging the expansion of Smithfield in Europe, the American-based advocacy organization Animal Welfare Institute (AWI), has built a coalition with Polish farmers in a one-of-a-kind campaign against Smithfield in Poland.¹⁰⁷ European animal protection organizations seem to have neglected AWI's 2009 revelations that detailed Smithfield's expansion plans, even though similar developments in the US suggest factory farms are sites of mass-scale animal cruelty within the food industry and contribute to the diminution of significantly more humane and sustainable alternatives.

¹⁰⁴ Doreen Carvajal and Stephen Castle, A U.S. Hog Giant Transforms Eastern Europe, May 5, 2009, *The New York Times*, <http://www.nytimes.com/2009/05/06/business/global/06smithfield.html> (last visited May, 3 2016), and Factory Farming Arrives in Eastern Europe, *The New York Times*, May 4, 2005, http://www.nytimes.com/slideshow/2009/05/04/business/global/0504-SMITHFIELD_8.html (last visited May, 3 2016)

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Arunas Juska And Bob Edwards, *Resisting the Trojan Pig: The U.S.–Poland Coalition against Corporate Pork Production*, in *Coalitions Across Borders, Transnational Protest And The Neoliberal Order*, edited by Joe Bandy and Jackie Smith, 187-208, Rowman and Littlefield Publishers, Inc., 2005

II. Building on the American experience to challenge animal welfare regulations in EU agricultural policy

After having identified the main issues at stake in the treatment of farm animals in EU law, this section proposes solutions to address them. This section therefore makes an assessment of current and past strategies to improve farm animal welfare in the US and the EU. The EU animal protection movement could first benefit from the American experience by implementing strategies that proved successful in the US – or at least more successful than those currently employed in Europe.

Focusing on the example of France, this section additionally argues that EU advocates, unlike their American counterparts, are in a position to improve the treatment of farm animals significantly by focusing their efforts on lobbying EU lawmakers tasked with drafting the CAP. Such a strategy, which remains to be explored in practice, would insist animal welfare be classified as a merit good under the CAP, instead of a public good.

1. An assessment of the legislative efforts and corporate-based strategies to achieve more stringent regulation of factory farming

In the absence of legal protections for animals under US law, animal protection advocates in the US have attempted to improve animal welfare by lobbying the private sector, even though such a strategy still falls short of challenging factory farming as a whole.

By contrast, the animal protection movement in France has only started engaging in corporate-based campaigns¹⁰⁸ while their efforts to obtain more stringent public regulation at the EU level have been met with limited success.

a) A brief review of successful legislative and private sector initiatives in the US

- The role of coalitions in the success of state ballot initiatives

Given the virtual absence of federal statutes providing even minimal legal protections to farm animals, along with the failure to improve such laws,¹⁰⁹ animal welfare advocates in the US have engaged in state-level efforts to pass laws ending the cruelest forms of confinement. To this date, eleven states have passed bans, mainly through ballot initiatives on gestation crate for sows, veal crates, and battery cages for egg-laying hens, or a combination

¹⁰⁸ David Blandford and David Harvey, Economics of Animal Welfare Standards: Transatlantic Perspectives, Agricultural Economics Society and European Association of Agricultural Economists (EAAE), 2014, EuroChoices 13(3) 35-40

¹⁰⁹ See generally David J. Wolfson and Mariann Sullivan, Foxes In The Hen House, In Cass R. Sunstein and Martha Craven Nussbaum (eds.), Animal Rights: Current Debates and New Directions, 2004, Oxford University Press. 205-228

of the aforementioned.¹¹⁰ A ballot initiative is also planned to take place in the November 2016 elections in Massachusetts, this time not only ending the use of any form of extreme confinement, but also prohibiting the sale of products from all these systems.¹¹¹

The coalition-based strategy employed by advocates during the campaign for the 2008 ballot initiative in California (Proposition 2) banning the use of battery cages for egg-laying hens and prohibiting the in-state sale of products from battery cages provided a model for successful advocacy. Proposition 2 was achieved partly thanks to a broad coalition that gathered different advocacy groups. Each of these groups had an interest in eliminating battery cages and among them were The Center for Food Safety, The Union of Concerned Scientists, The Physician Committee for Responsible Medicine, and The United Farm Workers.

The initiative was approved by a significant majority of voters, 63%, in 2008. Even though such results could merely reflect the general concern of citizens over farm animal welfare,¹¹² coalitions beyond the animal protection movement enlarged the base of support, enhanced the legitimacy of the message, and enabled mobilization of a larger number of people whose concerns might be focused on issues indirectly related to animal welfare, like food safety or public health. Building on California's successful Proposition 2 coalition strategy, the Massachusetts ballot initiative also gathers a broad coalition of different stakeholders.¹¹³

- Corporate-based strategies

Despite the success of state level initiatives, such protections only abide by a “Five Freedom” model. Additionally, only eleven states passed laws granting farm animals the most basic protections from suffering. Because the system of ballot initiatives is not available in every state, the enactment of similar laws in more states remains limited. Given the limitations of state-level initiatives and the failure to pass federal law, mostly on account of the influence of the industry, animal protection groups in the US engaged in lobbying the industry itself.

¹¹⁰ ASPCA, “Farm Animal Confinement Bans by State,” <https://www.aspc.org/animal-protection/public-policy/farm-animal-confinement-bans> (last visited May 6, 2016)

¹¹¹ Joshua Miller, *Animal-Welfare Vote May Break New Ground*, The Boston Globe, Nov. 1, 2015, <https://www.bostonglobe.com/metro/2015/11/01/humane-society-looks-mass-for-next-animal-ballot-push/zVctCseIIZwgPjB9lvuFSN/story.html> (last visited May 6, 2016)

¹¹² Rebecca Riffkin, In U.S., *More Say Animals Should Have Same Rights as People*, May 18, 2015, Gallup, <http://www.gallup.com/poll/183275/say-animals-rights-people.aspx> (last visited May 6, 2016)

¹¹³ Citizens for Farm Animals, “Our Coalition,” <http://citizensforfarmanimals.com/> (last visited May 3, 2016)

A first failed attempt was the agreement between the Humane Society of the United States (HSUS) and the largest group representing egg producers, United Egg Producers (UEP). Both groups endorsed a federal bill in 2013, requesting that uniformed cage-size standards be adopted across the country.¹¹⁴ HSUS saw in this agreement the opportunity to provide minimal animal welfare standards for egg-laying hens, while egg producers considered federal regulation an efficient tool against the multiplication of inconsistent state laws requiring different standards, following the vote of Proposition 2 in California.¹¹⁵ The agreement between HSUS and UEP failed in 2014 after other livestock groups strongly opposed the introduction of the Egg Bill in the Farm Bill, fearing it would open the door to more stringent regulations of their commercial activities.¹¹⁶

Building on the willingness of the egg industry to enhance animal welfare standards, the failure of the HSUS/UEP agreement however initiated a different type of cooperation between the industry and advocacy groups: corporate-based campaigns. For example, the Humane League, a US-based animal welfare advocacy group that specializes in corporate campaigns, has achieved significant commitments from the industry to switch to cage-free facilities. The Humane League's efforts resulted in cage-free pledges from about 100 companies, which is estimated to have spared about 60 million hens from extreme confinement.¹¹⁷ Similarly, following years of lobbying by animal welfare advocacy groups, including HSUS, McDonald's announced its decision to only use cage-free eggs by 2025.¹¹⁸ Major food producers subsequently aligned with McDonald's decision.¹¹⁹

Such commitments by the industry in the US might have more quantitative and qualitative impact than EU legislation, which still allows the use of battery cages. However,

¹¹⁴ Greene, Joel L. and Cowan Tadlock, Table Egg Production and Hen Welfare: Agreement and Legislative Proposals , Congressional Research Service, Feb. 14, 2014.

Available at: <https://www.fas.org/sgp/crs/misc/R42534.pdf> (last visited May 3, 2016)

¹¹⁵ California Secretary of State; Prepared by the Attorney General (2008). "Proposition 2 - Title and Summary - Voter Information Guide 2008". Available at:

<https://web.archive.org/web/20090410080219/http://voterguide.sos.ca.gov:80/past/2008/general/title-sum/prop2-title-sum.htm> (last visited May 3, 2016)

¹¹⁶ UEP Abandons HSUS Egg Deal, Jacqui Fatka, farmfutures.com, Feb.21, 2014 <http://farmfutures.com/blogs-uep-abandons-hsus-egg-deal-8186> (last visited May 3, 2016)

¹¹⁷ Open Philanthropy, *The Humane League - Corporate Cage-Free Campaigns*, February 2016, http://www.openphilanthropy.org/focus/us-policy/farm-animal-welfare/humane-league-corporate-cage-free-campaigns#footnote7_kexlh56 (last visited May 2, 2016)

¹¹⁸ Stephanie Strom, *McDonald's Plans a Shift to Eggs From Only Cage-Free Hens*, The New York Times, Sept. 9, 2016, <https://www.nytimes.com/2015/09/10/business/mcdonalds-to-use-eggs-from-only-cage-free-hens.html> (last visited May 2, 2016)

A Humane Nation, Wayne Pacelle's Blog, *Breaking News: McDonald's Announces Cage-Free Commitment for Laying Hens*, Sept. 9, 2015, <http://blog.humanesociety.org/wayne/2015/09/mcdonalds-announces-cage-free-commitment-for-laying-hens.html> (last visited May 2, 2016)

¹¹⁹ *Id.*

as pointed out by corporate social responsibility critiques,¹²⁰ corporate-based strategies also have the limitation of legitimating the industry's interest in self-regulation, at the expense of more ambitious laws that serve the public interest. Moreover, in the context of farm animal welfare, the successful efforts of advocacy groups in moving giant food producers to shift from battery cage to cage-free do not fundamentally challenge factory farming or improve the negative impacts CAFOs have on the environment and on the labor conditions of farmers and workers throughout the production chain. In fact, such initiatives might further entrench such a production model, while legitimating corporations as regulators.

b) Farm animal protection advocacy in the EU: the example of France¹²¹

- Absence of coalitions on the issue of factory farming

A major obstacle to improving farm animal welfare in the EU is the lack of consistency on the part of the animal protection movement at the European level, as well as the absence of broad coalition against the particular issue of factory farming. While the achievements of European animal welfare advocates enabled farm animals to enjoy minimal levels of protection throughout the EU,¹²² the only animal welfare group at the EU level, Eurogroup For Animals, does not identify the proliferation of factory farming as a pressing issue, and only tepidly engaged in the negotiation of the CAP in 2014.¹²³

Similarly, at the national level in France, except for the French branch of UK-based nonprofit Compassion in World Farming, the most visible animal protection organizations abide by an abolitionist approach, which makes no distinction between the treatment of farm animal welfare within industrial farm animal production and traditional methods, the latter of which tend to be much more humane than factory farming. In Poland, the US-based animal welfare organization Animal Welfare Institute (AWI) seems to have been the only organization to express concern over the proliferation of factory farming. The transnational coalition AWI built with Polish farmers did not include any other Polish or European-based

¹²⁰ Subhabrata Bobby Banerjee, *Corporate Social Responsibility: The Good, the Bad and the Ugly*, 2012, *Critical Sociology*, Vol 34, Issue 1, 51 - 79

¹²¹ While France is the major producer of animal goods in the EU, and roughly illustrates the agricultural model at play in Spain, Portugal, Italy, a more accurate picture of animal advocacy in the EU would also include efforts towards improving animal welfare engaged in Germany, Northern European countries, as well as former soviet economies. The analysis in this paper is therefore largely incomplete and calls on further developments.

¹²² Eurogroup For Animals, "Key Achievements", <http://www.eurogroupforanimals.org/key-achievements> (last visited May, 6, 2016)

¹²³ In fact, there is no literature reporting the involvement of animal welfare groups in the 2014 CAP reform.

animal welfare organizations, illustrating the lack of coordination of the animal protection movement in Europe.¹²⁴

European animal protection groups are not exclusively to blame for failing to engage in coalition building with other public interest groups. However, because of the negative effects extreme confinement of animals has on the environment, public health, consumer rights, and workers rights; animal welfare protection would be the natural leader in paving the way for a broad public interest coalition against factory farming. In declining to join other more influential groups, such as environmentalists and farmers who have garnered legitimacy in public opinion and with public officials, not only has the animal protection movement missed the opportunity to build its legitimacy, it has also missed an opportunity to be more effective at a moment when factory farming is beginning to surge in the EU.

- The beginning of corporate-based initiatives?

In comparison with the US, corporate-based initiatives to end cruel treatment of animals used for food within the industry have also been limited in France, a country whose activism and economic model is less acquainted with consumer-based strategies. So far, only French retail store Monoprix, which mainly serves middle-to-upper class urban customers, committed to end the sale of eggs from battery cages earlier in 2016.¹²⁵ French hotel group Accor Hotels also committed to the same pledge in 2016, but their decision was largely influenced - not by a French group - but by the Humane Society International's lobbying efforts, the international division of US-based organization HSUS. However, some changes are to be expected in the development of corporate campaigns, as French animal protection organization *L214* has targeted another retail store after conducting undercover investigations in suppliers' operations.¹²⁶

While US advocates have found relative success in improving the welfare of a significant number of animals through corporate-based advocacy, organizations should keep in mind the limitations of such strategy, which does not fundamentally challenge the expansion or even existence of factory farming. Such efforts should therefore be brought

¹²⁴ Arunas Juska and Bob Edwards, *Resisting the Trojan Pig: The U.S.–Poland Coalition against Corporate Pork Production*, in *Coalitions Across Borders, Transnational Protest And The Neoliberal Order*, edited by Joe Bandy and Jackie Smith, 187-208, Rowman and Littlefield Publishers, Inc., 2005

¹²⁵ *Le Parisien*, *Monoprix ne vend plus d'oeufs issus d'élevages de batterie*, April 11, 2015, <http://www.leparisien.fr/economie/monoprix-ne-vend-plus-d-oeufs-issus-d-elevages-de-batterie-11-04-2016-5705703.php> (last visited May, 6, 2016)

¹²⁶ *L'Obs*, *La vidéo choc des poulets en batterie de Système U*, Sept. 8, 2014, <http://tempsreel.nouvelobs.com/societe/20140918.OBS9606/video-choc-sur-les-poulets-en-batterie-de-systeme-u.html> (last visited May, 6, 2016)

about in addition broad coalition building efforts to achieve pragmatic and significant change to the way farm animals are treated under EU law, and in particular under the CAP.

2. Animal welfare in agricultural policies: animal welfare as a merit good

Besides engaging in efforts to amend the EU legislation, one way to fully address the pernicious effects of the CAP on farm animals is to make of animal welfare a merit good, rather than a public good – the status animal welfare currently is afforded under EU law.

The economic analysis of the law applied to animal welfare offers a promising perspective by differentiating public from merit good. Again, building on the experience of animal welfare advocates in the US might be helpful in the achievement of such an objective.

a) The misclassification of animal welfare as a public good

Even though animal welfare is not expressly recognized as a public good in the CAP,¹²⁷ it is not strictly denied such status in internal policies.¹²⁸ Moreover, the relationship between animal welfare and food safety, which is recognized as a public good, is already acknowledged in the CAP.¹²⁹ In that sense, animal welfare is implicitly considered a public good under the CAP, or will be considered as such shortly, similarly to the protection of the environment. Such classification, which first seems progressive from an animal protection point of view, has limited consequences on the advancement of animal welfare. This has to do with the fact that animal welfare itself is *really* not a public good.

A good is said to be public when everyone in society values it. The benefits of a public good are non-excludable, i.e. they are enjoyable by anyone, and non-rival, i.e. one person enjoying it has no effect on another enjoying it. For example, clean air is a public good.¹³⁰ Public goods do not have a market price, as demand does not meet supply (market failure). In the case of animal welfare, there is an alleged under-supply of animal welfare products that fall short of the demand of the European public, who are overwhelmingly supportive of tighter animal welfare standards.¹³¹ One conceivable type of corrective action is to artificially

¹²⁷ Diane Ryland, *id.*

¹²⁸ European Parliament Directorate General for Internal Policies -Policy Department B: Structural and Cohesion Policies - Agriculture and Rural Development, *What Tools for the European Agricultural Policy to Encourage the Provision of Public Goods?* June 2011.

Available at: http://www.ieep.eu/assets/835/PG_FINAL.pdf

¹²⁹ Diane Ryland, *id.*

¹³⁰ Jennifer Fearing and Gaverick Matheny, *The Role of Economics in Achieving Welfare Gains for Animal, The State of the Animals IV: 2007*

¹³¹ “More than nine in ten EU citizens believe it is important to protect the welfare of farmed animals (94%)” and “Europeans believe the welfare of farmed animals should be better protected than it is now (82%)”

create a market for animal-friendly products by creating property rights for the suppliers of the good to ensure excludability.¹³² One example of property rights for the suppliers of animal welfare-friendly products is the creation of labels ensuring animal welfare standards were respected in the making of the product. This is the response that seems to be adopted in the US. Another possible solution is to regulate through state legislation by setting basic animal welfare standards that apply to all products, thus enjoyable by anyone and non-excludable. This is the response adopted by the E.U.

However, there are several issues with viewing farm animal welfare as a public good. First, the proponents of animal welfare as public good wrongly assume that there is an undersupply of animal-friendly products. The use of the concept of Willingness to Pay (WTP) is incorrect in assessing the value of animal welfare. The WTP is the maximum amount of money an individual is willing to pay to procure a good, animal-friendly products in this case. Yet, such a concept ignores what economists identify as the citizen/consumer gap.¹³³ This gap reveals the difference between the opinions of citizens, and what they actually purchase. In that sense, the WTP is the wrong instrument to base the assessment of the existence of a market failure effect: because the willingness to pay is different and higher from what is actually paid by consumers, low supply meets a demand that is *de facto* lower than first thought. As a result, there is no market failure in the context of animal welfare and no need for the state or the private sector to undertake corrective actions.

Another problem with seeing animal welfare as a public good is that the welfare of each animal is neither non-rival, nor non-excludable. Animal welfare is a relation between a farmer and his or her animals, and relations are excludable. For instance, a farmer can take good care of one animal, while abusing another. As a result, animal welfare does not satisfy

Source: European Commission, *Attitudes of Europeans Towards Animal Welfare*, Special Eurobarometer Report 442, March 2016, p. 4.

Available at:

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwjkuNSF98DMAhVG4WMKHdW6DZ0QFggnMAE&url=http%3A%2F%2Fec.europa.eu%2FCOMMFrontOffice%2FPublicOpinion%2Findex.cfm%2FResUltDoc%2Fdownload%2FDocumentKy%2F71348&usg=AFQjCNGAs6mpxt_qycWDFlnOfkv3ep97KQ (last visited May 4, 2016)

¹³² David Blandford and David Harvey, *id*, 36

¹³³ Phenomena such as “cheap talk” and “free riding” explains such difference between WTP and purchase behavior, as well as unreliable label and inadequate information.

Source: David Harvey and Carmen Hubbard, *The Supply Chain’s Role in Improving Animal Welfare*, 767-785, *Animals* 2013, 3, 773-774.

Further on the “attitude-behaviour gap”: Monika Hartmann and Johannes Simons, *The Farm Animal Welfare - Dilemma: Can concerted Action of the Value Chain be a solution?*, EEAE, 2015.

Available at: <http://ageconsearch.umn.edu/bitstream/229280/2/The%20Farm%20Animal%20Welfare%20-%20Dilemma%20Can%20concerted%20Action%20of%20the%20Value%20Chain%20be%20a%20solution.pdf> (last visited May 4, 2016)

the criteria of non-excludability.¹³⁴ Furthermore, overall animal welfare, i.e. the total amount of the welfare of each individual animal in the food chain, is determined by consumption of animal products, which makes it a private good rather than a public one.¹³⁵

Viewing animal welfare as a public good is tempting from an animal welfare perspective because it pushes the state to issue regulation to ensure protection of animals. However, considering animal welfare as a public good is nothing less than a legal fiction that conceals the economic reality, which is the existence of a market where the interests of animals to live free from pain and suffering compete with the industry stakeholders, who seek to increase yields. To better address such a battle, that animal welfare advocates currently fail to see and lose *in absentia*, they should refocus on the appropriate status that should be accorded to animal welfare under agricultural policies.

b) The regulation of animal welfare as a merit good

The view that animal welfare should be considered as a merit good is preferable because it is more accurate, and more likely to challenge the economic policy promoted under the CAP.

A merit good is a good that is under-consumed in free-market conditions, while judged to be desirable for the well being of all members of society. By contrast with public good, the value of a merit good is not determined by ability and willingness to pay, but rather on the positive spillover effects that it will generate on third parties. A common example of a merit good is the inoculation against contagious diseases from which all the members of society benefit as the risk of infection is reduced.¹³⁶ Because it suggests that another standard than market value can be used in assessing the value of a good, while still seeking utility efficiency by analyzing the effects of such goods, the merit good approach is particularly well suited to ethical and moral issues,¹³⁷ such as animal welfare, that have a low market-value and beneficial effects on society.

The animal protection movement in the US has extensively studied the positive effect of animal welfare on society overall, through the notion of intersectionality of animal welfare with other fields of social justice, including labor law, environmental law, environmental justice, children protection, gender studies, racial studies, and the food empowerment

¹³⁴ Stefan Mann, *Ethological Farm Programs And The ‘Market’ For Animal Welfare*, 370-371, *Journal of Agricultural and Environmental Ethics* (2005) 18: 369–382, Springer 2005

¹³⁵ David Blandford and David Harvey, *id*, 36

¹³⁶ David Blandford and David Harvey, *id*, 36

¹³⁷ Wilfried Ver Eecke, *An Anthology Regarding Merit Goods: The Unfinished Ethical Revolution in Economic Theory*, Purdue, University Press, 2006

movement. They quite convincingly demonstrate the numerous benefits meaningful farm animal welfare protections have on the rest of society.¹³⁸ The most successful victories in US case law in favor of farm animal welfare reinforces such a view, as they were achieved using laws that were seemingly unrelated to animal welfare, such as federal contract law and food safety regulations in a case regarding animal cruelty on a dairy farm in 2008.¹³⁹

In seeking the recognition of animal welfare as a merit good under EU law, European animal welfare advocates would be promoting a more accurate classification of animal welfare under European economic law, thus achieving more efficient regulations. Furthermore, considering animal welfare as a merit good would also prompt animal protection movements to revise their strategy towards more coalitional advocacy by joining other movements that, despite their difference in the view concerning the instrumentalization of animals, have the same interests in challenging the economic policy promoted under the CAP. In that sense, the brutal opposition between animal protection groups and the most important farmer unions in France over the philosophical question of the use of animals¹⁴⁰ illustrates the necessity for animal welfare supporters to overcome dissents and join forces to challenge the economic policy promoted under the CAP, which is detrimental to both animals and decent, secured employment.

¹³⁸ Claire Jean Kim and Maneesha Deckha, *Intersection of Animal Law, Race, Culture and Gender*, 2013 Animal Law Conference at Lewis & Clark Law School

Available at: <https://www.youtube.com/watch?v=3D9SjqOxSTU&feature=youtu.be> (last visited May 4, 2016)

Carol J. Adams, *The Sexual Politics of Meat: A Feminist-Vegetarian Critical Theory*, Continuum Editions, 1999.

¹³⁹ The Associated Press, *California: Deal Reached in Suit Over Animal Abuse*, The New York Times, Nov. 27, 2013

Available at: http://www.nytimes.com/2013/11/28/us/california-deal-reached-in-suit-over-animal-abuse.html?ref=collection%2Ftimestopic%2FWestland%2FHallmark%20Meat%20Company&action=click&contentCollection=business®ion=stream&module=stream_unit&version=latest&contentPlacement=1&pgtype=collection&r=0 (last visited May 4, 2016)

¹⁴⁰ 20 Minutes, *Coup de gueule de la FNSEA contre le «show médiatique» sur le bien-être animal*, Oct. 29, 2014, <http://www.20minutes.fr/planete/1470910-20141029-coup-gueule-fnsea-contre-show-mediatique-bien-etre-animal> (last visited May 4, 2016)

Conclusion

American farm animal welfare advocates often hold up the EU as an example of better governance towards farm animals. While it is true that EU law provides for minimal animal welfare standards, the efficiency of such regulations has yet to be analyzed in the context of European agricultural policy. In that regard, just like US agricultural policies in the Farm Bill, the CAP promotes the implementation of intensive production of animal products and the expansion of mass-scale animal cruelty. EU animal welfare standards therefore stand as a mere façade for a policy that prioritizes intensification and specialization of animal production to the detriment of the welfare of billions of farm animals across all 28 member-states.

Animal protection groups, in EU member states and at the level of the EU, do not seem to have grasped the necessity of an urgent response to the rapid spreading of factory farming throughout Europe. Instead, such groups have engaged in pushing for stricter, yet still incomplete, regulations, thereby ignoring the fact that the European case law nullified these already limited attempts in the context of the CAP. The EU animal protection movement should realize that what is at stake for farm animals in the EU goes well beyond broadly drafted laws and poor enforcement and is more about the degree of consideration afforded to animal welfare within agricultural policies. Lobbying for animal welfare to be considered as a merit good, while building on the advocacy methods developed in the US, offers a promising, unexplored strategy.

2017 will be an important year for both American and EU animal welfare groups, as the negotiation for the new CAP is set to begin, as well as discussions of the upcoming 2018 Farm Bill.¹⁴¹ Hopefully, advocacy groups in the EU will seize this opportunity to more effectively advance the interests of farm animals.

¹⁴¹ Ian Kullgreen, *Too Soon To Talk About The 2018 Farm Bill?*, April 14, 2016, Politico, <http://www.politico.com/tipsheets/morning-agriculture/2016/04/too-soon-to-talk-about-the-2018-farm-bill-salt-fights-back-ag-appropriators-back-213-billion-bill-213764> (last visited April 20, 2016)