

THESIS

TRANSNATIONAL GOVERNANCE OF FARMED ANIMAL WELFARE:

A CRITIQUE OF ANIMALS AS COMMODITIES

Submitted by

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In partial fulfillment of the requirements

For the Degree of Master of Arts

Colorado State University

Fort Collins, Colorado

Summer 2011

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## ABSTRACT

### TRANSNATIONAL GOVERNANCE OF FARMED ANIMAL WELFARE:

#### A CRITIQUE OF ANIMALS AS COMMODITIES

This thesis explores whether transnational animal agribusiness is governed by looking at global governance and key players. It analyzes international organizations—the OIE, the FAO, and the WTO—as well as two key state actors in transnational animal agribusiness, the EU and the US. Given the growing scale of the industry, this thesis addresses the following:

- 1) Whether the transnational animal agribusiness (“TAG”) is governed
- 2) Whether the governance of TAG addresses farmed animal welfare (“FAW”)
- 3) Whether FAW addresses animals.

Ultimately, this paper finds significant variation in the governance of TAG, however, even the most promising examples of governance fail to appropriately recognize commoditized animals as grievable beings. This thesis recommends adoption of a grievability framework which finds that alternatives to animal agribusiness and a shift in the human perception of nonhuman animals are necessary.

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## LIST OF ABBREVIATIONS

AoA	WTO Agreement on Agriculture
CAFOs	Confined Animal Feeding Operations
COOL	Country-of-origin Labeling
CoE	Council of Europe
EU	European Union
FAO	Food and Agriculture Organization
FDI	Foreign Direct Investment
NPR	Non-Product Related
OECD	Organisation for Economic Co-Operation and Development
OIE	World Organization for Animal Health
PPM	Process and Production Methods
SPS	WTO Agreement on Sanitary and Phytosanitary Measures
TAG	Transnational/Transnationalization of Animal Agribusiness
TBT	WTO Agreement on Technical Barriers to Trade
UN	United Nations
URAA	Uruguay Round's Agreement on Agriculture
USA	United States of America
USDA	United States Department of Agriculture
WHO	World Health Organization
WTO	World Trade Organization

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## INTRODUCTION

The transnationalization and growth of animal agribusiness has made the question of governance with respect to farmed animal welfare (“FAW”) imperative. Transnational animal agribusiness (“TAG”) has become increasingly global yet concentrated in recent decades with consumption and production of animal products increasing around the world. Recent and ongoing crises involving zoonotic diseases, public health, food security, and environmental disasters have created compelling reasons for policy makers to incorporate TAG concerns into legislation. The light shed on intensive animal agribusinesses’ activities like factory farms due to the above crises has revealed an issue at the heart of all the others: the transnationalization, intensification, and industrialization of animal agriculture has for the most part, ignored the welfare of farmed animals. The impacts of the industry on animals are profound and yet, not widely contested. Given the growing scale of the industry, this thesis addresses the following:

- 1) Whether TAG is governed
- 2) Whether the governance of TAG addresses FAW
- 3) Whether the governance addresses animals.

The key concern in this framing is whether and how FAW is governed and whether the governance treats animals as sentient grievable beings, and not commodities. First, I will provide an overview of the animal agribusiness industry and key state players. Publications and legislation of the major governance organizations and states or regions will inform the first and second questions. The third question will be addressed in an overview of governance

mechanisms organized by an analytical scheme in order to determine potential gaps or inconsistencies in the treatment of animals.

This paper is significant both because it addresses the governance of an important sector of global agribusiness and because it examines the efficacy of the current trend of farmed animal welfare measures within governance structures. Ultimately, this paper criticizes the current FAW measures, and recommends a re-framing of animals as grievable beings, not just products on a production line. This shift will come from a re-framing of the human perception of nonhuman animals. While the data and arguments used here focus on animal agribusiness, my reasoning could also apply to animals for their use value by humans but addressing animal use by humans is not something I attempt to answer here.

In Chapter 1, this paper will develop the up-to-date and comprehensive characteristics of TAG including its transnationalization and primary actors. By elaborating on the structure and history of the industry, the chapter will aim to clarify trends in the movement from or to the North and South. Finally, I will explain the significance of United States (USA) and the European Union (EU) as key cases in TAG.

Chapter 2 will introduce the analytical scheme through which the governance of TAG will be organized. This scheme uses two categories: enforceability and attitude towards animals. This paper will address the ranges of academic views on these topics and will represent them on a continuum.

Chapter 3 will examine the global public governance of TAG within the WTO, the OIE, and the FAO and each organization's impacts on animal welfare. In each case I will ask whether or not the governance mechanisms are enforceable and how animals are taken into consideration.

Chapter 4 contrasts the EU and the USA as key case studies in the public governance of TAG. These two governments are representative of two distinct ways of governing FAW either through enforceable FAW measures (the EU) or through minimal regulation and acceptance of industry standards (the USA). I will focus specifically on the governance of FAW's treatment of animals. I will examine possible different theoretical perspectives between the USA and the EU.

Chapter 5 reflects on the findings with respect to FAW governance and provides possible explanations for patterns, variability, and silences in the governance of TAG and its profound impacts on animals. I will discuss the analytical scheme to determine where the cases of the WTO, OIE, FAO, USA, and EU fall within the continuums of enforceability and attitude towards animals. I will consider the usefulness of the analytical scheme in addressing this paper's question of the impacts of the governance mechanisms on the animals themselves.

Chapter 6 will explain the insufficient ability of FAW measures to question the impact of TAG on the animals themselves. This chapter will explore alternative governance options from a reduction to an abolition of commodified animal product consumption and production through a grievability framework.

In this paper's conclusion, I will summarize my findings and identify future research. I will offer a final analysis on whether TAG is governed at all, whether and how the issue of animal welfare is governed within TAG, and how these governance mechanisms impact animals. I conclude by recommending nonviolent action through veganism and veganism outreach efforts by consumers and advocates as an alternative to animal agribusiness.



## **CHAPTER 1:**

### **CHARACTERISTICS AND DYNAMICS OF TAG**

From factory-farm bred zoonoses like H1N1 (“swine”) flu, BSE (“mad cow disease”), and avian influenza (Otte et al. 2007), the global food shortage, to the shocking number of farmed animals killed a year for food and the global effects of animal agriculture on the environment, animal agribusiness substantially impacts the globe, without being subjected to much global governance. This chapter will clarify trends in the characteristics and dynamics of TAG including the history and globalized nature of the industry, and the trade of transnational animal products from or to the North and South. Initially, I will elaborate on this movement through a discussion of three dimensions of globalization: trade liberalization/de-regulation, foreign direct investment, and a shift in production and consumption. Then, I will discuss why the cases of the USA and the EU as major producers, consumers, exporters, and importers of animal products are significant to TAG.

#### **TAG: Clarification and Importance**

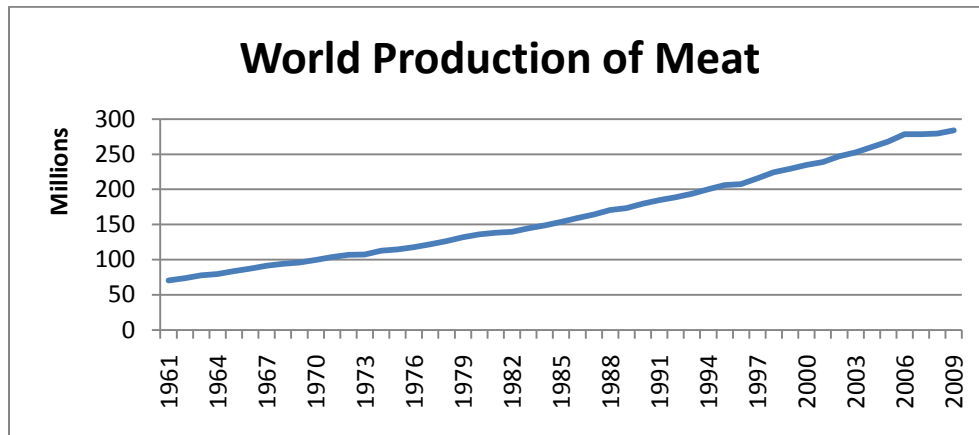
Every year, over 58 billion farmed animals<sup>1</sup> (not including sea animals) are raised and killed around the world for human consumption of meat, milk, and eggs (Ilea 2009: 153). Global trade in animal products represents the “fastest consumption and trade growth of all major

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<sup>1</sup> Most literature uses the term “livestock,” or “farm animal” (along with “poultry,” “beef,” “pork” and “broiler”) which I reject because it lumps individual animals into a false mass referent (see Carol Adams’ “The Sexual Politics of Meat”). This paper prefers “farmed animals” or “chicken/cow/pig meat” to reveal the commodification of the individual animal and the tendency for policies/marketing to ignore the inherent value of animals. This author also uses the term “animal agribusiness,” in an attempt to name the commodified animals in terms of business interests, thus illuminating the bias of the market in ignoring marginalized individuals such as animals in order to profit in economies of scale.

agricultural commodities” with an expected 40% growth over the next twenty years (FAO 2002; Kennes 2010). Table 1.1 indicates the global production of meat increasing 302% from 1961 to 2009 (while at the same time the human population increased a total of ~130%) (FAO 2010).

**Table 1.1: Global Production of Meat from 1961 to 2009**



Source: FAO 2008

Additionally, farmed animal production accounts for the livelihoods of one billion people worldwide; meanwhile changes in economies and scales of production have resulted in a shift of production from the North to the South, and a shift from extensive to more intensive methods of production (UNESCO 2008: 2). Consequently, animal agriculture continues to be the leading cause of global climate change (FAO 2006a); the global hunger crisis threatens the food security of millions; and the rise in meat safety issues in international trade has worried consumers and global health organizations as well. To further illuminate trends in the transnationalization of animal agribusinesses, this chapter will first examine the story of the industry’s North/South<sup>2</sup> movement alongside dimensions of globalization. This examination will hopefully clarify why the cases of the EU and the USA are especially relevant in this study of TAG. Finally, I’ll elaborate on the trends within the aforementioned regions.

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<sup>2</sup> I use a rough North/South dichotomy to represent the divergent natures of developed and developing countries, though I see TAG as a way in which their economies are converging in complex and complicated ways. I recognize this dichotomy as problematic and overly generalized, but use it as a working concept in this paper.

TAG refers both to the transnationalization of animal agribusiness as a process, and to the specific companies and countries that act as importers and exporters of transnational animal agribusiness and animal products. The TAG sector includes companies that have sales and operations in multiple nations. TAG companies perform one and commonly more of the following functions: buy, raise, and sell live animals, slaughter them, process them, and grow food (feed) for them. Many of TAG companies operate under an economy of scale meaning that a vertical concentration in the industry allows companies to control all aspects of their production leading to cheaper increased production and a decrease in competition. Mergers and acquisitions are common and widen the scope and deepen the hold of a company's hold on transnational animal agribusiness.

TAG is a specific manifestation of the globalization of agriculture, which Wright and Muzzatti (2007) define as “the hypermobility of transnational capital and the constant deregulation of agricultural trade policy that has, in effect, restructured national agri-food systems” (136). The transnational flow of global financial investments and technology have resulted in structural changes in animal product industries, including animal genetic changes and intensified confinement systems like the use of confined animal feeding operations or CAFOs (FAO 2002). As the largest component of the globalization of agriculture, TAG has been called different names, most notably “the Livestock Revolution<sup>3</sup>,” or more viscerally, “the Pink Revolution,” both names that imply its similarity to the Industrial Revolution and the Green Revolution, and a qualitative change in the way that animal agriculture is incorporated into global markets. Essential to the idea of the Livestock Revolution and this paper's conception of TAG is the assumption that all consumption, production, and retailing processes are parts of a globalized value chain (see Stamm 2008). A globalized value chain perspective sees how trade liberalization has encouraged industrialized and transnational growth of animal agribusinesses,

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<sup>3</sup> Coined by Delgado et al. (1999), the Livestock Revolution is defined as “a simple and convenient expression that summarizes a complex series of interrelated processes and outcomes in production, consumption, and economic growth [of animal products and trade]” (1).

and how an increase in demand and consumption of animal products equally bolsters the industry. Trade liberalization/de-regulation, foreign direct investment, and a shift in production and consumption all characterize the dimensions of TAG that will be further examined in this chapter.

### **Globalized Dimensions of TAG**

#### *Trade Liberalization/De-regulation*

Glenna and Mitev (2009) credit the rise of intensive animal agribusinesses (particularly CAFOs) to “the globalization of neo-liberalism, which originated in the US and became global through transnational agribusiness” (290). The USA’s role in the WTO<sup>4</sup> and the latter’s neo-liberal economic policies have shaped global TAG. The WTO’s provisions on agriculture have expanded global markets and encouraged developing countries to start or expand their exportation of animal products. In joining the WTO, member states agree to participate in the global multi-lateral trading system by privatizing state-owned companies, encouraging growth in the private sector, liberalizing foreign trade, attracting FDIs, implementing structural changes (including changes to the banking system), and adjusting financial and monetary policies (Chea and Shok 2011). All of these changes are required by the WTO as well as for the recipients of loans from other neoliberal economic institutions like the IMF and the World Bank (Chea and Shok 2011). These requirements have directed many states to privatize their agricultural sectors and implement structural changes to the lending institutions. Trade liberalization essentially leads states to de-regulate industries as a way of removing barriers to trade; then states are expected to adopt or refine their trade laws to match the WTO’s rules and regulations (Chea and Shok 2011). Furthermore, the Uruguay Round’s Agreement on Agriculture (URAA) worked to create fairer competition via improved market access, domestic support, and reduced agricultural export subsidies (WTO 2011a). The specific negotiations are still being worked out during the current Doha Round since the negotiations on reducing agricultural export subsidies are particularly

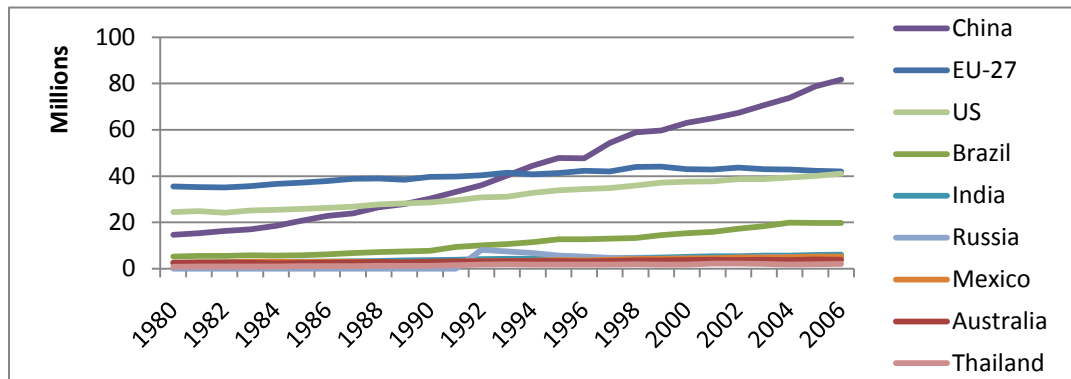
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<sup>4</sup> Here, I discuss the influence of the WTO on trade liberalization and de-regulation, however, the WTO’s influence on animal health issues will be discussed in later chapters.

controversial (WTO 2011b). The animal agribusiness sector in many developed countries benefits from these subsidies, particularly for feed crops. Regardless, the WTO has had a large impact on the growth of TAG around the world.

The effects of trade liberalization or WTO accession on key players within TAG are hard to determine. China joined the WTO in 2001 while Brazil, Argentina, Thailand, Australia, Mexico, India, the USA, and the EU-27 have been members since the inaugural date: 1 January 1995 (WTO 2011b). The following table demonstrates how China was already the top producer of animal products before its accession while the USA, the EU and Brazil (and the other major players) lagged behind even though they were signatories in 1995. Perhaps since these countries were already trading in a globalized fashion, their inauguration of the WTO did not have such a clear effect on their meat production levels.

**Table 1.2: Production of meat<sup>5</sup> (in millions of tons) of some major TAG players**



Source: FAO<sup>6</sup> 2008

Accession does not seem to have an impact on these countries' production or consumption of animal products, but WTO membership does have an impact on the ways in which animals are transported and killed and the labeling of animal products because the WTO's

<sup>5</sup> Data for all animal products is unavailable so I use meat consumption as a proxy for all animal product consumption. According to my data source, "Meat consumption per capita refers to the total meat retained for use in country per person per year. Total meat includes meat from animals slaughtered in countries, irrespective of their origin, and comprises horsemeat, poultry, and meat from all other domestic or wild animals such as camels, rabbits, reindeer, and game animals" (World Resources Institute 2011).

<sup>6</sup> EU-27 data is the sum of the data available for the countries in the EU-27. Data from Cyprus was unavailable.

Sanitary and Phyto-Sanitary measurements set standards for animal health and slaughter (WTO 2011d). Member countries disagree whether or not these SPS standards act as non-tariff barriers to trade since developing countries often cannot match the higher standards of developed countries, even though they are encouraged to meet these voluntary international standards. In any case, trade liberalization and de-regulation seem to have set the initial stage for increased trade in transnational animal products through transnationalized and industrialized animal agribusinesses. The next section then aims to demonstrate foreign direct investment (FDI) as another way in which TAG is influenced by the dimensions of globalization.

### *Foreign Direct Investment*

Trade liberalization encourages foreign direct investment (FDI) and the movement of capital through transnational animal agribusinesses. While the Livestock Revolution globally increased productivity of animals, land, and labor at intensive feedlots and packing plants, the globalization of animal production has freed companies increase their production overseas. They often do this by relocating or adding production facilities at cheaper locales while maintaining their home country markets (Lang 2003: 557-8). These businesses in turn facilitate structural changes, often involving technological advancements in the production of animal products. As a result, FDI radically intensifies the modes and methods of local animal agribusiness production. The growth in the industry due to FDI has seemingly allowed the industrialization of animal agriculture to meet the growing demand in developing world<sup>7</sup>.

The movement of capital through these foreign investors occurs most often through companies from the USA and Brazil that dominate the FDI of TAG<sup>8</sup>. In particular, Cargill, Tyson Inc., Hormel Foods, and Smithfield Foods, Inc. from the USA, and JBS from Brazil

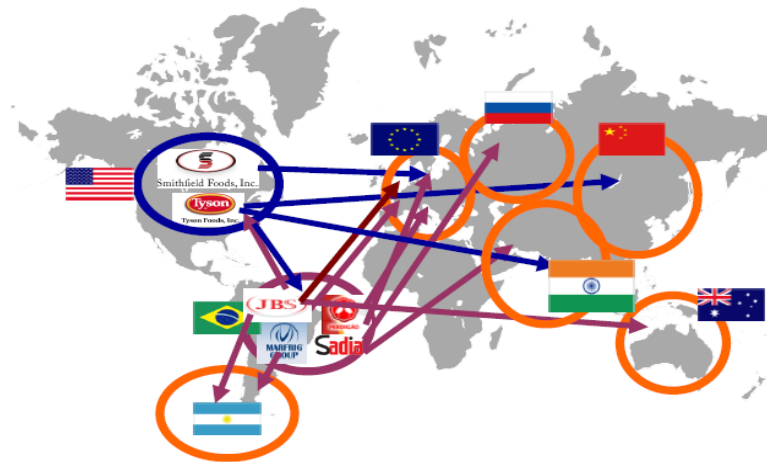
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<sup>7</sup> Many argue that FDI does not in fact serve the host country's population; instead these foreign investors intend to take advantage of cheaper labor and other inputs in order to sell animal products at lower prices in other markets.

<sup>8</sup> I use the Forbes' account of the 2009 top 2000 global companies to rank the public animal agribusinesses that follow in this discussion. All of the companies mentioned are located on this list, with the exception of Cargill which is private.

operate within most of the other major TAG states. Figure 1.1 reveals the USA animal agribusiness presence in: the EU, China, India, and Brazil; and the Brazilian presence in: the USA, the EU, India, Australia, Russia, and Argentina.

**Figure 1.1: Influence of Brazilian and US transnational animal agribusinesses on other major players in TAG**



Source: Kennes 2010

The following figure further illuminates how transnationalization of animal agribusiness takes place through global companies.

**Table 1.3: Largest Transnational Animal Agribusinesses by Forbe's Ranking and Market Value**

Company	Forbes Ranking	Market Value (\$Bil) / Annual Sales	Country of Origin	Global Operations	Production Types	Estimated Pounds of Meat
<b>Cargill</b>	Private	53.3/ 107.9	USA	Business Unit has cow operations in USA, Canada, Argentina, and Australia Pig operations in the US and Brazil, turkey operations in the US, Chicken operations in Brazil, Thailand, the U.K., Canada and Honduras, and Sales offices all over Asia, including Shanghai, Hong Kong, Taipei, Singapore, Tokyo, Osaka and Seoul	Animal meat processor; Feed production through grain and field beans; Sea Transportation of Freight; Commodity Contracts and Brokers; Flour and Milled products;	590 million tons/year  28,000 heads of cows/day capacity
<b>JBS</b>	698	12.18/ 20.19	Brazil	Production facilities and offices in Brazil, Argentina, Italy, Australia, the USA, Uruguay, Paraguay, Mexico, China, Russia and other countries	Largest animal protein (initially cow meat but now pig and chicken meat as well) processor, meat packer, and exporter in the world	24-30,000 heads of cows/day capacity
<b>Tyson Foods</b>	971	6.47/ 26.82	USA	Production facilities in Mexico, Argentina, China and India; Offices in Canada and Russia	Slaughtering, processing and marketing of chicken, cow, and pig meat; miscellaneous food manufacturing; frozen specialty food manufacturing	29,000 heads of cows/day capacity
<b>Hormel Foods</b>	1161	5.52/ 6.57	US	Production , manufacturing, and sales facilities in Australia, China, Europe, Japan, Mexico, Panama, Philippines, and South Korea	Canning meat (notably, SPAM); animal slaughtering; cow, chicken and pig processing;	1.2B pounds of turkey meat/year
<b>Smithfield Foods</b>	1586	2.96/ 11.61	USA	Plants in Brazil, Europe, Poland, Romania, U.K., Mexico	Largest pig meat processor in the USA; vertically integrated pig meat processing; mostly pig and turkey meat	6B pounds of pig meat/year; 1.4B of cow meat/year (2006)
<b>Nippon Meatpackers</b>	1871	2.75/ 10.56	Japan	Production, slaughtering/meatpacking or processing, and exporting from USA and Australia; EU and South America, procurement; Southeast Asia, procurement and processing	Vertically integrated production and processing of chickens, pigs, and cows	n/a

Source: Forbes 2009 Ranking



Cargill is a USA-based transnational animal agribusiness that operates as one of the largest meat packers and processors in the world, producing more than 590 million tons of animal protein a year and acting as the USA's highest-grossing private company in 2010 (Cargill 2010; Forbes 2011). Cargill not only has cow meat operations in the USA, Canada, Argentina, and Australia, and pig meat operations in Brazil, Thailand, the U.K., Canada, and the Honduras, but it also has sales operations all over Asia (Shanghai, Hong Kong, Taipei, Singapore, Tokyo, Osaka and Seoul). Under its "Cargill Animal Protein" business arm, it sells "U.S., Canadian, Argentine and Australian beef; U.S. and Brazilian Pork; U.S. Turkey; and Brazilian and British poultry" all over the world, and especially within the greater China region (Cargill 2010: 16). From the beginning, Cargill worked to oversell all competitors in the production of cow, chicken, and pig meat. Throughout the 1970s, 80s, and 90s, Cargill provided premium prices for buying live animals, out-competing others (Kneen 2002: 52). Because of the already highly-concentrated nature of the USA pig meat industry, Cargill examined opportunities abroad earlier than other USA companies (*ibid*: 53). From the 1970s, Cargill was implementing fully-integrated operations all over the globe (*ibid*).

JBS, based in Brazil, is also one of the top grossing animal agribusiness and the world's largest cow meat, and animal meat processor ranked in Forbes at 698 (Forbes 2011b). In 2007, JBS acquired the USA meatpacking company Swift & Co. (at the time the USA's third largest producer and processor of cow and pig meat) and in 2008, JBS bought the cow meat group of Smithfield Foods, another major USA meat processor. In 2009, JBS entered the chicken meat processing world by buying 64% of Pilgrim's Pride (USA-owned, now Pilgrim's). JBS has processing plants in key TAG countries: Brazil, Argentina, Italy, Australia, USA, Uruguay, Paraguay, Mexico, China and Russia, and exports to over one hundred countries (JBS 2011a).

Tyson Foods, Inc., based in the USA, is one of the world's major animal agribusinesses as the second largest American food production company in the Fortune 500, and ranked 971 of the top global companies (Forbes 2011b). Its food operations around the world are notable in

their own respect, but they all contribute to the behemoth's global hold on trade in animal products. In China, Tyson operates under "Jiangsu Tyson Foods" and "Tyson Xinchang" (which has a production facility with the capacity to kill 400,000 birds a day); both companies process and export animal products to Japan, Southeast Asia, and Europe. In Brazil, Tyson consists of three fully-integrated companies. Tyson's Mexico operations are the third largest in the country. In India, Tyson operates under "Godrej Tyson Foods" with plants in Mumbai and Bangalore that kill 60,000 chickens per day. As of 2007, Tyson jointly created the first vertically integrated cow meat operation in Argentina. Figure 1.2 illuminates the placement of Tyson's production facilities: in Mexico, Argentina, China and India (all considered part of the global South) while its exports offices were located in Canada and Russia (both considered part of the global North).

**Figure 1.2: Tyson's International Locations**



Source: Tyson 2009

Other notable transnationalized animal agribusinesses include: Associated British Foods (UK: ranked 509; sells animal feed, processing facilities in the UK and China, supplies and markets pig meat in Australia); Hormel Foods (USA: ranked 1161; sells a variety of animal products; wholly-owned subsidiaries in Australia, China, Denmark, UK, Japan, Mexico, Panama, Philippines, and South Korea); and Smithfield Foods (USA: ranked 1568; world's largest pig meat producer and processor with stakes in production facilities in Poland, Romania, and Mexico--notably at the Granjas Carroll plant, where the 2009 Swine Influenza originated) (Forbes 2011b).

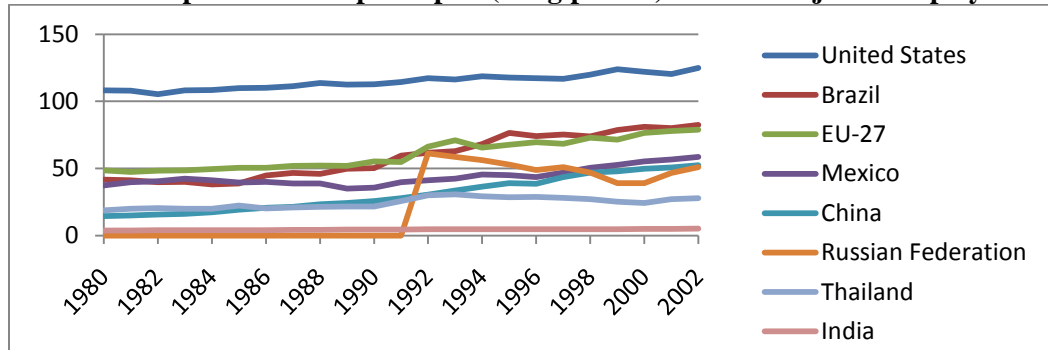
In addition to meatpacking and processing industries, feed industries also play a large role in TAG. One of Cargill's top competitors in the public sector is Archer Daniel Midlands (ADM), the USA-owned top global feed and animal protein producer. ADM is ranked 212 in Forbes' top global 2000 companies, and its 2010 revenues were \$61.7 billion, an increase of 30% from the previous year (Forbes 2011a). ADM processes animal-feed at pre-mix plants in China, India, Australia, Japan and several other countries. Interestingly, wheat and soy comprise the sole components to its animal protein product used for feed and as supplements within meat products. The growth in the company can largely be attributed to an increase in feed trade.

The majority of the major animal agribusinesses are USA- or Brazil- based with production facilities located all over the world, but most commonly in the USA, Brazil, China, India, Canada, Mexico—areas with cheaper inputs like feed, labor, and equipment, lots of land for grain production, and a market outlet for animal products and by-products (Dyck and Nelson 2003: iii).

#### *A Shift in Production and Consumption*

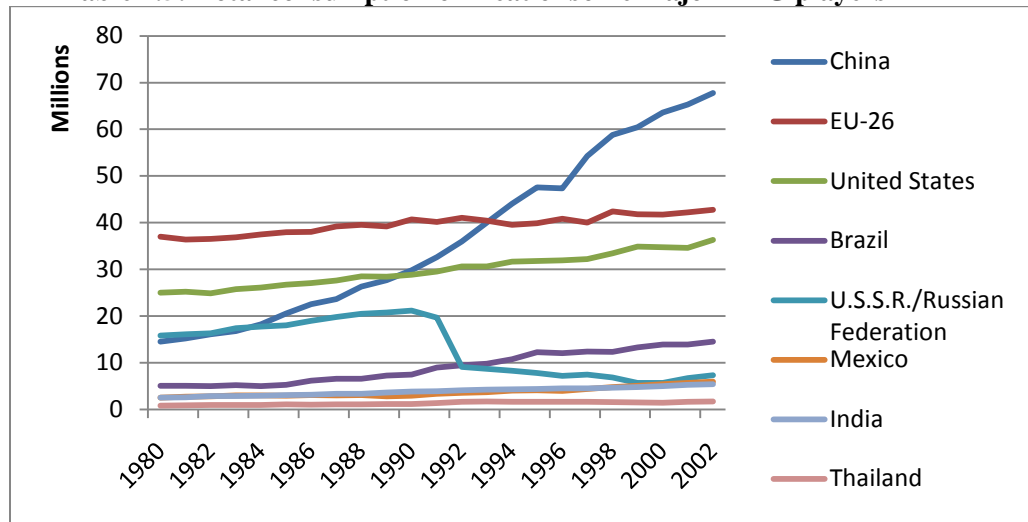
Trade liberalization and FDI support the growth of TAG, but the strongest contributor to the industry's global growth is the shift in consumption. Eating animal products has historically been the privilege of the rich, and therefore, developed countries have long since established the industrialization of production and mass consumption of animal products. The major TAG consumers are mostly developed countries (USA, EU, Russia) but Brazil, Mexico, and China have demonstrated strong growth in consumption. The following tables illuminate the consumption of meat per capita and total consumption of major TAG players.

**Table 1.4: Consumption of meat per capita (in kg/person) of some major TAG players**



Source: FAO 2008<sup>9</sup>

**Table 1.5: Total consumption of meat of some major TAG players**



Source: FAO 2008

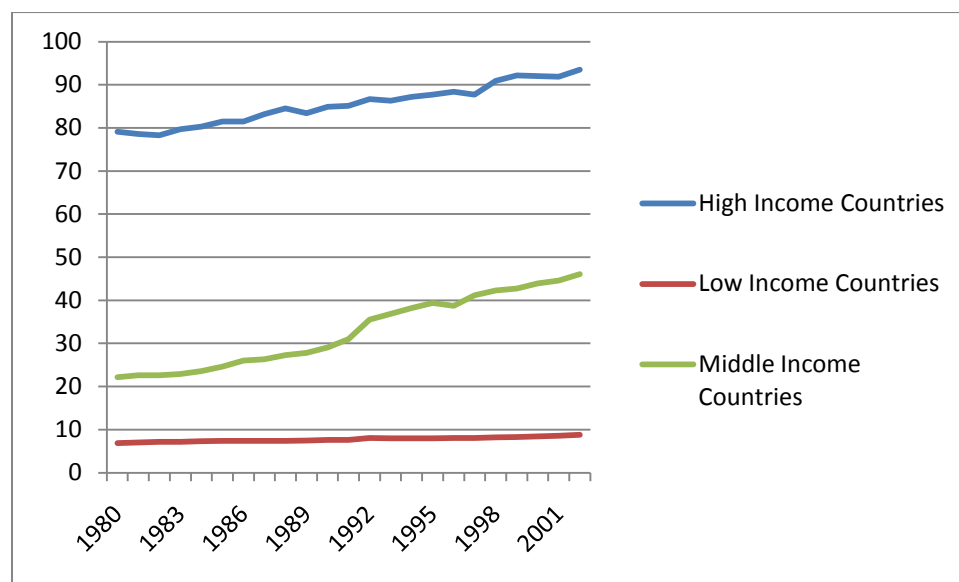
While the per capita consumption of meat in the USA remains far above other countries, the total consumption in China and the EU outnumbers the USA. This makes sense as production within China and the EU has increased over time (FAO 2008).

With the liberalization of trade and capital, and the growth of the middle class around the world, transnational animal agribusinesses have seen an unprecedented opportunity for growth in the global South. The FAO (2003) finds that increasing demand for milk, meat, and eggs within developing countries is a major cause of the Livestock Revolution; Hall et al. (2004) agree and attribute this changing demand in the South to population growth, rising incomes and urbanization (Hall et al. 2004: 428., WHO/FAO 2003:30). Hall et al. (2004) found that “From the early 1970s to the early 1990s, there was a growth of about 50% in the combined per capita

<sup>9</sup> Data from Cyprus unavailable. Data from USSR/Russian Federation unavailable prior to 1992.

demand and consumption of meat, eggs, and milk in developing countries, leading to large increases in animal production” (436). Of the largest increases in demand for animal products, South and Southeast Asia took the top two ranks (*ibid.* 427). The consumption of animals is projected to increase 3% a year until 2020 at which time 63% of world meat production and 50% of global milk production are expected to originate from the South (World Bank 2001). In fact, over eighty percent of *all* agri-food production will take place in developing countries by the year 2020 (Brunisma 2003 qtd in Schlundt 2006: 367). This example is further illuminated in the following table of meat consumption in high, medium, and low income countries. The increase of meat consumption per capita in middle income countries is far greater than the increase in high or low income countries.

**Table 1.6: Consumption of meat per capita in high, middle and low income countries**



Source: FAO 2008

The drastic increase in demand for animal products has resulted in a current trade imbalance caused by net export of animal products from the North and a net import of animal products in the South; this imbalance is predicted to continue until 2020 (Hall et al. 2004: 428; Delgado et al. 1999). Interestingly, developing countries’ meat production has surpassed that of developed countries (FAO 2005); even so, the demand in developing countries outweighs the

available domestic supply leading most of them to remain as net importers instead of exporters. Southeast Asia (notably, India) and Latin America are expected to improve their animal product exports in order to become net exporters of pig and chicken products, and cow products, respectively.

The shift in production and consumption, the movement of capital through FDI, and trade liberalization and de-regulation have created the setting for TAG to flourish in obvious ways such as increased production of meat and increased revenues around the world. The impacts of TAG within specific players in the global North and the South will be further examined in the next section.

### TAG Team: How have the major players changed over time?

**Figure 1.3: Global Production, Consumption, and Trade of Animal Products**



Source: UNCTAD 2003 Trade flows under \$.2 billion are not shown. Intra-EU trade is not shown; it amounts to \$13.7 billion.

The major TAG players are changing over time. Figure 1.3 illuminates this global trading pattern—where transnationalized animal products came from and where they went—in 2003, and Table 1.9 organizes this data while highlighting development status and each state’s proportions of the top global meat processors.

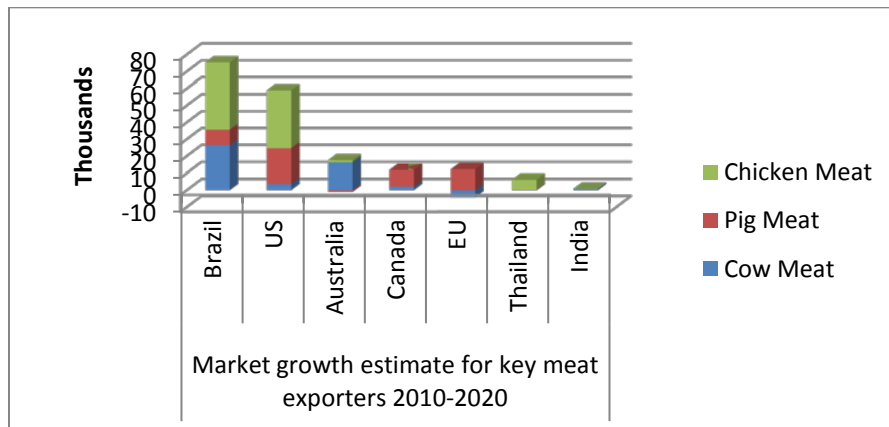
**Table 1.7: Leading Producers (with proportions of top 50 global meat processors) and Consumers**

Leading Producers/Exporters	Leading Consumers/Importers
United States (22:50)	Russia
European Union (16:50)	Japan
Australia (0:50)	<b>China</b>
Canada (2:50)	<b>Mexico</b>
<b>Brazil (2:50)</b>	United States
<b>Argentina (0:50)</b>	

Source: Dyck and Nelson 2003:4 ; Emphasis added to illuminate developing countries' growing role in global animal agribusiness

Contrast those leaders with the following projections (made in 2010) of market growth for exporters and importers from 2010 through 2020.

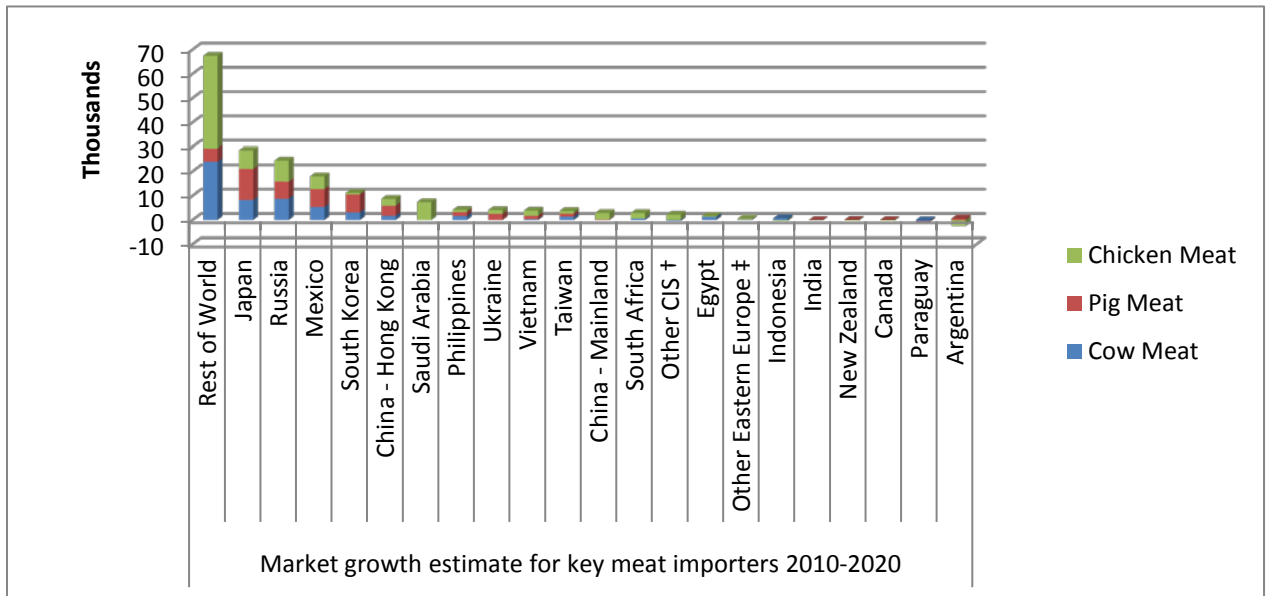
**Table 1.8: Growth Projections of Animal Product Exportation (in thousand metric tons)**



Source: FAPRI 2010

The EU is in the process of falling as a major exporter, and Brazil is rising as a major exporter. The following graph on animal products importation shows the increase of animal product importation (and presumably consumption) around the world.

**Table 1.9: Growth Projections of Animal Product Importation (in thousand metric tons)**



Source: FAPRI 2010

Even as the global South continues to produce more meat, it will continue importing animal products mostly from Brazil and the USA in order to sustain its growth (FAPRI 2010). 70% of the growth of meat demand will come from Asia while Brazil and the USA will supply the product (FAPRI 2010). Clearly, the disparity between the countries that export and import is great. Brazil, the USA, Australia, Canada, the EU, Thailand and India export the majority of chicken, pig, and cow meat, while Japan, Russia, Mexico, South Korea, China, Saudi Arabia, and a lot of other smaller countries (“Rest of the World”) import the majority of meat. To further examine some key actors within TAG, I will provide a detailed analysis of the USA and the EU, contrasted briefly with Brazil and India.

### Case Studies of the Global North and Global South

#### *The USA*

The above tables demonstrated the USA’s primary role (in 2003) as the leading global animal agribusiness exporter and as the fifth largest consumer. Now, the USA has fallen second to Brazil in terms of total exports, and it no longer plays a major role in importing animal



products. The two countries continue to grow in terms of exports at 3% a year each. Although the US and Brazil will account for 70% of the global exports by major players within TAG in 2011, this forecasted representation is less than it was 5 years ago since more players have entered the global market (USDA FAS 2010: 15). The USA will benefit from increased exports to Mexico as Mexico's domestic demand increases. The USA no longer serves as the top cow meat producer, and its declining cow population due to decreased demand will result in a decline in production (*ibid*). Decreased domestic demand also leads to a decrease in cow meat imports. The USA reduced its cow meat production 2% from 2009 to 2010, and as a result, will decrease its exports to 9% of total production (*ibid*: 9). This is its first decline in production since 2004 (*ibid*: 8). Its pig meat exports are expected to increase 5% though as it continues to trade with Asian markets. The USA is also the world's top producer of chicken meat, and its production is expected to increase 2% to 16.6 million tons in 2011 due to rising domestic and foreign demand (*ibid*: 10). Overall, the U.S. is working to maintain its role as the second largest global meat exporter.

#### *The E.U. -27*

The E.U. as demonstrated in Table 1.7, held the world's second place in global meat exportation in 2003; however, this position is contested through the emergence of developing countries as meat producers. It has now fallen to the fifth largest exporter. The current global recession has lowered meat demand in the E.U., so production has decreased and imports stayed stable since major global traders were restrained by increase global demand (USDA FAS 2010). Factors like increased feed costs, global competition, receding domestic demand and farms incompliant with the environmental and animal welfare laws (effective 2013) have constrained pig meat production in particular and reduced total exports by 9% (USDA FAS 2010: 10-11). Since Western European countries have some of the strongest environmental laws governing their production of factory-farmed animal meat, many of these companies have moved production to areas with less regulation such as the USA and Brazil (Nierenberg 2005: 62). Its export share is

expected to be further overtaken by U.S. and Brazil. Its chicken meat production will increase slightly in the next year due to rising domestic demand but higher grain costs will restrict its growth (*ibid*: 14).

### *Brazil*

To briefly round out my profile of TAG, I will also examine India and Brazil as representatives of the global South and countries that have changed consumption, production, and experienced a greater movement of capital and trade de-regulation as they joined TAG's global value commodity chain. Although Brazil already is major producer and exporter of animal products, the country is part of the Global South distinction of this paper. India is another developing country but in contrast to Brazil, it represents a shift in consumption trends due to globalizing influences.

Brazil is expected to supply chicken meat exports to Russia, the Middle East, and many markets in Asia while its pig meat will overtake EU's position in the global supply (USDA FAS 2010: 1). Because the EU has been slowing its imports of Brazilian cow meat since 2008, Brazil's cow meat exports have decreased and its calf production rate of increase has slowed as well (*ibid*). Disease has constrained some market access for Brazil; for example, its pig products, while supposedly free from Foot and Mouth Disease, have not been approved for export to the USA (*ibid*: 11). Overall growth will support rising demand in the Middle East and China.

The role of JBS SA, as Brazil's major transnational animal agribusiness and the world's largest meatpacker, greatly influences the country's presence in global trade in animal products. It maintains a strong hold throughout the world with its subsidiaries, JBS USA—the USA's largest pig, cow, and chicken meat processing company, and largest feedlot company. From this position within the USA, its cow meat exports equaled 43% of all US cow meat exports (JBS 2011b). In the past 15 years, JBS has acquired 30 global companies that help it maintain a strong grip on global meatpacking and processing.

## *India*

India, as a country projected to transition into a powerful leader with the growth of transnational animal agribusinesses, offers itself in colorful contrast to the USA, and to other countries. The state, with its second-largest global population, rising incomes and urbanization, recently liberalized trade markets, and its historically, religiously, and culturally embedded ethical taboos against eating meat, is a fascinating case of TAG.

India's total production of meat has increased 12 times from 2001 to 2007 and has grown 214% from 1970 to 2006 (FAO 2007). Trade groups estimate that India has tremendous export potential for global trade in buffalo and chicken meat, eggs and dairy products. India's chicken consumption annual growth rate of over 10% a year is already one of the highest in the world. The organized/more industrialized sector of Indian chicken meat industry accounts for nearly 70% of the total output and the remainder comes from smallholders. According to the OECD statistics database on projections for 2015, of the top three chicken-meat-producing developing countries (China, Mexico, and India, respectively), India is expected to increase production rates that more than double China's increase, and almost double Mexico's increase (Windhorst 2007).

Still, foreign direct investment has not found a way to capitalize on India's growth yet as one report found:

Foreign direct investment (FDI) has, so far, not been a major factor in the development of India's poultry sector. But India's fast-growing, competitive, and potentially large industry offers investment opportunities in input activities, such as breeding, medicines, feed, and equipment, as well as vertical integration and processing. While the country permits FDI in these activities, investments are constrained by market and policy uncertainty, poor power and transport infrastructure, and high taxes on processed food (USDA ERS 2003).

An updated USDA Economic Research Service report from 2008 came to the same conclusions: even though India has strong growth in its economy, especially in food demand, investment has lagged behind due to the lack of infrastructure and market services (Landers 2008).

## Conclusion

From this overview, the strong growth trend in transnational animal agribusiness becomes clear. This paper's key findings explain the extremely consolidated and integrated production side of TAG. As 2020 approaches, and transnational animal agribusinesses continue to pursue trade de-regulation, liberalization, and foreign direct investment, the states the businesses are producing and trading within will increasingly resemble homogeneous components of the same global commodity chain.

How key actors discussed in this chapter deal with continued growth will vary. The EU's stricter standards on quality and animal welfare will require investments and protection from developing country markets that fall below the standards; this will lead to decreased productivity. Brazil's ability to produce more than any other country will be increased by infrastructure improvements. The USA will continue to play a large role in production and consumption. In India, the slow transition away from a "live bird" market will increase its ability to export chicken meat through more modern distribution. China's enormous growth will depend on importation of meats and feedstuffs. Russia will aim for self-sufficiency and will continue to protect its markets from excessive exports or imports. Mexico will continue producing locally and importing animal products. Overall, the production in the Americas will shift to Asia. Trade in chicken meat is expected to increase dramatically. TAG will have to find a way to balance production and consumption in domestic markets with global expansion and trade while concerns for animal welfare continue to rise to the foreground.

As seen in this chapter, the transnationalization of animal agribusiness, like many globalizing industries, has transformed itself into an intensely concentrated and mobile business sector which does not lend itself easily to being governed. The following chapters will aim to address efforts at governance and whether it goes far enough in terms of animals via animal

welfare. This chapter illuminates the fact that TAG is a tremendous force in global trade in order to justify my belief that addressing farmed animal welfare is a pressing issue. Looking at governance from a global level and through the USA and the EU attempts to capture the most salient perspectives in terms of governance. The global public governance of TAG in the USA and the EU can reveal the nuances of the way these global businesses interact on the value-added commodity supply chain. The governance mechanisms of the WTO, the OIE, and the FAO will be considered as well. Animals are ignored as stakeholders in discussions of TAG since TAG views animals as simply commodities but all of the governance mechanisms of the transnational organizations and states have the potential to change the way animals are viewed in global trade. This thesis will analyze how far their governance actually goes.

## **CHAPTER 2: ENFORCEABILITY AND ATTITUDE TOWARDS ANIMALS:**

### **AN ANALYTICAL SCHEME**

In order to determine how far the governance mechanisms go, this thesis utilizes an analytical scheme that categorizes actors' efforts at FAW measures based on enforceability and attitude towards animals. Examining FAW measures rather than just TAG is important because while TAG is subject to regulations for public health, anti-competition, or free trade issues, farmed animal welfare measures are the only type of legislation that attempt to consider animals for animals' sake. Investigating further into the welfare of farmed animals is a valuable step since transnational animal agribusiness, as an industry, assumes the commodification of animals and their slaughter for profit; on the other hand, animal welfare measures increasingly attempt to reduce suffering and value animal sentience. The two categories of 'enforceability' and 'attitude towards animals' attempt to situate the impact of different governance mechanisms of FAW on the animals. This chapter will ground this thesis' analytical scheme through organizing the debates surrounding farmed animal welfare within TAG as reported in industry, animal advocacy, development, and international organizational literature. It will focus on public policy's regulatory measures, though private governance will be briefly mentioned for contrast.

#### **Enforceability**

Many environmental governance scholars define an "accountability deficit" as one of the key issues within governance of cross-border entities, particularly with transnational environmental harm (Mason 2008). Mason (2008) reviews modes of accountability or

responsibility and finds the concepts of ‘answerability’ and ‘redress’ as the “core elements” to these frameworks (12). This thesis uses the term ‘enforceability’ to capture the lack of answerability and redress when it comes to abiding by TAG or FAW legislation. I adopt what Mason (2008) considers the global governance perspective in that I attempt to locate the multilateral governance collaborations between transnational public organizations, states, and private industries (though I focus on public, not private governance) (14-5). This thesis recognizes though that the “definitions and framings of accountability tend to be driven by normative agendas rather than by empirical realities” (Weisband and Ebrahim qtd on Mason 2008:13). In that way, this thesis privileges the established governance institutions without noting the efforts of civil society, or activist networks. Chapter 6 is an effort to re-frame the conception of governance of TAG and FAW to these other levels.

Why is the enforceability of FAW or TAG legislation an important issue? FAW represents a hybrid of social concern and ethics, and scientific and technological advancements. Through the global governance perspective I see that the regulation of FAW is constantly shifting and contested amongst the various stakeholders including producers, consumers, retailers, governing bodies, and advocacy actors. The increasing number of codes, laws, and regulations regarding farmed animal welfare underscores the importance of this issue to multiple stakeholders and of the enforceability of those efforts. Most often, these issues have transcended from the farmer or producer’s discretion into the public policy and market realm (Lund et al. 2004). Without the accountability inherent in enforced rules, the benefits of improved animal welfare might not be actualized in practice. Since regulatory governance mechanisms offer the “most immediate” method of overcoming the modern human/animal dualism (Buller and Morris 2003: 232), whether or not global, regional, or national actors enforce the regulations can reveal the sincerity with which the global governance actors view farmed animal welfare and by extension, animals. The success of governance mechanisms also reflects the degree to which the various

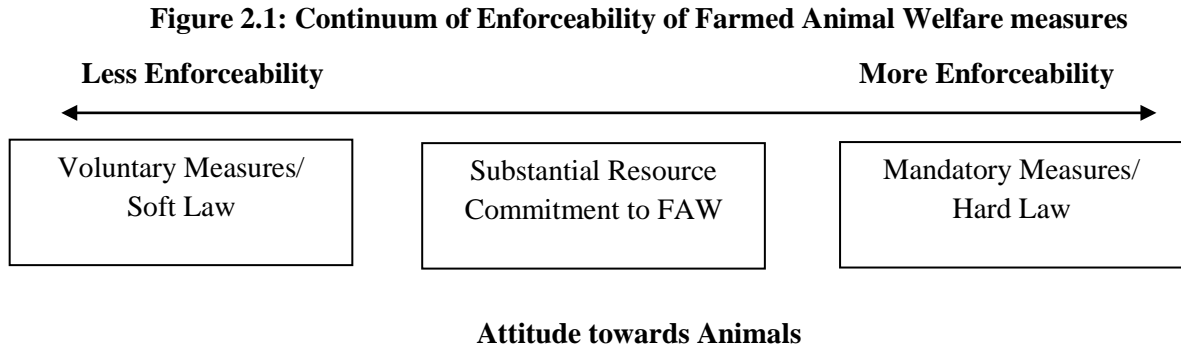
stakeholders view the measures as legitimate. In this way, transparency and better stakeholder participation can improve legitimacy of measures, and lessen the degree to which the measures need to be monitored or enforced (Bradley and MacRae 2010: 27). The enforceability category attempts to bring these issues to light.

Who holds FAW measures accountable varies among market, regulatory, and quality assurance welfare measures; these actors also require differing levels of responsibility for enforceability (Buller 2010: 3). Buller finds that: market strategies use the retailers and professional producer organizations; regulatory strategies use the state governments and international organizational actors; and quality assurance strategies use territorial actors like producer groups to be held accountable for the measures they propose (*ibid*). Third-party auditing groups can also play an important role in verifying the standards of market or quality assurance strategies. Regulatory strategies are presumed to require the most enforceability; accordingly, because this thesis is focusing on the public governance of transnational animal agribusiness, regulatory mechanisms through states and international organizations are given more weight.

As mentioned above, the enforceability of the regulations can reveal implicit perceptions of animals as important or unimportant. This thesis attempts to capture this by categorizing governance of FAW within TAG along a continuum from mandatory to voluntary measures depending on their enforceability. The source of FAW measures is expected to have an effect on the enforceability of the measures. In general, this thesis suspects that international organizations suggest voluntary measures that encourage the spread of FAW norms and knowledge, but desire harder laws to improve FAW while states and other international governing bodies offer weak laws to improve FAW but sometimes attempt stronger measures through soft law (for a discussion on policy transfer within transnational networks, see Stone 2004: 545). A transparent policy with substantial commitment of personnel, money, or other resources to farmed animal



welfare would exist in a middle ground between these two ends. Figure 2.1 illustrates this continuum.



In its analysis of animal welfare, this thesis finds that ‘attitude towards animals’ is a more direct way of looking at a policy’s attitude towards animals rather than examining the extent of a welfare measure. FAW measures are presumed to consider animals first and foremost, but deeper analysis reveals that this might not always be true. Placing FAW approaches on a continuum based on their attitudes towards animals should reveal significant variation in governance attitudes.

On the end of highest attitude toward animals, this thesis goes beyond the common theme of good animal welfare as “animals are healthy and have what they want” (Dawkins 2008:74). The high end would in fact, reject FAW measures and TAG in order to appreciate animals as true sentient beings with lives worthy of living. This view reveals the farmed animal welfare paradox: all animals want to live, rather than not to live. The act of raising animals specifically for food anticipates their slaughter, and unarguably constrains animals’ desire for life; FAW measures cannot stop this. Francione (1996) rejects ‘new welfarist’ hybrid approaches that attempt to treat animals better instead of working for long-term abolition of animal exploitation. The strongest stance for animals is seen by many as the adoption of veganism: Regan (1984), Penman (1996), and Francione (1996) all argue for the universal adoption of veganism.

Since even the recognition of animal sentience without stronger political implications (like the rejection of TAG or FAW measures) is rare, this analytical scheme uses ‘recognition of animal sentience’ as another category beneath the top one. While animal sentience has been a catchphrase goal of the animal advocacy movement, it seems to offer little motivation for appropriate actions on the welfare front. Recognizing animals as sentient is supposedly an advancement from a completely instrumental view, though further analysis might reveal otherwise.

The difference between these top two categories of rejection of TAG or FAW measures and a recognition of animal sentience can be explained in a discussion of grievability. A rejection of TAG or FAW measures would recognize the grievability of animals while a recognition of animal sentience would not necessarily address their grievability. Grievability is discussed further in Chapters 5 and 6, but essentially the concept captures human perception of animals as worthy of living. The concept of grievability additionally imbues a human sense of responsibility for farmed animal existence especially in the case of animal agriculture, since the animals have been bred for human consumption and would not exist in their current size or number without human efforts. Grievability involves a personal sense of sadness while animal sentience is more scientific and objective. Animal sentience can be tested under animal welfare science by using physical tests, and historically has catalyzed minimal improvements to an animal’s environment as a way to rectify an animal’s sentience with its use by humans. Moving through a sense of animals’ grievability would lead governance mechanisms hopefully to a rejection of TAG or FAW, not just to a recognition of animal sentience. A full embrace of animal grievability would then inspire alternatives to animal agriculture such as a reduction in consumption and production of animal products, or abolition of consumption and production of animal products; these alternatives will be further addressed in Chapters 5 and 6.

A standard understanding of FAW then falls under the ‘less instrumental’ category. Advocates for animal welfare argue that their *quality* of life comes into play. While anticipating an animal’s quality of life is not exactly an instrumental point of view, I argue that the implicit view of animals behind the stated belief in their sentience is that animals are for human use, and since they are sentient, humans have an obligation to treat them well. (If these advocates truly saw animals as sentient, would they continue to condone their slaughter?) These advocates often use a more specific understanding of animal welfare: “physical and emotional well-being [as] distinct from animal rights or citizen-related entitlements” (Kendall, Lobao, and Sharp 2006). Another common definition states that farmed animal welfare regards “an individual animal[’s]... attempt to cope with its environment, with attempts to cope including the functioning of body repair systems, immunological defences, the physiological stress response and a variety of behavioural responses” (Broom 1996). Vanhonacker et al. (2011) divide approaches to animal welfare in three: body, mind, and nature. They criticize approaches to FAW that only address the animals’ bodily needs—adequate food, water, and shelter—but fail to adequately address mental and natural well-being. Other approaches they mention go further in conceptualizing the animals’ need to feel safe, or free from harm. They consider the farthest reaching measures to encompass the animals’ need to express their natural behaviors, but presumably not the animal’s natural desire to live (Vanhonacker et al. 2011).

This category would also include efforts to value the process and production measures or PPMs, particularly non-product related or NPR PPMs. NPR PPMs include animal welfare, a production concern which is not obvious in the final product, but still matters because animals matter, or the perception of animal welfare matters. The debate over how to include NPR PPMs in international trade law will be discussed at length in the next chapter.

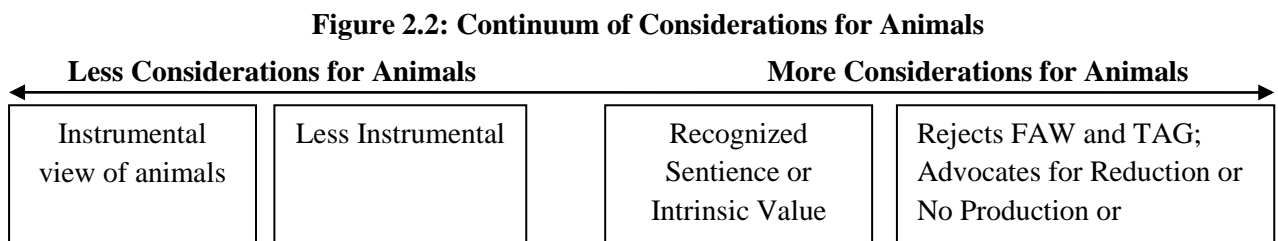
De Greef et al. (2005) instead define vaguer, non-hierarchical conceptions of FAW: “no suffering, respect for intrinsic value, and non-appalling appearance of animals” to conclude that

the minimization of suffering is a commonality in all animal welfare strategies (57). Appearance might seem like a superficial category for welfare, but I argue that it seems that all animal welfare conceptions are based in a human experience. Buller and Morris (2003) elaborate on this idea; they argue that no farm animal welfare strategy truly addresses animals since “the continued use of farm animals as a source of food and resources for humans maintains an essentially impenetrable humanity/animality divide that ethical and moral positioning as well as human-non-human associations fail to bridge” (217). Welfare measures, especially instrumental ones, then pose faulty morals.

A ‘more instrumental’ approach would then see that animal well-being leads to other positive things like good public health, economic benefit, lack of zoonotic diseases, or some combination of these.

That animal welfare concerns vary due to attitude towards animals becomes obvious here. My analytical scheme hopes to clarify that letting animals live and letting them live in a more “humane” way makes a qualitative difference in the animal’s life.

Figure 2.2 offers examples of where various measures might fall within the continuum.



The two categories ‘enforceability’ and ‘attitude towards farmed animal welfare’ combined will look like Table 2.1:

**Table 2.1: Analytical Scheme along continuums of enforceability and attitude towards FAW**

	More Instrumental	Less Instrumental	Recognizes Animal Sentience/ Intrinsic Value	Rejects TAG/FAW; Advocates for Reduction or no Production or Consumption
-Voluntary Spread of Norms or Practice, Soft Law				
-Substantial Resource Commitment				
-Less Enforceable				
-More Enforceable, Hard Law				

This thesis is most interested to see if any governance efforts are enforceable by hard law and advocate for a rejection of FAW or TAG, and a reduction or no production or consumption of animal products. It seems that most advocates for the reduction or abstinence of production or consumption focus on voluntary spread of norms or practice by individuals. In the same way, most enforceable measures do not bother elaborating on animals, and instead view animals as instruments to public health and disease control. Where specific entities will fall within this continuum will be discussed in Chapters 3 and 4.

## **CHAPTER 3: TRANSNATIONAL PUBLIC GOVERNANCE OF FARMED ANIMAL WELFARE**

The next two chapters attempt to capture the governance of TAG and its treatment of FAW by examining public governance at a transnational and regional/state level. They examine transnational organizations and state governments because they seem most consequential yet democratic. While true governance expresses itself in a variety of ways, not just through proper institutions, these institutions have developed (or permitted the development of) a TAG regime. This thesis's notion of 'multilevel governance' has roots in the 'regime' concept in which "a set of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations" (Krasner qtd in Van Kersbergen and Van Waarden 2004:149). The policy network governing TAG is made of political actors from states, international and transnational organizations and agreements, private<sup>10</sup> actors, and civil society actors; this thesis concentrates on public governance with a global impact in order to address the most powerful public influences governing animals.

The way the public actors define farmed animal welfare frames the way their policies deal with animals. Unfortunately, there are no international agreements on farmed animal welfare. The previous chapter focused on two key factors for analyzing governance schemes of farmed animal welfare: enforceability and attitude towards animals. This chapter will examine the transnational public governance of farmed animal welfare at the global, regional, and bilateral

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<sup>10</sup> Since TAG emerges from the private sphere, the internal governance of the industry speaks volumes of its treatment of animals; however, here I am examining the ability for public actors to negotiate change for animals.

levels, using that analytical scheme to categorize governance efforts. Since farmed animal welfare standards could be arrived at through multilateral or bilateral agreements, this chapter will briefly address those agreements before extending my focus to the WTO, the OIE, and the FAO. Each case will consider whether the governance mechanisms are enforceable and whether they seriously consider animals. Additionally, this chapter's consideration of the organizations and agreements will determine the explicit activities and their actual implicit impact on animals including where money and personnel are sent.

### **Global, Regional and Bilateral Agreements**

Before beginning with a discussion of specific transnational organizations, I will briefly describe global, regional, and bilateral agreements that affect the governance of TAG. These agreements arguably have more legitimacy and enforceability due to their closeness with the state governments than do the international organizations. Although there has been no binding multilateral or global agreement on animal welfare, several binding and non-binding regional and bilateral agreements do mention their concerns for animal within trade. Transnational agreements by the WTO discuss animal health, but so far ignore farmed animal welfare—although, many believe the WTO could incorporate FAW into these agreements (Hobbs et al. 2002). The only regional agreement on FAW is in existence through the EU's 1997 Treaty of Amsterdam. Bilateral agreements that include farmed animal welfare measures include the EU's free trade agreement with Chile which includes animal welfare concerns (especially on the stunning and slaughter of animals); because of that, this free trade agreement is one of the EU's more progressive agreements (Rudloff and Simons 2004). While agreements at all three levels hold more weight than transnational organizations, unfortunately none exist outside of the EU (and Chile). For this reason, I will explore transnational organizations to assess the governance deficit of TAG and FAW. My methodological reasons for selecting the WTO, the OIE, and the FAO are because they are the organizations most often referenced in the governance of animal agriculture

literature. I will begin with the WTO since its role is more consequential; I will continue with the OIE which the WTO named as a FAW standard setting body; and I will then look at the FAO and its efforts to promote FAW.

## WTO

Although the WTO is relatively small, it wields a lot of power due to its transnational agreements and dispute resolution powers. Its ability to influence multilateral environmental agreements (and I argue, potentially FAW agreements) is contested between Young and Eckersley. Eckersley (2004) assesses the WTO's "regulatory chill" effect on multilateral environmental agreements and found that the WTO's trade agreements do "limit the scope and operation of MEAs" (1). Young on the other hand claims states still hold more power than the WTO and that concern over the WTO's detrimental effect on MEAs is a "self-fulfilling prophecy" (2005: 48). With that said, the WTO only implicitly governs animal agribusiness and FAW, so even though the EU has strong regional agreements on FAW, it failed to get the WTO to adopt FAW measures. It appears that Eckersley's position is more correct in this instance.

Animal welfare is an understated trade concern within the WTO. A simple search on their website for the term resulted in only 570 hits while a search for "the environment" returned 15,000 hits (search 4/10/2010). The WTO currently has no rulings directly impacting the welfare of farmed animals. Similar to Eckersley, many international legal scholars argue that its lack of decision making on farmed animal welfare has had indirect but deleterious effects on animals<sup>11</sup>. Thomas (2007) notes: "Animal welfare advocates view global free trade agreements as a major reason for the lack of progress on welfare issues to date. The most important trade pact affecting animal welfare is GATT and its progeny, the WTO" (609). Similarly, Nielsen (2007) finds that the WTO "has interfered with the ability of the members to enact trade measures to protect the

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<sup>11</sup> Stevenson (2002) even says that through the decisions they have made, the WTO has had a "highly detrimental impact on measures designed to protect animals" (1). He refers specifically to the changes mandated by the WTO in the *Tuna-Dolphin* and the *Shrimp-Turtle* cases.



environment or animal welfare, because these measures are most likely inconsistent with the substantive obligation under the GATT” (8). The WTO’s member states recognize the WTO’s ability to enforce trade sanctions and so the WTO effectively governs global trade in a way that no other individual governing body can manage.

Farmed animal welfare is a growing global concern though, so if the WTO somehow did include farmed animal welfare standards, the welfare of animals during the process of animal production could be *de facto* improved. As mentioned above, the EU acted on this idea in 2000, and submitted a proposal to the Committee on Agriculture recommending that the WTO create a framework through which animal welfare is valued. The impetus for their submission was concern over cheap imports with lower welfare standards undercutting their domestic products created under strict domestic standards and at a higher cost (Hobbs et al. 2002: 439). The EU’s proposal offered multiple (nonexclusive) avenues for pursuing farm animal welfare through multilateral agreements, a labeling regime, and subsidized production (*ibid* 440). However, the WTO has not continued discussion on the proposal by the EU since developing countries argued for their need to alleviate human problems before animal welfare and some from both developing and developed countries thought consumers should be able decide for themselves if they wanted to pay more for higher welfare standards (*ibid* 440; WTO 2011b). Additionally, certain agreements of the WTO—specifically the Agreement on Agriculture (AoA), Agreement on Sanitary and Phytosanitary Measures (SPS), Agreement on Technical Barriers to Trade (TBT), and the General Agreement on Tariffs and Trade (GATT)—work against “protectionist measures” of states (like animal welfare standards) that legislate a preference for domestic over international products either by restricting trade or other discrimination. It seems that the EU’s proposal goes against the wishes of many WTO member states and the current agreements of the WTO (*ibid* 446). In spite of this, PPMs have been considered in recent cases so re-examining the WTO’s potential for animal welfare is necessary. First, I will describe process and production measures (PPMs). Then, I will examine function of each GATT agreement and how these

agreements can either help or hurt animal welfare standards setting through their treatment of PPMs.

The potential utility of WTO agreements to help animals comes from PPMs and their ability to bring light to the production process with which animal welfare standards are concerned. Read (2005) defines PPMs as: “the desire of some countries to regulate international trade in goods and services on the basis of the inputs and process technologies utilized in their production” (239). PPMs have been invoked to examine trade disputes within the WTO regarding various forms of negative externalities like pollution, labor issues, genetically modified organisms, and conservation of natural resources. PPMs could also refocus governance efforts to include animals, instead of simply improving trade relations of transnational animal agribusinesses.

PPMs could be incorporated under several WTO agreements: the AoA, SPS, TBT and GATT XX. Any of the agreements could potentially improve animal welfare through PPMs, but Read finds that the debate over animal welfare in the WTO to be whether or not the issue can be solved under existing WTO Agreements (*ibid*: 240). I will first explain these existing agreements before exploring proposals for changes or new agreements.

The AoA was created to encourage more “market orientation” for agricultural trade by defining “market access, domestic support and export subsidies;” the AoA also developed “Green Box” subsidies for “non-trade distorting” domestic measures (WTO 2011). Peterson argues for the use of AoA’s “Green Box” subsidy allowance; this would give governments the power to offer agricultural subsidies for “non-trade distorting” subsidies (2002:31). These could be used to offset the cost of increasing animal welfare standards in terms of housing, equipment, feed, and care.

SPS measures similarly respect a state’s right to regulate animal products, however, the state’s prerogative extends “only to the extent necessary to protect human, animal or plant life or

health and should not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail” (WTO 2011). In the case of transnational animal agribusiness, the SPS agreements have been discussed in order to determine which countries/transnational agribusinesses can trade animal products internationally. If the WTO were to officially adopt higher standards for measuring animal *health* standards under the SPS, *and* those standards included measures of animal *welfare*, then the WTO could possibly inspire better livelihoods for animals. Peterson (2002) agrees; SPS can be used to defend animal welfare programs—in particular, the health standards set by the SPS could be used to make a connection “between animal health and animal welfare” (25-26). Additionally, the SPS has a goal of harmonizing global standards for animal health and names the OIE as the standard-setting body. The OIE’s Terrestrial Animal Health Code clearly states “that humans who use animals have an ‘ethical responsibility’ to ensure animal welfare ‘to the greatest extent practicable,’” and also that higher animal welfare can often improve food safety (OIE 2010: 7.1.2.6). On the other hand, Peterson recognizes that the OIE’s standards are not easily translated into practice—though the Code does name the commonly cited, and easier to practice Five Freedoms, also referred to as the Brambell Report from the UK’s Farm Animal Welfare Council in 1965—but the SPS could define animal welfare standards without help from the OIE (Peterson 2002).

Including FAW within the SPS agreement is problematic for a few reasons: existing concern within developing countries, existing differing interpretations by countries, and difficult enforceability of standards. Since the WTO deals more specifically with trade issues, the above discussion of SPS and the proposed animal welfare standards have required discussion on “*cui bono?*” Unfortunately, many argue that WTO’s SPS standards have perpetuated the uneven playing field by creating a high entry for developing countries to fit the food health standards set by industrialized countries (FAO 2005). They argue that further improvement in animal welfare standards could create more such barriers. Differing interpretations also result from the WTO’s SPS guidelines; more importantly, no variation has read the guidelines as mandatory above state

sovereignty or state regulations on SPS issues (Macrory et al. 2005)<sup>12</sup>. By extension, the enforceability of an inclusion of PPM standards within the WTO's SPS regulations is questionable.

The TBT attempts to reign in technical standards, certification, or testing such that they do not constrain trade. Interestingly, the revised TBT includes process and production measures (PPMs) defined as characteristics of the product itself, representing a potential improvement for animals, the environment, and labor from the previous version (WTO 2010: 96). Other agreements could overrule this change though. For example, in the GATT, Article I(1) on the "Most-Favored Nation," and Article III(1) on "National Treatment," member states are prohibited from discriminating between "like" products from a particular WTO member and other WTO states, and a WTO member's products and its own domestic products (Peterson 2010: 8-9). No precedent has been set to allow the WTO to reconsider animal products produced under differing animal welfare standards as not "like" products, even though the production process could have been radically different. International legal scholars recognize these differences as PPMs, which more often than not do not affect the final product's "likeness"—in which case, they are called "non-product related PPMs" or "NPR PPMs" (*ibid*: 10; see also Charnowitz 2002). NPR PPMs then would not be included in the revised TBT mentioned above. Additionally, many members of the WTO see farm animal welfare as not being included in PPMs that affect characteristics of the product, or Product-Related PPMs (WTO 2010: 96). If the state soliciting change can prove TBT via Product-Related PPMs, this path could be successful.

While the AoA's "Green Box" rule could possibly allow domestic subsidies for higher farm animal welfare standards, SPS standards could include animal welfare as a function of animal health, and TBT could examine PPMs under the new definition, most scholars and the

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<sup>12</sup> Macrory et al. (2005) quotes the Appellate Board: "We cannot lightly assume that sovereign states intended to impose on themselves the more *onerous*, rather than the less burdensome, obligation by mandating *conformity* or *compliance with* such [SPS] standards, guidelines and recommendations" (emphasis original, 2059).

Commission of the European Communities recommend the use of GATT Article XX. The GATT Article XX can invoke the use of a special exception for animal welfare standards as “necessary to protect public morals” (Stevenson 2002, Thomas 2007, Nielsen 2007, and Commission of the European Communities 2002).

Nielsen (2007) takes interests in the GATT’s Article XX moral exception clause as well except she argues for a distinction in the WTO Agreements between public moral issues, like animal welfare, which she says are determined morally and environmental ones, which are determined scientifically. She claims that because of the moral differences in how humans treat animals around the world, the international community has difficulty coming to a consensus on welfare standards (325).<sup>13</sup> Furthermore, Nielsen claims that the way multilateral environmental agreements (MEAs) govern wildlife scientifically (in quantifying aspects of a particular species) is a vastly different legal issue than governing animal welfare morally (in judging individual animals’ welfare)<sup>14</sup>. Consequently, she recommends the WTO to split GATT Article XX into three sections: human health, moral issues (like animal welfare), and environmental issues (Nielsen 2007: 15). This is due to what she sees as a problematic distinction<sup>15</sup> between the GATT Article XX paragraphs (a), (b), and (g): the first two permit a trade restriction if it is *necessary* for (a) public morals or (b) human, animal, plant life or health whereas (g) is pursued through measures *relating to* the conservation of natural resources. Her point is that trade restrictions on animal welfare could be tested through all three points with different results on the validity of the restriction. She concludes that animal welfare should be decided on by the membership of the WTO rather than by the dispute settlement panels or the Appellate Board. Ultimately, she finds that animal welfare and other morally founded NPR-PPMs could be passed

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<sup>13</sup> She fails to reconcile the differences in the way humans view, and subsequently moralize, the environment around the world; however, her argument strengthens when she considers the view of wildlife and farm or experimental animals.

<sup>14</sup> Nielsen (2007) also claims that MEAs are unable to protect animals from trade because they usually only protect species in a host country without discussing trade.

<sup>15</sup> Vranes (2009) harshly critiqued Nielsen’s analysis of the three paragraph subsections and cited her misunderstanding of pursuing policy *aims* via Article XX with the least trade-restrictive *means* (4).

but only if GATT Article XX were revised (*ibid* 328). It seems that GATT Article XX can offer a better analysis of morally-founded non-product related PPMs (Nielsen 2007: 328).

Thomas also saw room to incorporate higher welfare standards through the GATT Article XX's special moral exception which could review PPMs via the "policy" test. Thomas (2007) finds that higher welfare standards could be pursued best through a dispute settlement (with subsequent enactment of the "policy" test) of a carefully designed import ban on lower welfare animal products. He uses the contemporaneous example of the EU's 2007 Council Directive "On the Laying Down Minimum Rules for the Protection of Chickens Kept for Meat Production" and its proposal to ban the import of chicken from "third countries" with lower welfare standards. Like Read, Thomas argues that "When PPMs are not taken into consideration, nations cannot give preferential treatment to a product produced according to higher welfare standards" (2007: 608; see also Kysar 2004 and Stevenson 2002). He believes that this point under the "policy test" might allow the ban to pass through the WTO's dispute settlement body. Unfortunately the proposal referred to by Thomas did not make it past the Council of Ministers six months after his article was written. In the final adopted legislation, the animal welfare concerns stayed the same, but the degree of improvement to animal welfare was lessened, special exceptions to all of the stronger welfare rules for permitted, and most notably, the ban on the import of chickens raised with lower welfare standards was dropped (Council Directive 2007).

NPR PPMs have recently been considered valid concerns in WTO dispute panels and Appellate Body rulings leading scholars to see space for future animal welfare law (Thomas 2007). While the *Tuna-Dolphin* case ended with the WTO's insistence on free trade trumping PPM concerns, in the more recent cases on *Asbestos*, and *Shrimp-Turtle*, the ruling body decided in favor of restricting trade based on NPR PPMs (Thomas 2007: 611). Stevenson (2002) interprets the Appellate Body's rulings as allowing trade regulations to reflect consumer preference and public concern. The use of Article XX (a) can be helpful in this regard since it allows for a moral exception to trade measures deemed "necessary to protect public morals."

Archibald also heralds this decision as representative of the WTO's new conception of balance as "the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment" (the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations qtd. on Archibald 2008:18). While the GATT had no statement on the wise use of the world's resources (and thusly decided on the *Tuna-Dolphin* case without considering wise resource use), the WTO agreement does recommend wise use, and Archibald interprets the *Shrimp-Turtle* case as a manifestation of their commitment to such. Archibald (2008), Stevenson (2002), and Thomas (2007) all find that animal welfare PPM distinctions can exist within the WTO and international trade. Stronger NPR PPM trade restrictions have an opportunity for acceptance by the WTO then; getting farmed animal welfare on the agenda as a valid PPM then is the issue.

Even though the WTO has the potential to incorporate moral concerns like animal welfare as PPMs, I have placed the WTO in the 'more instrumental view of animals' category (see Table 3.1) since there seems to be no impetus for it to consider farm animals other than as products. This can be seen in the WTO's insistence on "sound" science-based decision-making and rejection of political decision-making. It claims that the most important part of setting of new standards is providing evidence that the measures were founded from risk assessment based in science (Peterson 2002: 28). For example, when the European Community (EC) attempted to ban the import of meat from cows that had been treated with artificial growth hormones in 1998, the Appellate Body ruled that the measure was stricter than international standards without any scientific justification (*ibid* 29). Even after the EC invoked the precautionary principle, the Appellate Body rejected it claiming that "[the precautionary principle] is not an alternative to risk assessment and scientific evidence for a definitive standard" (*ibid* footnote 202: 29). Even though this ruling was about artificial treatment of a food product and not about animal welfare, it

seems unlikely that the WTO would strongly consider animal welfare as a science<sup>16</sup>. As noted before, the WTO has not yet ruled on farmed animal welfare measures. Their online materials had no mention of information regarding funding for this emerging legal zone or personnel researching this avenue. Not only does the WTO not directly engage in farm animal welfare governance but as a trade dispute settlement body, it is capable of strong reparations against “protectionist” or incompliant member states who do attempt farm animal welfare regulation. Because of that, I have placed it in the ‘more enforceable’ category.

### **World Organization for Animal Health (OIE)**

The World Organisation for Animal Health (OIE<sup>17</sup>) is an intergovernmental organization with 176 member states originally tasked in 1924 with managing global health crises and pandemics. The OIE is now considered the international standard-setting organization for animal health and welfare. The organization recognizes “the essential link between animal health and welfare” and sees its mandate to improve animal health and welfare worldwide as a global public good (OIE 2002; OIE 2011a).

The movement to define farmed animal health was led first by the OIE and its Animal Health Codes in the 1960s. These voluntary codes were revised regularly. In 1995, they became the international standard referenced by the WTO’s Sanitary and Phytosanitary (SPS) Agreement. The primary goal of the OIE as stated by the OIE Director-General Bernard Vallat at the First Global Conference is to propose guidelines “for adoption by our International Committee<sup>18</sup>” with

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<sup>16</sup> Sharpless says that “animal welfare science is applied rather than basic science” making it a “value-laden balancing test” (2008: 37-8).

<sup>17</sup> The OIE changed its official name from the Office International Des Epizooties in 2003, but kept its well-known acronym.

<sup>18</sup> According to the OIE, the International Committee consists of delegates (often the chief veterinary officers) from all member countries and meets at least once a year at the five-day-long General Session of the International Committee. Each country gets one delegate, and one vote.



the ultimate goal being “a gradual harmonization of existing national and regional legislation” (Vallat qtd. on Sharpless 2008: 35).

The OIE’s animal welfare goal has come into light over the past ten years. Following the EU’s unsuccessful attempt at an introduction of animal welfare concerns to the WTO in 2000, in 2001 the OIE’s International Committee adopted a Strategic Plan to prioritize animal welfare (as related to animal health) standards over the following five years. A working group on animal welfare moved into action in 2002 when it proposed recommendations on animal welfare which were adopted by member states as the Resolution on Animal Welfare (OIE 2009). The first principle of the Resolution states: “There is a critical relationship between animal health and animal welfare” which was incorporated into the Terrestrial Animal Health Code in 2004 (OIE 2011a). Updated in 2009, this document includes recommendations on international standards for transport by air, sea, and land, for slaughtering animals in slaughterhouses and for killing of agricultural animals for disease purposes (OIE 2011a). Many of the OIE standards appear to have been inspired by the EU’s directives which were temporally prior; however, the OIE’s seven specific animal welfare standards<sup>19</sup> are updated regularly to account for scientific progress. All parties to the OIE (currently 178 countries and regions) voted to adopt the Code to the OIE’s body of standards, however, neither ratification within the countries nor compliance is not enforceable by the OIE (OIE 2011a).

From 2002 on, the OIE has been a main player in organizing global actors in farmed animal welfare. In 2004, the OIE organized the first international conference on animal welfare which welcomed scientists, non-profit NGOs, private sector, and governmental authorities to discuss ways in which the OIE could promote animal welfare. The OIE’s creation of the World

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<sup>19</sup> These seven standards cover: the transport of animals by land; the transport of animals by sea; the transport of animals by air; the slaughter of animals for human consumption; the killing of animals for disease control purposes; the control of stray dog populations; the use of animals in research and education; the welfare of farmed fish during transport; and the welfare aspects of stunning and killing of farmed fish for human consumption (OIE 2011b).

Health and Welfare Fund in 2004 by unanimous vote by 167 member countries established avenues to assist developing countries meet international standards for animal welfare among other issues like disease outbreak. The second OIE Global Conference on Animal Welfare in 2008 concerned the adoption and implementation of their welfare standards. The OIE continues to support the efforts of its Animal Welfare Working Group (OIE 2011b).

In a shift from most private standards, the OIE is concerned with animal welfare science-based and outcome-focused codes geared to reduce stress and unnecessary pain to individual animals, rather than simply improving resources via space increase, temperature control, and air flow. These standards are problematic because they are unenforceable. The OIE's animal-centered codes pay attention to "survival rate, disease and injury, behaviour, and reaction to handlers" which requires more effort to measure but these measures arguably treat animals better than the resource-oriented measures (Alberta Farm Animal Care 2008); however, implementation and enforcement of these codes is not considered within the OIE's jurisdiction—each member state retains that. On the other hand, since these codes are transparently and democratically voted upon by member countries, many see the OIE as key to setting international animal welfare standards. This is a valued task since having standards agreed upon by the international community would facilitate later acceptance under TBT and SPS agreements or bilateral agreements (Peterson 2002: 27-8).

Animal welfare concerns are a priority of the OIE, although it is unclear how many employees are staffed under that research and policy-making area, or how much money they spend on animal welfare issues. The OIE has recently decided to help member states implement the OIE recommendations via voluntary contributions from other member states to the World Animal Health and Welfare Fund (OIE 2011c). While the actual monetary amount available from and the priorities of this fund are unclear, donors are listed in their online materials. They include the WTO, the FAO, the World Health Organization (WHO), the World Bank, the USA,

UK, EU, and other developed countries (OIE 2011f). The threshold for donors to become members of the advisory committee is \$1M (USD) (OIE 2011f). The advisory committee meetings are attended by representatives from the WTO, WHO, FAO, the OIE, and main donors: the World Bank, the European Union, Australia, Canada, France, Italy, Japan, Switzerland, UK, and USA (*ibid*). Interestingly, a private collaboration effort of global food companies, academia, intergovernmental organization, international NGOs called SSAFE is allowed a representative as well. Members of SSAFE include:

Cargill, Danone, Keystone Foods, McDonald's, Michigan State University, Nestle Purina PetCare, Pfizer Animal Health, The Coca-Cola Company and Underwriters Laboratories. Current Collaborators include: CARE USA, Center for Science in the Public Interest, Colorado State University<sup>20</sup>, Food and Agricultural Organization (FAO), International Federation for Animal Health, National Veterinary School of Alfort, Wildlife Conservation Society (WCS), EcoHealth Alliance, World Organization for Animal Health (OIE) (*ibid*).

An independent assessment of the Fund's activity from 2008-2009 found that "the Fund has largely met its objectives;" the evaluation statement failed to include any specific details however its overall recommendations did encourage an improvement in veterinary services capacity, and a look into collaboration with more private actors (OIE 2011f).

As mentioned earlier, the OIE's lack of enforceability in the eyes of the WTO places it in an awkward position; it defines standards yet the WTO does not enforce them<sup>21</sup>. Many veterinary and animal health member state organizations mention the OIE as the standard setting organization for animal health, so it does seem like most countries abide by these standards. In any case, the lack of binding enforcement mechanism places the OIE in the 'less enforceable' category. While the OIE does not recognize animal sentience, its codes on slaughter, transport, and housing of various groups of animals emphasize the need to reduce suffering and undue pain

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<sup>20</sup> I attempted to find the contact for this project but Dr. Salman from Colorado State University who had been asked to be on the SSAFE committee said he denied the position and did not know of another person who had accepted it (Salman 2011).

<sup>21</sup> This is very similar to the ongoing International Labour Organization (ILO)/WTO debate.

and stress in animals. Because of that, I have placed the OIE in the ‘less instrumental view of animals’ category.

### **Food and Agriculture Organization (FAO)**

The United Nations’ Food and Agriculture Organization (FAO) works to eradicate world hunger through improving and modernizing agriculture. The FAO focuses its efforts on developing countries since they are where the majority of the world’s poor and hungry live. As such, the organization frequently deals with the conflict between industrialized large-scale commercial agriculture and small-scale agriculturalists. The FAO facilitates knowledge transfer in a few ways which represent a commitment to exploring, but perhaps, not quite governing farm animal welfare. Its largest contribution to global farmed animal welfare is its web portal “Gateway to Farm Animal Welfare.” As a statement to its dissatisfaction with the current state of animal welfare in both modern and traditional agriculture, and as a “capacity-building” exercise, the FAO hosted an open forum with experts entitled the “Initiative on Capacity Building to Implement Good Animal Welfare Practices and Expert Meeting” in 2008 (FAO 2008) . With feedback from this meeting in hand, the FAO launched the Gateway to Farm Animal Welfare in 2009 as a source of information on legislation, best practices, and news and events for individual producers, NGOs or IGOS, states, and industry groups. Most partners in the Gateway<sup>22</sup> deal directly with farmed animal welfare, though a few do not. Because the FAO is the organizing body for such a diverse set of perspectives, the FAO does not make explicit its own animal welfare concerns on the Gateway portal.

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<sup>22</sup> This web portal serves as an active partnership between the FAO, the European Commission, the World Organization for Animal Health (OIE), the International Fund for Agricultural Development (IFAD), Compassion In World Farming (CiWF), the Latin American Poultry Association, Humane Society International (HIS), the International Fund for Animal Welfare (IFAW), the Royal Society for the Prevention of Cruelty to Animals (RSPCA), the Brooke, the World Society for the Protection of Animals (WSPA), the International Dairy Federation (IDF), the International Federation of Agriculture Producers (IFAP) and the World Veterinary Association (WVA).

The FAO declares that good animal welfare practices can “improve animal growth and production” first and foremost, leading to economic and public health benefits. It also states “the importance of animal welfare practices that lead to benefits for both people and their animals and supports their implementation” (FAO 2009). Interestingly, the FAO takes an inter-connected approach to the issue of animal welfare: they say animal welfare is only “one among many socially important goals including food safety and security, human and animal health, environmental sustainability, worker safety, rural development, gender equality, and social justice” (FAO 2008). On the FAO’s Animal Production and Health Division website, the FAO delves into ethical matters but as a complement to “practical” matters:

Poultry welfare matters for both ethical and practical reasons. From an ethical perspective, chickens have a sufficient degree of awareness or “sentience” to suffer pain if their health is poor, or deprivation if they are poorly housed. From a practical viewpoint, consumers value poultry welfare, so better market access may be obtained by producers who ensure good welfare in their flocks. Information about the topic is available from this website through links to information notes on specific subjects (FAO 2011).

Market access to small-scale animal producers does seem to be a major priority of the FAO (see Nicol 2011; and Nicol and Davies 2011). Another division of the FAO, the Committee on Agriculture, released a report in 2005 on the effects of the globalizing livestock sector on markets in developing countries; the report concluded with a request to gather examples of ways to alleviate the “potential negative impacts of globalization within the livestock sector, on poverty alleviation, public health and the environment” – with no note of animal welfare (FAO 2005). The report notes how the WTO and its Agreement on Agriculture attempted to level the playing field for those trading in animal agriculture, but the FAO (2005) concludes that liberalized world markets have not treated all countries fairly. Non-tariff barriers such as those requirements for food safety and animal health, especially the WTO’s SPS standards, have also perpetuated the uneven playing field by creating a “high entry” for developing countries to fit the disease standards set by industrialized countries (FAO 2005). An increase in environmental and animal

welfare standards could create more such barriers. The FAO argues against such approaches for a more holistic look at animal welfare.

On the other side, even though much of the FAO's work sees how animals and their welfare can improve the lives of *people*, in their executive summary from the expert meeting on "Capacity Building to Implement Good Animal Welfare Practices," the FAO found that "The view of animals as 'sentient beings', as reinforced by modern science, is spreading through scientific and veterinary education and *provides an additional impetus to safeguard animal welfare*" (FAO 2008: 4; emphasis added). More investigation reveals that in their statement on Good Agricultural Practices, the FAO includes an entire section on animal health and welfare claiming: "Farm animals are *sentient* beings and as such their welfare must be considered" (FAO 2003; emphasis added). Because the FAO's interest in incorporating a wide range of stakeholders, these sentences stand out. Without any binding legislation, the FAO belongs in the "voluntary spread of practice" category since, that is what they encourage—the voluntary spread of good farmed animal practices. Since the FAO does recognize animal sentience, albeit in a small way, I have placed it in 'recognizes animal sentience' category. Their explicit treatment of farmed animal welfare is politically nuanced, while their implicit treatment of farmed animal welfare is incremental and holistic. Unfortunately, I could find no indicators of staff or money dedicated solely to farmed animal welfare projects within the FAO.

### **Collaborative Governance by International Organizations**

The WTO, OIE, and the FAO collaborate with each other and with other international organizations in multiple avenues regarding farm animal welfare. The other organizations often include the World Health Organization (WHO) and the World Bank. I focus on these institutions specifically because they come up frequently in the literature, and represent the majority of more specific governing bodies within trade and animal agribusiness. These organizations' tasks often overlap and they frequently coordinate efforts with other IGOs, NGOs, governments, and

producers. All five organizations actually work together on the Standards and Trade Development Facility which guides developing countries in establishing and implementing WTO's Sanitary and Phytosanitary (SPS) regulations "to ensure health protection and facilitate trade expansion" (WTO 2011a) particularly in international animal agricultural trade. The WHO, FAO<sup>23</sup>, and OIE also collaborate in monitoring zoonoses (infectious diseases that can be transmitted from non-human animals to human animals), food safety issues, and the public health aspects of animal agricultural trade (WHO 2010). The WHO and FAO additionally investigate and regulate—in collaboration with national governments—genetically modified farmed animals for food safety risks through their Codex Alimentarius Commission (Schlundt 2006:383)<sup>24</sup>. The Codex Alimentarius (as produced by the FAO/WHO Food Standards Programme) represents a multilateral framework for creating norms and standards for the entire spectrum of food industries; these standards are aimed at biotechnology as previously mentioned, risk communication, and consumer protection.

Although these multilateral institutions benefit from their combined governance power, most of the standards recommended by each of these five organizations can only be regarded as non-binding in the face of state sovereignty; that is, *unless* the WTO were to rule on the recommendations. The WTO's decisions trump all others.

### **Conclusion**

The global public governance of farmed animal welfare has been changing. Through this analysis, it became clear that the 'enforceability' and 'attitude towards animals' variables vary significantly in the governance of animal welfare.

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<sup>23</sup> The FAO also has a separate Animal Health and Production Division that monitors the growing animal agri-food sector for public health risks and disease outbreaks.

<sup>24</sup> GM foods offer a litany of opportunities and risks for both agribusinesses and consumers. Currently, developing countries are faced with the choice of using biotechnology to improve animal breeding, health and nutrition, and livestock management; meanwhile, multilateral institutions work to harmonize regulations for "food safety, public health, animal health and plant health standards" (Schlundt 2006: 386). The way GM issues are handled could speak to how FAW might be handled in the future.

Many scholars are anticipating the effects of the WTO on the issue since the member countries of WTO may expand the jurisdiction of the WTO on farmed animal welfare and the WTO may expand its role through dispute resolution<sup>25</sup>. The OIE will no doubt continue to discuss and issue reports on adequate animal welfare practices, while the FAO will most likely continue to incorporate animal welfare into some of its other more mainstream projects like solving global hunger. Since the OIE and the FAO seem to be the leaders in collaboration, their responsibility with regards to farmed animal welfare standard setting need to be clarified on the WTO scene. The contested nature of the OIE especially is well-known; according to a report by the OIE in 2006 at a public forum of the WTO, even though the WTO recognizes the OIE as the international standard-setting organization for animal health, the OIE sees their weak role as problematic (Thiermann 2006). The presentation found the WTO's lack of animal welfare standards inconsistent especially since the Standards and Trade Development Facility, as a joint initiative with the WTO, the World Health Organization, World Bank, OIE, and the FAO, aims to help train experts in meeting OIE standards and implementing SPS standards. Their inability to enforce the OIE's Code contradicts the OIE's maintenance of itself as the international leader in setting animal welfare standards.

Alternatively, the potential ability for public morals to shift this governance paradigm to more accurately reflect public concern could leverage more power for these other organizations and for civil society. Interestingly, these organizations' plight to standardize regulations is seen as caused by the "growing consumer demand for food safety and food quality"<sup>26</sup> (Garcia and Carruth 2006: 409; see also Kysar 2004).

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<sup>25</sup> See Elliot 2010 for an example.

<sup>26</sup> It is also important to note that while each organization addressed the interconnected economic and social conditions under which TAG exists, only the FAO mentions the environmental impacts of the transnationalization of animal agribusiness in its report "Livestock's Long Shadow" (2006). Its recommendations for a global reduction in meat consumption again were not mandatory.



**Table 3.1: Analytical Scheme along continuums of enforceability and attitude towards FAW**

	Instrumental	Less Instrumental	Recognizes Animal Sentience/ Intrinsic Value	Rejects TAG/FAW; Advocates for Reduction of Production or Consumption
-Voluntary Spread of Norms or Practices, Soft Law	FAO			
-Substantial Resource Commitment				
-Less Enforceable	OIE			
-More Enforceable, Hard Law	WTO			

In terms of the second variable on attitude towards animals, the FAO extended the farthest into recognizing animal sentience but most of the language use was still anthropocentric and maintained the conception of animals as instruments. My research here supports evidence that finds stronger IGOs with hard enforceable laws and an instrumental view of externalized subjects (like animals) while weaker IGOs have weaker enforcement mechanisms if any, and have a higher view of externalized subjects. Perhaps deeper look at the public governance within states will reveal more nuances regarding consumer interest in animal welfare to be recognized.

## **CHAPTER 4: PUBLIC GOVERNANCE OF FARMED ANIMAL WELFARE WITHIN THE EU AND THE USA**

Chapter 3 established the roles of international organizations in governing TAG. This chapter will look at public governance at the national and regional level for the USA and the EU as two major players in TAG with distinct methods for governing FAW. National legislation affects international trade, and this effect can be very controversial. This legislation can include free-standing animal welfare laws, criminalized cruelty to animals measures, specific legislation based on the use of the animal—whether research, entertainment, or food, or simply legal slaughter methods. No country or region aside from the EU has explicitly adopted animal welfare principles in constitutional form, though many have adopted certain limited provisions (Vapnek and Chapman 2011: 27). This chapter will attempt to determine the difference in the governing techniques of the EU and the USA.

The EU and the USA, as two major actors in transnational animal agribusiness, have attempted to address these issues within their territories in starkly different ways. This is representative of an epistemic difference in their governing approaches overall, as these differences occur with many contested global problems. First, I will provide a historical overview of the current legislation in each location. Then, I will contrast the characteristics of FAW measures in each. Finally, I will conclude with a description of the main factors affecting the different types of FAW governance in each location.

Many countries have legislation regarding cruelty towards animals, but historically few have protected farmed animals (Commission of the European Communities 2002: 5). This trend is changing as a report on global farmed animal welfare legislation found “significant progress” from 1992-2002 in the farmed animal welfare legislation of a few countries—mostly non-EU European countries and some OECD countries (*ibid*). The report attributed the increase in non-EU European countries to those countries’ desire to become a member of the EU. The increase is also due to the legislative harmonization underway by the Council of Europe to improve implementation of their Conventions on farmed animals, especially regarding international transport, farm life and slaughter (*ibid*). Others attribute the growth in FAW measures to a better understanding of animal needs, and increased public awareness (Caporale et al. 2005: 567). Still others assign the growing focus on farmed animal welfare to the desire to export to the EU (Van Horne and Achterbosch 2008: 40). In light of this, the fact that the EU and the USA have such divergent strategies for governing farmed animal welfare is intriguing. The EU has a considerable amount of legislation specific to farmed animals, and even legally declares animals as sentient beings. The USA, on the other hand, has some of the weakest farm animal welfare standards in the world (Matheny and Leahy 2007: 325). This chapter attempts to illuminate differences in these two governments’ governance mechanisms while paying close attention to the analytical criteria established in previous chapters: enforceability and the attitude towards animals within the legislative language.

### **The EU: An Enforceable Approach**

The EU has the widest reaching and most binding legislation on FAW of the two, and one of the highest legislated standards in the world (EFSA 2011; Van Horne and Achterbosch 2008: 40; Caporale et al. 2005: 569). Switzerland is considered the only other region with higher FAW standards (Van Horne and Achterbosch 2008: 42-3). I will describe the history of animal welfare recognition through EU legislation before examining the role of the CoE. I will then

discuss the transnational reach of the EU's proposal to the WTO, their bilateral agreements, and effect on international trade. Then, I will explain the EU's long term goals, and criticism of their approach.

Miele et al. trace the beginning of animal welfare concerns to the Victorian period's animal welfare societies which deliberated over the treatment of animals (2005: 170), though most scholars point to Brambell Report in 1965 as the inspiration for the EU's farmed animal welfare concerns. This British Brambell Report recommended that farmed animals be able "to stand up, lie down, turn around, groom themselves and stretch their limbs" (Farm Animal Welfare Council 2009). These recommendations were then elaborated upon by the resulting UK's Farm Animal Welfare Council in 1979 into the "Five Freedoms"—freedom from thirst; from discomfort; from pain, injury, or disease; from fear or distress; and to express normal behavior—a list of voluntary standards which have since become universally recognized through the OIE's standards (Farm Animal Welfare Council 2009). Using these "Freedoms" as a foundation, the EU began adopting animal welfare concerns in legislation in the 1970s, but hard law recognition of animal sentience did not come until the late 1990s, and some say this recognition was led by advocacy organizations and their effect on consumers<sup>27</sup>.

The EU uses regulations (binding law within all member states), directives (binds member states to create compliant domestic law), and decisions (voluntary norm-setting) to shape the regional legal landscape; all of these forms must be consistent with and included in an EU Treaty if they are to be considered binding for all member states (Miele et al. 2005: 172; Sharpless 2009: 9). The recognition of animal sentience has passed through all three stages of legislation to the highest regulatory level, and is central to the EU's current approach to welfare requirements: "The European Commission's activities in this area start with the recognition that *animals are sentient beings*. The general aim is to ensure that animals need not endure avoidable

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<sup>27</sup> A Compassion in World Farming petition for the recognition of animal sentience in the mid-1990s is credited with the gestalt shift of consumers: a "new status for animals" would bring consumers better welfare benefits like safer food (Miele et al. 2005: 170).

pain or suffering and obliges the owner/keeper of animals to respect minimum welfare requirements” (EU 2011a, emphasis added). From the Treaty of Rome to the Treaty of Amsterdam, animals have lost their simple commodity definition and become legally-defined sentient beings. I will use the recognition of animal sentience to define two periods in the EU legislative history: one which viewed animal as agricultural products, and one that views them as sentient beings.

**Table 4.1: A historical overview of European legislation impacting or improving animal welfare**

Year	Governing body	Legislation	
Animals as Agricultural Products	1957	Treaty of Rome (created the EU)	Assumed animals to be goods or agricultural products
	1968	COE Convention	International Transport; revised 2003, EU adopted revised version in 2004
	1974	EU Directive 74/577/EEC	Stunning of Animals before Slaughter
	1976	COE Convention	Protection of Farm Animals; EU adopted in 1988
	1979	COE Convention	Protection of Animals during Slaughter; EU adopted in 1998
	1988	EU Directive 88/166/EC	Minimum standards for laying hens in battery cages
	1990	EU Directive 90/425/EC	Veterinary checks on certain animals before importing
	1991	EU Directives 91/629/EEC; 91/628/EEC; 91/630/EC	Directives on Pigs; International Transport; Calves; Amended 1997-2001 to include a Ban on Veal Calf Crates by 2006, Ban on battery cages by 2012 (larger cages permitted), Partial ban on pregnant sow crates by 2013
	1992	EU Directive 92/65/EC	Animal health requirements before importation
	1992	EU Maastricht Treaty	<b>Contained a Declaration on the Protection of Animals which obliged member states to consider animal welfare when drafting legislation, with no direct legal enforcement</b>
1993	EU Directive 93/119/EC	Welfare requirements on the slaughter of animals	
Animals as Sentient Beings	1997	EU Treaty of Amsterdam	<b>Incorporated a binding Protocol on Animal Welfare into the founding document of the EU. It recognized animal sentience and obliged member states to regard animals in agriculture, transport, and research.</b>
	1997	EU Regulation 2634/97/EC	Welfare requirements on the export of certain animals
	1998	EU Directive 98/58/EC	General protection of farmed animals
	1999	EU Directive 99/74/EC	Protection of laying hens
	2006	EU Parliament	Action Plan on the Protection and Welfare of Animals 2006-2010
	2009	EU DG SANCO	Welfare Quality study 2004-2009 on farmed animal welfare capacity building, monitoring and implementation
	2009	EU Treaty of Lisbon	<b>Recognized animal sentience and human obligation to regard animals well; raised animal welfare to the level of other major social justice concerns</b>

### *Animals as Agricultural Products*<sup>28</sup>

The Treaty of Rome established the EU in 1957 as the European Economic Community; this Treaty had no wording on animal welfare, and assumed animals to be goods or agricultural products (Camm and Bowles 2000: 197). Later, the adoption in 1992 of the Declaration on the Welfare of Animals in the Maastricht Treaty recommended that governing bodies in the EU to consider animal welfare when drafting legislation, but the measure had no direct legal effect (Camm and Bowles 2000: 198). Aside from this limited legal conception of animals and their sentience prior to 1997's Treaty of Amsterdam, numerous directives on animal welfare have been passed (without recognizing animal sentience) through the EU Community Law via articles of the EC Treaty.

For instance, while the 1974 EU Directive 74/577/EEC wants to ensure the proper stunning of animals before slaughter, the focus is on animal suffering not on animal sentience:

Whereas the Community should also take action to avoid in general all forms of cruelty to animals; whereas it appears desirable, as a first step, that this action should consist in laying down conditions such as to *avoid all unnecessary suffering* on the part of animals when being slaughtered (European Communities 1974).

Many other similar Directives were passed from 1974 on. Article 43 in the Treaty of Rome regarding the Common Agricultural Policy inspired Directive 91/629/EEC on laying down minimum standards for the protection of calves and Directive 91/628/EEC on the protection of animals during international transport, both with no mention of animal sentience (Camm and Bowles 2000: 198). Other Directives implemented before the 1997 Treaty include: animal health requirements before importation (Directive 92/65/EC); veterinary checks on certain animals before importing (Directive 90/425/EC); welfare requirements on the export of certain animals (Regulation 2634/97/EC); welfare requirements on the slaughter of animals (Directive

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<sup>28</sup> The EU image of animals as agricultural products is not entirely true. Since the 1970s, the EU has been began legislating improved conditions that did not affect the final animal product, meaning animals were respected as something *more* than just a product so the two categories of products and sentient beings actually exist on a continuum.

93/119/EC); minimum standards for farmed pigs (Directive 91/630/EC); minimum standards for laying hens in battery cages (Directive 88/166/EC); and the general protection of farmed animals (Directive 98/58/EC) (EU 2011a; Camm and Bowles 2000: 199). Directives on specific species of animals (pigs, calves, and laying hens) and on animal transport were adopted in 1986 and are periodically updated as better scientific data emerged, but again with no wording on sentience (Commission on European Communities 2002).

How has the CoE influenced the EU? Since the late 1980s, the EU has adopted as law the three major conventions or treaties signed by the Council of Europe (CoE 2011). The CoE is an intergovernmental organization that attempts to harmonize human rights and democracy issues across all forty-seven states within Europe. All member states of the EU are members of the CoE (CoE 2011). The CoE's Conventions on the Protection of Animals were the first international legislative efforts in the world (COE 2011). The CoE began drafting the Conventions in the 1960s because leaders found that "respect for animals" was a common ideal across member states and animal protection was an area which needed "concerted action" (CoE 2011). The COE's three Conventions on the protection of farmed animals are on: animals during international transport (ETS 123, 1968); animals kept for farming purposes (ETS 87, 1976); and animals for slaughter (ETS 102, 1979) (COE 2011). Over time, the CoE has passed additional protocols amending these Conventions<sup>29</sup>. These conventions are all based on the principle that: "for his own well-being, man may, and sometimes must, make use of animals, but that he has a moral obligation to ensure, within reasonable limits, that the animal's health and welfare is in each case not unnecessarily put at risk" (COE 2011). While the CoE has forty-seven members, many of whom have ratified the Conventions, the recommendations are considered "soft law instruments" requiring implementation and enforcement by member countries (FAO 2011). Still the CoE claims that after ratification by at least four countries of the CoE, the Convention will enter into

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<sup>29</sup> In 1979 and again in 2003, the Convention on the Protection of Animals during International Transport was amended and later revised. In 1992, the Convention on the Protection of Animals Kept for Farming Purposes was amended (COE 2011).



force (Gminder and Beate 2004). The CoE believes that “ratification by trading partners could provide one means of establishing equivalence of animal welfare standards” (FAO 2011).

Adoption by the EU can strengthen the enforceability of these Conventions since the Conventions of the CoE that have been adopted by the EU are considered binding and are a part of the EU Community Acquis (accumulated legislation of the EU) (FAO 2011). The EU has adopted all three CoE conventions on farmed animals into law: the 1976 Convention for the Protection of Animals Used for Farming Purposes in 1988; the 1979 Convention for the Protection of Animals for Slaughter in 1998; and the 2003 Convention on the International Transport of Animals in 2004 (EU 2011c). Once the adoption of a CoE Convention has been approved, EU member states must still sign and ratify the Convention alongside the EU (Gminder and Beate 2004). As such, signing the Conventions is still largely a symbolic act as a report on the EU signing says: “The EU’s aim in signing the Convention is to accelerate this process in the Member States” (Gminder and Beate 2004). Similar to the EU’s legislation on animal welfare, member states retain sovereignty and the responsibility of enforceability for the implementation of these standards.

The CoE in 2010 halted plans to continue working on animal welfare issues and it is unclear whether it will persist in this area of concern (Rayment et al. 2010: 26). It seems as though the EU signed the Conventions into law and the CoE stopped working on animal welfare issues in an effort to continue harmonization of animal welfare issues within the European countries. The CoE’s concern with respecting animals inspired the start of EU legislation on animal welfare, but it was not until the late 1990s that animal sentience was recognized by an EU Treaty.

#### *Animals as Sentient Beings*

Forty years after the Treaty of Rome established the EU, the EU’s 1997 Treaty of Amsterdam gave the EU political power through police force, foreign policy, and a centralized citizenship (Tomaselli 2003). The inclusion of the Protocol on Animal Welfare in the 1997 Treaty

of Amsterdam notably defined animals as “sentient beings” and integrated the protection of their interests in the founding document of the EU (Miele et al. 2005: 173). Although pre-1997 measures did introduce animal welfare into soft law, the Treaty of Amsterdam represents, to many scholars, the inclusion of animal welfare concerns into hard law (Camm and Bowles 2000: 198).

Currently, the recognition of animal sentience continues to spread through law as the Lisbon Treaty of 2009, which revises current founding treaties of the EU and the EC, states in Article 13:

In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, *since animals are sentient beings*, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage (EU 2009).

This treaty puts animal welfare on the same level of consideration as other major issues like gender equality (Article 8), social protection (Article 9), environmental protection (Article 11), and consumer protection (Article 12) (EU 2009). Animal welfare is considered an area of shared competence meaning that both the Union and member states create legislation to regulate it, but competences specifically not shared with the Union as defined in the Treaty remain the responsibility of the member states. The Union will only act if the objectives of the treaty cannot be achieved by the member states (Articles 1, 4, and 5 of the EU Treaty) (EU 2011b). The Lisbon Treaty also confirms that the EU will have the international policy-making power in terms of an international agreement on animal welfare. Article 3.2 states “The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope” (EU 2011b). The implementation of animal welfare measures depends on the specific Directive then, since member states and the EU have different methods of creating the measures.

Not all countries in the EU regulate farmed animal welfare to the same standards. A 2008 study attempting to correlate the welfare regulation level on farmed chickens with income levels of countries found the following:

**Table 4.2: Global chicken welfare regulations<sup>30</sup> and income levels of selected countries**

Welfare regulation level	Income level	Countries
5	5	Switzerland
4	5	Northern Europe: <b>Denmark, Finland, Norway, Sweden</b>
4	5	Western Europe: <b>Austria, Germany, Netherlands, UK</b>
3	5/4	Southern EU: <b>France, Spain, Italy</b>
3	3	Eastern EU: <b>Poland, Hungary</b>
2	5	Australia, Canada, USA
1	5	Japan
1	4/3	Middle East: UAE, Saudi Arabia
1	2/3	South America: Argentina, Brazil, Chile
1	2/3	East Europe: Ukraine, Russian Fed.
1	1/2	Asia: China, Thailand, India

Source: Van Horne and Achterbosch 2008: 42-3, emboldening added to denote EU member states

All of the top-ranking countries (“3” or higher on the welfare scale), with the exception of Norway and Switzerland, were EU members. In particular, northern and western EU countries appear to have higher standards of welfare—at least for chickens—while southern and eastern EU countries appear to not extend regulation beyond the requirements of the EU Directives (Van Horne and Achterbosch 2008: 42).

<sup>30</sup> The scale was dependent on only two criteria: for broilers, maximum bird density per meter squared, and for layers, the space per hen and body mutilations like beak trimming (Van Horne and Achterbosch 2008: 42). There are clear limitations to using such simple criteria, but I use this table as an example.

### *EU's Efforts to Pursue Animal Welfare at a Global Level*

As mentioned previously, in an attempt to further solidify farmed animal welfare as legitimate global trade concern, the European Commission presented a paper at the Agriculture Council of the WTO on June 28, 2000 arguing that animal welfare was a legitimate 'non-trade concern' to be examined under Article XX of the WTO's Agreement on Agriculture (Eurogroup 2000:1). In the paper, the EC offers three avenues for dealing with animal welfare: multilateral agreements, labeling, and direct payments to producers to compensate for increased production costs (Eurogroup 2000:1). In September 2000, the EU presented a new proposal suggesting labeling table eggs with method of production information; the proposal exempted eggs from developing countries as long as they labeled eggs with: "production method not know," "non-EU," or country of origin (Eurogroup 2000:1). There has been no progress on these proposals but the EU does currently oblige country-of-origin labeling for a few agricultural products including chicken meat imported from developing countries (as of a 2008 Commission Regulation), and cow meat (as of a 2000 Council Regulation) (Vassilou 2009). The EU does allow member countries to create more stringent country-of-origin labeling requirements, so long as they do not interfere with trade (Vassilou 2009). The importance of the "consumer right to know" is considered to be at the heart of the current dispute settlement, and will likely have impacts on the EU's regulations as well.

While animal welfare does rank highly on the EU citizens' concern list, one author warns that "the European Union is a trading body. Though it has grown in breadth and depth, one of its primary roles remains to assure the single market and to ensure free trade in goods and in services" (Moynagh qtd on Miele et al. 2005: 172). That said, animal welfare standards have supposedly been harmonized across EU member states to avoid unjust trade advantages due to implementation costs. The EU does not currently restrict importations of animal products due to animal welfare standards—something that if changed, might catalyze a dispute within the WTO (Vapnek and Chapman 2010: 23).

Although pursuing animal welfare standards through the WTO does not seem feasible with the current standstill of the Doha Round, the EU has maintained a transnational scope with its farmed animal welfare measures through bilateral free trade agreements as well. The only standing agreement with animal welfare concerns is the EU's free trade agreement with Chile in 2002. Since the adoption of SPS rules into the WTO in the 1994 Uruguay Round, SPS standards have been enforceable to all WTO member countries, regardless of their FTA status, but rarely do the SPS agreements in FTAs extend beyond the scope of the agreed upon harmonized standards (Rudloff 2004). In this sense, the animal welfare clauses in Articles 2 and 3 and Appendix 1c (concerning the stunning and slaughter of animals) in the EU-Chile FTA are unusual; the agreement is widely considered "the most advanced agreement to date" (Rudloff 2004). The Annex IV "Agreement on Sanitary and Phytosanitary Measures Applicable to Trade in Animals and Animal Products, Plants, Plant Products and Other Goods and Animal Welfare" discusses animal welfare in terms of animal health and public health, and assumes "the importance of animal welfare" in terms of veterinary health and establishing standards without any description of animal sentience ("Annex IV" 2002: 1). Rudloff finds the agreement inspired by the OIE's work to harmonize animal welfare standards (2004). The Annex discusses animal welfare standards as "standards for the protection of animals as developed and applied by the Parties and, as appropriate, *in compliance with the OIE standards* and falling within the scope of this Agreement" ("Annex IV" 2002: 4; emphasis added). While many warn that higher standards could act as potential barriers for trade with developing countries, the European Commission is motivated to improve farmed animal welfare within the EU as well as with its trading partners (European Commission 2006c). The EU currently leads ongoing discussions on animal welfare standards within its bilateral negotiations with Canada, and there is a possibility animal welfare will appear in agreements with India, Korea, Ukraine, countries within the Association of Southeast Asian Nations (ASEAN) and the Mercado Común Del Sur (MERCOSUR) (Vapnek and Chapman 2010: 24).

The EU has banned animal products from other nations, but only on SPS grounds, not animal welfare. The distinction is important after all because SPS concerns are product-related PPMs while many argue that NPR PPMs like animal welfare cannot be considered for trade. The EU banned US chicken meat in 1997 citing sanitary and phytosanitary (SPS) reasons, namely that chicken meat in the USA is commonly processed with pathogen reduction treatments which the EU bans (Van Horne and Achterbosch 2008: 45). The Bush administration filed a complaint for a WTO dispute settlement panel in January 2009, but as of December 2010 the panel had not yet been composed (Johnson 2010). Van Horne and Achterbosch also remark on the unlikelihood of a major EU import trade disruption since other exporters, namely Thailand and Brazil, already meet EU standards; if higher standards were enacted, Brazil and Thailand would be able to meet them easily due to lower housing and labor costs (2008: 45). So far, the EU has maintained this ban but in order to protect themselves, EU producers pressured by increased production costs might push for stronger border protection to enforce the quota limits in order to guard their home industries (*ibid*). In this case, there might be cause for the WTO or its members to question whether or not higher farmed animal welfare standards are protectionist measures.

The EU has domestically banned several practices still legal in the USA (Matheny and Leahy 2007: 339; see Druce and Lymberry 2002). All members of the EU have agreed to phase out battery cages by 2012. Germany, Switzerland, Sweden, and Austria have already banned them (Druce and Lymberry 2009). Battery cages housed ninety percent of all hens in the EU before the legislation passed; under the new rules, all hens will have more space. The new EU system will allow chickens minimally more space (still inside a cage), a nesting box, and a perch.

Gestation crates/sow stalls and tethers for pigs past the fourth week of pregnancy will be banned in 2013 in the EU (Druce and Lymberry 2009). Pregnant pigs should now be able to turn around in their cages, though “farrowing cages –which severely confine nursing sows or those about to give birth—are still permitted” (Druce and Lymberry 2002: 6). Other “fattening” pigs, of which there were 15 million slaughtered in the UK alone in 2002, are given a set amount of

space depending on their weight and their “job”: weaners, rearing, or boars (Druce and Lymberry 2002: 9). The “sweat box” system of raising pigs in such crowded, hot and humid conditions that “their sweat and urine steamed” is also banned in the UK.

Veal crates were also banned in the EU as of 2007 (it was banned in the UK in 1990) (Druce and Lymberry 2009: 11). Veal calf housing is now supposedly large enough for the cows to turn around, lie down and get up without hindrance; these calves should also be able to see other calves after four weeks in isolation. Their diet is now supplemented with a minimum level of iron and fibrous food (Druce and Lymberry 2009: 15).

How does the EU plan to improve on future animal welfare legislation? Periodic progress reports on the implementation of various projects have helped determine areas for improvement. These long-term Action Plans reports discuss ways to harmonize legislation on animal welfare across all member states. In 2006, the Commission of European Communities reported on the progress of Directive 98/58/EC on the Protection of Animals Kept for Farming Purposes (Commission 2006). This report found that the Community Action Plan on the Protection and Welfare of Animals in 2006 needed better implementation (Commission 2006). While the report claims results were “satisfactory,” it continued to criticize poor harmonization among the member states: “The reality of the transposition of the EU legislation is however quite mixed. Some Member States have implemented welfare standards that go beyond Community standards while other Member States have delayed the application” (Commission 2006). The recording and reporting of data also needs improvement; in 2002 only three states reported satisfactory findings on time, and in 2003, only one did (*ibid*). The report recommended further initiatives to clarify the process, and to incorporate animal welfare into other Community policies within the Common Agricultural Policy, especially. Training competent authorities to help member states inspect farms was also considered vital for the future success of the program (*ibid*).

The second evaluation of the Community Action Plans was completed in January 2011. The 2006-2010 Community Action Plan and EU Policy on Animal Welfare (PAW) evaluation was commissioned by the Directorate General for Health and Consumers of the European Commission (DG SANCO) in 2010. The report found an increased level of welfare for animals targeted, but recommended better enforcement, harmonization of laws, better public awareness of issues, and the inclusion of a wider scope of animals like fish and dairy cows (Rayment et al. 2010). The report also noted that because of overarching EU legislation the internal competitive distortion due to different standards between member states has been reduced. Also, the increased welfare standards have caused a production increase of only 2%, which does not seem to threaten the sustainability of the industries (Rayment et al. 2010). The new 2011- 2015 Action Plan will incorporate these changes under five problem-solution categories: enforcement, competitiveness of farmers, communication to consumers and stakeholders, science and innovation, and scope of the EU legislation (Simonin 2011).

While the EU looks for ways to improve as pointed out in the reports, others criticize the EU for its inconsistency across departments. Miele et al. especially critique the EU for its inconsistent language on animal welfare within treaties on animal agriculture. They claim the EU's language within these documents perpetuates two ambiguous ways of portraying animals, either as "mere production resources" or as "sentient beings" (Miele et al. 2005:172)<sup>31</sup>. (This distinction makes sense seeing how historically that is how animal welfare developed; Miele et al. are interested in a different issue though.) For example, the European Commission's Trade website includes SPS standards and animal welfare considerations under its "Health" category pointing to an obvious discrepancy between its regional beliefs in animal sentience and its transnational trade agreements (European Commission 2009). In its description of health and

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<sup>31</sup> Miele et al. clarifies these two approaches as the 'environmental' or the 'animal'; essentially, the 'environmental' approach involves maximizing production and minimizing costs within the environment in which the animals are raised while the 'animal' approach recognizes animal self-awareness and suffering and attempts to place limitations on animal exploitation within animal agriculture (173).



SPS standards, the EC focuses on EU legislation's compliance with the WTO's SPS Agreement or the "EU's international obligations" (European Commission 2009). Miele et al. admit that a shift has occurred though. Regardless of the language in older legislation or in different department websites, the governance of the welfare of animals in the EU has shifted from an economic/industry focus which simply commodified animals to a more moral and scientific view which lauds animals as sentient beings worthy of higher welfare standards (Miele et al. 2005:176). However, the ambiguity between these two perspectives persists among the multiple documents, leading to the potential for different interpretations by member states and ineffective governance. In any case, the inclusion of animal sentience creates a clear delineation between the EU and the US approach to farmed animal welfare.

#### **The USA: A *de facto* Voluntary Approach**

Although the USA imports and exports a similar volume of animal products as the EU, farmed animal welfare in the USA is not as highly governed as in the EU. First, I will explain the history of regulating animal welfare legislation before describing the minimal protection for farmed animals through the federal legislation before describing the limited state ballot and legislative measures. Then, I will discuss recent failed federal bills and a bill which would further remove factory farmed activities from public discretion. I will also discuss the USA's role in bilateral agreements and international trade dealing with FAW. Finally, I will examine the USA's long term goals, especially how voluntary measures are encouraged and supported by the USDA.

**Table 4.3: Historical Overview of USA Federal and State Legislation on Animal Welfare**

Year	Governing Body	Legislation (with effective dates)
1877	USDA	Twenty-Eight Hour Law on inter-state transport of animals
1958	USDA	Humane Methods of Slaughter Act
1992	Florida- ballot <sup>32</sup>	Banned gestation crates (2008)
2006	Arizona- ballot	Banned gestation and veal crates (2012)
2007	Oregon- statute	Banned gestation crates (2012)
2008	Colorado- statute	Banned gestation (2018) and veal crates (2012)
2008	California- ballot	Banned gestation and veal crates, and battery cages (2015)
2009	Maine- statute	Banned gestation and veal crates (2011)
2009	Michigan- statute	Banned gestation (2019) and veal crates (2012), and battery cages (2019)
2009	Ohio- statute	Created a Livestock Care Standards Board which voted 4/20/11 to phase out gestation (2026) and veal crates (2017) and prohibited new construction of battery cages

The current model of regulation—of cow meat in particular—can be traced to the beginnings of the USA cow meat industry<sup>33</sup>. Railroads and refrigerated boxcars led to gains through economies of scale and subsequent concentration of meatpackers; these ranchers and butchers then lobbied for the right “to regulate the buying practices of the Beef Trust, to improve food safety and sanitation in packing plants, to provide tariff protection against foreign imports, and, later, to maintain a national voluntary grading service”—essentially, they became the USDA (Ferrier and Lamb 2007: 86). Over the years, legislation has been adopted to help regulate anticompetitive practices (Packers and Stockyards Act of 1921 which led to the current day Grain

<sup>32</sup> “Ballot” denotes a ballot initiative while “statute” denotes a bill passed through the state legislature.

<sup>33</sup> This trend seems representative of most animal agriculture in the US, so I use it as an example for all.

Inspectors, Packers, and Stockyard Administration); and labor and sanitation laws (Meat Inspection Act of 1891 and in response to the “European reluctance to recognize US inspection laws,” the Pure Food and Drug Act and the Meat Inspection Act of 1906) (Ferrier and Lamb 2007: 87). In what may be a classic case of a conflict-of-interests, these laws have rarely stopped the further concentration of meatpackers and the vertical integration of the animal agriculture industry or the violation of labor and sanitation laws (see Andreas 1994). For example, during the 1980s and 1990s when cow meat consumption dropped, “Federal regulations of the beef industry arose in order to regulate market power and to use government sanctions to bolster economic returns to various links in the beef supply chain, e.g. to foster rent-seeking” (85). The transformation of the industry parallels the way most USA animal agribusinesses have intensified, conglomerated, and influenced regulation.

As a result of the formative creation of the industry, the USA only has two federal bills that directly regulate farmed animal welfare, though the Animal Welfare Act does attempt to protect farmed animals under certain circumstances. For example, while the USA Animal Welfare Act is the most comprehensive federal statute regulating animals in the USA, it does not cover farm animals used for food.<sup>34</sup> To regulate farm animals, the USA relies on its 1958 Humane Methods of Slaughter Act (HMSA) and the Twenty-Eight Hour Law of 1877 as the two source of federal animal welfare law; although they offer some protection for animals, these laws actually do little (Matheny and Leahy 2007: 334).

The HMSA regulates the slaughter of farmed animals, specifically that animals are “rendered insensible to pain... by humane methods” in order to prevent “needless suffering” before slaughter (Wolfson 1996: 126). The USDA, the authorized agency to enforce the HMSA,

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<sup>34</sup> The Animal Welfare Act (AWA) does protect farmed animals being used for research or teaching though this constitutes a very limited number of animals (Tomaselli 2003). Its main concern is protecting warm-blooded animals in commercial use. According to the Humane Society of the United States, the AWA protects animals in “research; public displays such as zoos, circuses, and other exhibits; sales of exotic animals; and commercial sales of companion animals (e.g., wholesale sales to pet shops, but not sales directly to individual consumers, under current USDA rules). It does not cover birds, rats, and mice bred for use in research; reptiles; or animals raised for food or fiber” (HSUS 2010).

excludes farmed birds and fish from this legislation meaning they do not require chickens or other birds, or fish to be stunned before slaughter (Matheny and Leahy 2007:334). According to Matheny and Leahy, this effectively means that “HMSA protects only one percent of farm animals from being slaughtered while fully conscious” (2007:335). Additionally, the law only covers slaughterhouses that are federally-inspected (not state-inspected) and exempts religious/ritual slaughters like Kosher, which use some of the most cruel slaughtering methods (Wolfson 1996: 126). Also, the USDA has failed to enforce the rule for the humane slaughter of pigs even though a 2002 Congressional hearing recommended it (Vesilind 2010: 5). Overall, enforcement of this law has been entirely insufficient (Wolfson 1996: 126).

Past interpretations of the Twenty-Eight Hour Law which states that animals cannot be transported for more than twenty-eight hours without a five hour break for watering and feeding, ignored trucks which transported over ninety-five percent of all farmed animals (Matheny and Leahy 2007: 334). This means animals could be transported via trucks for an indefinite amount of time without any time for rest, water, or food (*ibid*). The law also excludes transportation by air or water, and does not apply if animals have access to rest, food and water within the vessel (Wolfson 1996: 126). It also does not apply within state lines (Wolfson 1996: 126). Animal welfare groups protested this interpretation in 2006 and in an unanticipated response, the USDA answered affirmatively stating: “[w]e agree that the point meaning of the statutory term ‘vehicle’ in the Twenty-Eight Hour law includes trucks” (Matheny and Leahy 2007: 335). Matheny and Leahy recognize this victory but they continue to explain that the law’s exclusion of farmed birds “exempts ninety-eight percent of farm animals from protection *ex ante*” (2007: 335-6). In addition, the limited enforceability and the unsubstantial fines per shipment (a maximum penalty of \$500) rather than per animal mean that these laws represent very minimal efforts to protect farmed animals (Matheny and Leahy 2007: 335-6; Wolfson 1996: 126). The last prosecution under this law was in 1962 (Vesilind 2010: 5).

Since those are the only two federal laws regulating farm animals, there are many gaps in the protection of farmed animals. Most significantly, the USA has no federal legislation on the welfare of farmed animals on the farm (or in the factory) where animals spend the majority of their lives (Matheny and Leahy 2007: 336). Differences in the way states legislate animal welfare also causes confusion. Although every state has legislation prohibiting cruelty to animals, almost thirty states “exempt “common,” “normal” or “customary” farm animal husbandry practices from coverage under the law” (Springsteen 2009: 438; Tomaselli 2003). Wolfson (1996) argues that customary farm practices—like debeaking, castrating without anesthetics, de-tailing, de-horning, and close confinement—would be considered violations of the current animal cruelty legislation without the exemptions. To overcome this legislative lacuna, states have taken on ballot initiatives and have had some success regulating specific welfare measures relating to extreme confinement that way. Florida, Arizona, Colorado, and California have passed ballot initiatives to ban gestation crates; Arizona and Maine additionally also banned veal crates; and California banned battery cages as well (Springsteen 2009: 440). Oregon also banned gestation and veal crates but through the legislative route; Michigan also banned gestation and veal crates, and battery cages through the legislative route. Ohio’s government proposed a board to establish farmed animal welfare standards in an effort to avoid a campaign by Humane Society for the United States for a ballot initiative limiting confinement (Springsteen 2009: 455). Each of these initiatives is slightly different in that different space requirements are legislated for different animals, and there are a variety of special exemptions and punishments in these new standards. Most of the laws have been passed within the past ten years, so implementation is just beginning and the effectiveness of enforcement mechanisms have not been examined.

What is the scale of the laws that have already been passed at the state level? In the USA, battery cages are the primary form of enclosure used for 99 percent of hens—270 million hens in 2009, 280 million now (Druce and Lymberry 2002; HSUS 2011). Michigan, California, and Ohio are the only states who have banned battery cages so far. The majority of veal calf

production occurs with veal crates; most states who have passed some confinement welfare laws have banned them. Gestation crates have also been targeted by confinement welfare laws. For all the animals who will be affected by the change in confinement systems, many more will continue to be raised in intensively confined situations. Additionally, a change in confinement systems is not necessarily better for the animals. For example, the change from battery cages to open housing or even so-called cage-free systems does not change the number of animals living in a certain amount of space, or other practices like de-beaking, de-horning, or castration.

For every initiative that has passed, many initiatives have failed to pass. From 2000 to 2009, there had been twelve states that have failed in an attempt to place confinement measures on the ballot (Springsteen 2009: 457). More attempts at legislating animal welfare at a state level occur each year; as of 2009, Connecticut, Rhode Island, California, and Illinois all had plans for such attempts (Springsteen 2009: 465).

The lack of substantial federal legislation on the issue seems unusual in comparison with the EU. However, recently proposed bills have attempted to change that. Unfortunately, neither one of them made it far through the process. House Bill 4733, or the Prevention of Farm Animal Cruelty Act would stop the government from purchasing animal products from animals raised in gestation or veal crates, or battery cages (US House 2011b). This bill was introduced in March 2010 and moved to committee in the past session of Congress; as such, no action can be taken on it. House Bill 4356 on Downed Animal and Food Safety would require the humane euthanasia and disposal of injured cows raised for human consumption (US House 2011a). This bill was introduced in December 2009, moved to committee and is now considered stagnant. With these failed bills and the unchanged legal scene in mind, Wolfson's (1996) conclusion on the state of farmed animal welfare in the USA remains accurate: "Although many people may have the impression that laws prevent domestic animals -- the vast majority of which are animals raised for food or food production -- from being treated in a cruel manner, the reality is that more such animals are now being abused than ever before in the history of the United States" (124). In fact,

legislation seems to be moving closer to ignoring animal abuse as a bill before the Iowa legislature would make it illegal to produce or possess photos or video taken in a slaughterhouse (Sulzberger 2011). Florida and Minnesota are considering similar measures as well (Sulzberger 2011). These bills would effectively silence whistleblowers and activists from sharing with the public some of the most egregious crimes against animals<sup>35</sup>.

While not directly governed by the USDA, the USDA's affiliation and recommendation of the FAW standards set by the industry, retailers, and suppliers is de facto norm setting. In fact, a 2010 Union of Concerned Scientists survey of over 1700 FDA and USDA employees found that undue corporate interests affected their decisions (Erickson 2010: 5)<sup>36</sup>. This method of establishing norms has grown significantly in the past ten years with McDonald's 2001 decision to give more space to egg-laying hens, Wolfgang Puck, Burger King, Chipotle Mexican Grill all partnering with a higher-welfare supplier (Niman Ranch), United Egg Producers' (UEP) 2006 incorporation of third-party auditing and removal of forced molting from its guidelines, and Smithfield's 2007 decision to phase out gestation crates over the following ten years (Sharpless 2009: 7-8). Sharpless (2009) also finds third-party auditing is on the rise in the USA. Many of these private welfare standards, including those by auditing groups, are based on recommendations from Dr. Temple Grandin, a Colorado State University Professor<sup>37</sup>. She claims that her autism allows her to empathize more with animals, so she builds safer-feeling slaughterhouse shoots for the animals to walk through. Her stamp of approval has generated much business for those companies who broadcast her message and approval of their system.

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<sup>35</sup> The Iowa bill most likely is a response to two damaging incidents in Iowa in 2010: secret footage taken last year unveiled unsanitary processing facilities inside an egg factory in Iowa just months before another Iowa egg factory recalled the largest number of eggs in US history due to Salmonella contamination (Sulzberger 2011).

<sup>36</sup> Almost forty percent of the employees agreed or strongly agreed that "public health has been harmed by agency practices that defer to business interests" and almost thirty percent had personally experienced "instances where public health has been harmed by businesses withholding food safety information from agency investigators" (Erickson 2010: 5).

<sup>37</sup> I discuss Dr. Grandin's influence on the public perception of animals in greater detail in Chapter 6.

The USDA shares these private animal welfare options with the public as it does list many voluntary standards certification organizations and third-party auditors on its website. Sharpless believes that any of these motives for “humane animal care standards” typically stem from one of two reasons: “1) responsive to public or NGO pressure as a means to avoid bad PR or onerous government regulation, or 2) intended to capture market demand for humane food products” (Sharpless 2009: 6). While the USDA may be attempting to avoid bad PR due to public pressure, it seems more likely that it wishes for its constituents to “capture market demand for humane food products.” Using science to establish greater legitimacy, the USDA seems to praise “science-based” efforts to answer “consumer concerns” about farmed animal welfare:

In the United States, most livestock production industries have developed and implemented science-based animal care guidelines in response to consumer concerns that animals being raised for food production are treated humanely. Assurances that animals are being raised according to these guidelines are provided through voluntary third-party audits rather than legislation. The information on this page provides links to animal husbandry guidelines, animal welfare audit overviews, humane certification programs, food industry animal welfare policies, and related international policies (USDA 2011).

The need for scientific verification is used to protect USA international interests as well since the USDA keeps a tight watch on those who attempt to regulate its industry. For example, the agency that specifically deals with sanitary and phytosanitary (SPS) concerns, the USDA’s APHIS (and more specifically, the Sanitary International Standards Team), qualifies its recognition of the OIE’s authority as the sole standard setting international authority with which it must work closely to develop national standards (APHIS 2010). The Sanitary International Standards Team claims that “while it is the intent of the United States to support adoption of international standards -- and to participate actively and fully in their development -- it should be recognized that the U.S. position on a specific draft standard would depend on the *acceptability and technical merit* of the final draft” (APHIS 2009).

Current governance structures within animal health organizations continue to privilege free trade and public health over animal welfare in another example: the USDA’s Animal and Plant Health Inspection Service (APHIS) works with the USA Department of State, the Foreign



Agricultural Service (FAS), the USA Trade Representative (USTR), the USA Agency for International Development (USAID), and the Center for Disease Control on health and international trade issues (APHIS 2010). While the USDA's website contains a list of voluntary animal welfare measures, its support of the industry it regulates can also be seen in its promotion of international trade and encouraging domestic growth.

Another example of the ways in which USA federal regulatory agencies seem to fall short of the task of regulating animal welfare is in the USDA's Center for Animal Health Information and Analysis. The Center "was formed in the early 1990s to address emerging animal health issues, such as bovine spongiform encephalopathy (BSE)" yet instead of adding animal welfare to the potential solutions to emerging disease issues, the Center presumes the continuation of disease outbreak and instead "grew to include a business intelligence function, as well as a group dedicated to spatial epidemiology methods and applications" (Lynn 2009: 1). Unlike in the EU, where animal welfare is seen to be closely tied with animal health and public health, in the USA, the development of disease outbreak technology and "business intelligence" groups help industry deal with the effects of animal diseases, without addressing the root cause (intensive confinement).

### **Comparison of the EU and the USA**

The EU favors a legislative approach while the USA prefers a voluntary strategy of addressing farmed animal welfare. The situations in the two countries can be explained by the characteristics of TAG as addressed in the first chapter of this thesis. While the EU demand for animal products on the whole is declining, and their exports will continue to increase, their population is becoming more selective with the animal products they do buy. As a result of this heightened sense of awareness, EU consumers have inspired an influx of animal welfare regulation. In the USA, the demand for animal products has remained steady while American animal agribusinesses are capitalizing on the growth of developing countries' industries. Those

new developing country markets have little demand for animal welfare standards while the domestic market is starting to see more interests in higher welfare products.

In a notable difference from the legislation of the EU, none of the legislation in the USA recognizes animal sentience. The USA's emphasis on science and free trade avoids determining proper space and other welfare particulars. Interestingly, international trade scholars find that "the cost of compliance with current [animal welfare] legislation even in those EU countries with national standards significantly above the EU level is 6% of production cost at maximum" (Grethe 2006: 317), however, the USA method of production attempts to cut costs in any way possible. For example, the production cost for chicken meat production in 2004 in the USA was 36% lower than in the Netherlands (Van Horne and Achterbosch 2008: 44).

Overall, the EU does cover much more of the livelihoods of a wider swath of farmed animals and has protected animals for much longer than the USA. The EU regulates life on the farm, during transport, during slaughter, and it specifies welfare requirements for laying hens, veal calves, and pregnant sows. The USA only regulates mammals (mostly cows and pigs) during slaughter and transport, and has no federal regulation for life on the farm or specific animals. The USA has also ignored potential animal health implications of animal welfare having made little changes in food safety law even though "Mad Cow" disease, bird flu and swine flu all have been linked with intensive factory farming of animals (WHO, FAO, OIE 2004)<sup>38</sup>. The EU has a stronger sense of the relationship between animal welfare and animal health and includes animal welfare measures in the SPS section of its free-trade agreements (the first of which in the world was the 2003 EU-Chile FTA) (see European Commission 2006 for discussion by both stakeholders in the implementation of these FAW standards).

To what extent are consumers playing a role in efforts to govern farmed animal welfare?

Given its extensive history of legislating farmed animal welfare, one must ask why the EU started

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<sup>38</sup> The FAO, World Health Organization (WHO), and the OIE in 2004 identified the "increasing demand for animal protein" and the intensification of farmed animal production as the leading cause of recent zoonotic diseases (WHO, FAO, OIE 2004).

regulating this topic. Consumers in particular are credited with having higher preferences for better welfare standards of animal production (European Commission 2007b). The European Commissioner for Health remarking on the 2007 Directive on the welfare of broiler chickens stated: “EU consumers repeatedly expressed concern at the welfare problems arising in intensive chicken farming” (European Commission 2007b). While Europeans are eating less meat, consumers and advocacy groups seem to push for more animal welfare legislation. To test the social concern for animal welfare, the EU arranged for special Eurobarometer polls to analyze the responses of over 29,000 EU citizens in 25 member states on animal welfare measures (European Commission 2007). The most notable finding was that the average EU citizen surveyed considers animal welfare to be an eight out of ten on a scale of importance (European Commission 2007). On the other hand, a USA poll in 2003 found that seven out of ten respondents “agree that farm animals are treated fairly in this country” (Zogby 2003: 5). At the same time, three-quarters of the respondents thought that farmed animals should be protected under the Animal Welfare Act (Zogby 2003: 5). The USA has seen growth in exportation of meat products and further consolidation of American agribusinesses resulting in greater political power in the hands of few. This seems to correlate to the low level of governance of farmed animal welfare. Whereas the trade liberalization and de-regulation evidenced by the USA’s acceptance of animal cruelty exemptions on farms and the nature of the USA and SPS disputes has caused the USA to continue exporting animal products abroad, the EU is shifting its consumption to locate local sources of animal products with higher levels of standards.

In a break from its previous position, the USA has employed mandatory country-of-origin labeling (“COOL”) for end-product consumption of cow and pig meat as a result of the 2002 Farm Bill as of March 2009<sup>39</sup> (Ross 2010: 299). Canada objected to the practice in 2008 (before the rule was finalized) and the two countries are currently in the middle of a dispute

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<sup>39</sup> The US has country-of-origin labeling under the Tariff Act of 1930 for the “ultimate purchaser” which was interpreted as the importer unless the good was already in packages ready for the end- consumer, meaning many country origins were never presented to the end-consumer (Ross 2010: 306).

settlement at the WTO with a panel decision expected in July 2011 (Ross 2010). The USA is defending its right for COOL on the basis of “informed consumer choice”—the same justification the EU gives for labeling genetically modified foods (Ross 2010: 311). The EU has maintained its labeling since 2000 without any issue even though its labeling requirements are much higher than the US’; for example, all cow meat is to be labeled “by country of birth, fattening, slaughter, cutting, and deboning” (Ross 2010: 312). This means that the USA is shifting from regulating producers to informing consumers. This shift is most likely due to a search for more profitable animal welfare standards, consumer sensitivity and a fear of regulation at both state and federal levels.

How have global alliances influenced the regulatory methods of each government? The EU is far more engaged in farmed animal welfare issues than the USA. Collaborative efforts with other international organizations on animal welfare have improved the EU’s legitimacy and transnational reach with regards to the issue. For example, the European Commission worked in 2006 with the Finnish Presidency, the OIE, the Council of Europe and others in participating in an international workshop on animal welfare (Rayment et al. 2010: 26). The European Commission also collaborates with the FAO and its development of the farmed animal welfare portal and its other capacity-building initiatives. These initiatives have resulted in the FAO’s good agricultural practices which specify good farmed animal welfare practices (Rayment et al. 2010: 26). Collaborations with the World Health Organization (WHO), the World Bank, and others resulted in two international conferences on animal welfare. In addition, the Commission has taken the lead in implementing the FAO and the WHO’s Codex Alimentarius standards on global organic production standards (Rayment et al. 2010: 26). Although the USA collaborates with the FAO and the OIE, its minimal effort is hardly comparable to the EU’s.

The enforceability of FAW measures in the USA is much less than in the EU, although the EU has problems with enforcement as well. The attitude towards animals in the EU is much higher as the most notable legislation recognizes animal sentience while in the USA, none of the

legislation (including at the state level) sees animals as valuable aside from their production value. In the USA, “more than 10 billion nonhuman animals are annually slaughtered just for food” consisting of around 150 million cows, sheep, pigs, and goats and nine billion chickens, turkeys, and ducks (Wise 2004: 19). In the EU, 300 million cows, sheep, pigs, and four billion chickens were killed in 2007. Gandhi said “The greatness of a nation and its moral progress can be judged by the way its animals are treated” in which case neither the USA nor the EU can claim to be great nations with high levels of moral progress (Wynne-Tyson 1990). The changes in the EU and in some USA states when examined closely are minimal and rarely provide for an animal’s natural livelihood. Farmed animal welfare measures have a troubling effect on the animals, since even the EU’s measures—considered some of the highest in the world—cannot speak out in a way that criticizes the industry. Does the recognition of animal sentience recommend stronger laws for animal welfare? It seems likely. Do animals in larger cages live their lives in richer more meaningful ways? It is doubtful.

Minimal improvements to space and shelter do not pacify animals in the moments before their deaths; these improvements on animal’s deathbeds make no difference in the commodified treatment of their bodies. If anything, the decrease in production and consumption, rather than the farmed animal welfare measures, in the EU speaks more highly of the region’s concern for animals. In the USA, the unawareness of citizens and the negligible amount of concern for animals within the two federal laws accurately represents the country’s indifferent holocaust of farmed animals.

### **Conclusion**

This chapter has revealed that the governance paradigms of FAW vary drastically from the EU to the USA. Kogan (2003) remarks on the procedural differences of the two: “In the U.S., regulation is subordinate to legislation, whereas in the EU, regulation is legislation.” If laws on FAW pass through the legislature, the USA will accept them as law, but it will not regulate

industry most likely due to the massive influence of the agriculture lobby. Another way to describe the way the two strategies for governance are at odds is that the EU's dependence on the 'precautionary principle' and a "nonscience consumer-based criteria" or consumer right-to-know is at fault with the USA's voluntary industry-based standards (Kogan 2003). My research supports these conclusions on the difference between the governance mechanisms of the two governments.

While the EU Directives establish welfare norms through its enforcement of FAW standards, the USDA historically accepts the animal agribusiness' industry standards (voluntary or not) as the norm. This seems to be because the EU depends mostly on heightened citizen concerns while the USA allows industry standards to prevail. These standards, if concerned at all with animal welfare, often focus on animal welfare science as practiced and proliferated through industry scientists like Temple Grandin. However, in the USA, state-level ballot initiatives and the COOL debate are changing the regulatory landscape. Additionally, both USA and EU retailers are attempting to capture niche markets by creating voluntary standards, so the governance could change. These novel policy approaches have the potential to create higher welfare norms, though enforceability is a problem. The recognition of animal sentience seems to be missing from most voluntary standards as well. In the last chapters of this thesis, I will consider alternatives which can consider more seriously animal sentience and enforceability than these two governing forces.

## CHAPTER 5: DISCUSSION OF FINDINGS

In this chapter, I will review my findings in order to point to the differences amongst the international organizations and between the USA and the EU. I will offer plausible explanations for the latter difference and explain how the case of FAW within TAG adds to the literature on the difference between the two regions in terms of other governance issues (e.g. GMOs, ozone, and climate change). Then I will elaborate on whether the efforts by all of these organizations are sufficient for the animals.

The governance mechanisms of the international organizations and the states vary under this thesis' analytical scheme. The WTO uses its ability to enforce trade sanctions through its dispute settlement board and to set standards through its Agreements to govern TAG when necessary for public health. Mostly, the WTO's governance of TAG serves to dissuade the establishment of additional regulations for FAW. The OIE on the other hand establishes standards for animal health and welfare but has no way to enforce compliance with member countries. The FAO encourages the voluntary practice of FAW through its education and outreach programs like the Gateway to Farmed Animal Welfare but in retrospect, its actions hardly merit being considered "governance." The WTO with its influence on the further industrialization and transnationalization of animal agriculture holds the most power in terms of what kinds of governance is allowable. This is what makes the cases of the EU and the USA so interesting then, because they each attempt to hold each other accountable for governing in different ways through the WTO's dispute settlement process.

Why are the regulatory efforts by the EU and the USA so different? Vesilind (2010) claims that two things define USA agricultural tendencies: the “revolving door syndrome” in which corporate executives from the animal agriculture industry retire to work for the regulatory bodies that regulated their business, and the strong lobbying force that hinders any attempts at regulation (4). The EU, on the other hand, has a long history of animal welfare interests but most importantly, it also experienced several serious food safety crises in the 1990s. “Mad Cow Disease” among other outbreaks is credited with the development of the 1998 Directive establishing minimum care standards for most animals used by humans, including farmed animals (Vesilind 2010). These perspectives seem very similar to the divergent strategies taken by the countries with regards to other issues like GMOs, ozone, and climate change as well<sup>40</sup>. Anderson and Jackson (2003) agree; they find that the production policy process has had a disproportionate affect on GM policy in the USA. The EU has adopted more of a precautionary principle while the USA instead requires the GM product to be substantially modified before it will block its use (Anderson and Jackson 2010). Selin and VanDeveer (2011) also find that the divergent governance strategy between the two powers particularly with regards to climate change is a result of: different social norms regarding the environment and human health; a more informed public due to better advocacy groups; the rise of the Republican party in the USA leading to deregulation of business; and a federalist government in which the USA states and cities deal with climate change issues while the EU regulations have become more centralized and harmonized over the past ten years (Selin and Vandever 2011). Indeed, animal welfare seems to follow in the footsteps of other major contemporary issues.

These internal biases towards certain policies are often played out on the international scene as discussed in Chapter 3. Interestingly, both regions are members of the three international

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<sup>40</sup>For an extended discussion of why these two systems of governance differ so drastically r, see Schreurs, Selin and VanDeveer 2009; Jasanoff 2005; Vig and Kraft 2004; Harrington, Morgenstern and Sterner 2004; Vogel 200.3



organizations. To visualize how divergent their policy strategies are, after gathering information about each entity’s enforceability and attitude towards animals within farmed animal welfare measures, I’ve placed them in the following positions:

**Table 5.1: Analytical Scheme along continuums of enforceability and attitude towards FAW**

	Instrumental	Less Instrumental	Recognizes Animal Sentience/ Intrinsic Value	Rejects TAG/FAW; Advocates for Reduction of Production or Consumption of Animal Products
-Voluntary Spread of Norms or Practices, Soft Law	FAO			
-Substantial Resource Commitment				
-Less Enforceable	USA	OIE		
-More Enforceable, Hard Law	WTO			EU

As can be expected, the WTO maintains an instrumental and enforceable hold on potential farmed animal welfare measures. The USA also sees animals as instrumental through its regulations are less enforceable due to inadequate resources and limited interest in enforceability. The OIE sees animal welfare as important but its standard-setting power is limited by the enforcement of the standards by the WTO. The FAO recognizes animal sentience, though the FAO also sees that good animal welfare positively affects farmers and public health. The FAO’s animal welfare considerations focus more on the voluntary spread of practices and standards rather than mandatory governance. Finally, the EU maintains enforceable hard laws that recognize animal sentience. The EU, as discussed before, holds animals in the highest position in its efforts at global governance, yet the EU’s standards still do not go far enough in recognizing animals because according to my continuum, the highest recognition of animal sentience would

encourage a rejection of TAG or FAW, or a reduction of animal product production/consumption. Overall, the global public governance of FAW is not satisfactory.

Why are the methods of global and public governance of farmed animal welfare not satisfactory? I argue this for two reasons: 1) the current standards are often unenforced or unenforceable and 2) the standards ignore even a reduction of animal product consumption and production as a way to improve farmed animal welfare I will explain each reason in more detail starting with enforceability.

As I discussed in the previous chapter, the USA and the EU both use so-called “hard” laws to enforce a certain level of treatment for animals but the USA has had major issues with enforcement due to the weak interpretation of the legislation by the USDA. Additionally, there’s no history of enforcement of the Twenty-Eight Hour Law (although there was one fruitless investigation in 2006) (AWI 2011). There is also no system in place to document violations (AWI 2011). The FAO has no legislation, only voluntary standards, so enforcement again is a moot point. The WTO has no laws on FAW but it does recognize the importance of animal health—which does imply that animal welfare is an instrumental part of animal health and thus, human health—and could impose trade sanctions (effectively enforcing these regulations) upon countries who fail to follow those regulations. The OIE created voluntary standards for farm animal welfare based on the EU’s, but implementation and enforcement were not delegated by the WTO, and so are not considered a part of its responsibilities. The EU also has issues enforcing its more technical FAW legislation in some member countries where lower standards persists. The EU has referred Greece’s infringement cases to the European Court of Justice multiple times, each case ending with a simple reminder of the protocol and a fine (Court of Justice 2011). Other countries have failed to abide by FAW legislation as well but most infringements involve a judgment that dismisses the action and only occasionally require the infringing country pay a minimal fee (Court of Justice 2011). The recognition of animal welfare as a key social justice

issue is something that the EU also has trouble enforcing. It is hard to measure the social acceptance of such legislation. Enforceability of established legislation is already difficult; further efforts to legislate FAW will have to address this issue.

To me, the latter reason—that the standards ignore suggesting a reduction of animal product consumption as a way to improve farmed animal welfare—as the most obvious solution, is the most egregious absence within the FAW literature. The majority of farmed animal welfare measures mention that it is the sheer number of animals killed is often responsible for the worst cases of farmed animal welfare abuse. I argue that the current system of factory-farming animals conceals the welfare of individual animals and blinds their human killers to the significance of their welfare. This is part of a larger problem with the farmed animal welfare literature in which animals are not considered as individuals but rather as a whole so that FAW accountability corresponds with numbers and statistics of average downed cows per month or the average square inch per battery cage hen. Calculating numerical averages of animal welfare fails to recognize the individual animal's welfare during the “food” production process. This seems to represent a failure for farmed animal welfare measures to actually translate into better welfare for individual animals, especially if just as many animals are being killed as before. Additionally, most animal welfare measures focus on extreme confinement like battery cages, and gestation or veal crates, yet none recognize an animal's most inherent natural behavior: freedom. With this realization, I recognize stronger enforcement of standards and gradual incremental changes through the political process could positively impact animal lives, but enforcing fines, creating higher fines and better punishments (rather than longer jail time), and better monitoring by responsible agencies can only go so far. This strategy fails to question the assumption that animals are ours to handle how we wish.

Even imagining the highest possible level of animal sentience recognition possible seems incompatible with continuing to farm animals as if they were simply commodities and not

sentient beings. Imagining the highest level enforcement and recognition of animal sentience then leads not to free lives for animals, but to marginally better lives for well-respected animals who are still treated as commodities to be killed in the same droves as before. I will address this paradox in my next chapter while I contemplate the political strategy for a reduction of animal product consumption.

## CHAPTER 6: ALTERNATIVES TO ANIMAL AGRICULTURE

The global public governance of TAG simply fails to account for the livelihoods of animals. Even efforts at farmed animal welfare cannot recognize animals as independent entities outside of their socially constructed position as products within an industry; this is the ultimate paradox in attempts at improving animal welfare. Animal welfare improvements are always seen as ends unto themselves, even if activists portray them as incremental steps towards global veganism. It is unlikely that the industry would allow their business to diminish over time. This is why transnational animal agribusinesses around the world are beginning to adopt their own animal welfare standards in order to appease citizen and activists appeals for higher standards. The industry will satisfy the easy demands of the activists before they get the idea to start demanding more.

The categories of ‘enforceability’ and ‘attitude towards animals’ have the potential to recognize the livelihoods of animals but in their application within common forms of global governance, they fall short of this realization. Inherent in the idea of enforceability is the idea of accountability, and all of those on the production side of TAG have no way to be accountable to the animals. Inherent in the idea of having an attitude towards animals within animal production is the assumption that the animal is going to be killed, so s/he does not matter *that* much. Essentially, any level of strict enforcement or any level of graciousness of attitude, does not matter *that* much if the underlying establishment is not questioned. Additionally, establishing governance as a regulatory force which serves to facilitate the accountability of a producer to a consumer (“principal-agent view of accountability”) fails to anticipate other modes of

responsibility (Weisband and Ebrahim qtd in Mason 2003:13). This chapter hopes to instill in this discussion a broader sense of responsibility within individuals.

Given what this paper has explored in the shortcomings of regulatory farmed animal welfare, there seems to be two theoretical and practical approaches for improving the lives of animals that reject farmed animal welfare as a legitimate strategy. The first is legislation regulating the *reduction* of animal product consumption and production. The second is the *abolition* of consumption and production of animal products. I organize these approaches as distinct theoretical and practical approaches for reasons that I will explain, but of course, these approaches are not mutually exclusive though they should be if we are, as Gary Francione says, to solve our “moral schizophrenia” regarding animals (2000). I first entertain the idea of regulatory alternatives, but ultimately I accept Francione’s theory of abolition<sup>41</sup> by an extended discussion of Butler’s conception of grievability.

### **The Reduction of Animal Product Consumption and Production**

What would regulations enforcing the reduction of animal product consumption or production look like? In a sense, this approach is somewhat similar to the current animal welfare framework since higher costs and better consumer awareness in high welfare regions like the EU have caused a decrease in production and consumption of animal products. The goal of this approach is a reduction of animal lives killed, not just improved welfare for animals. In the public governance realm, stricter regulations or higher taxes on animal products could effectively reduce production and consumption, respectively. Social acceptance of the idea is necessary here to avoid situations like the Prohibition wherein citizens openly rejected the regulation. Public authorities could incorporate training of officials and citizens on animal sentience, but this might

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<sup>41</sup> Francione rejects all regulatory measures like farmed animal welfare standards or other “incremental” steps in favor of a complete abolition of animal use (2000: 182). This is a common argument within animal rights literature and activism—should animal activists fight for animal welfare measures or for animal rights? Francione argues the latter, using veganism as a baseline.

only indirectly affect animals since the training does not dictate when animals are killed or at what rate. Private governance seems like it would be unwilling to accept a reduction in production since that idea contradicts the capitalist ideology of continual growth under which all business operates. (Again, since the industry's wide acceptance and use of farmed animal welfare standards is a way to capitalize on public concern for animals, this ideology is most likely a sort of preemptive strategy against a call for a reduction of animal product consumption.) Social acceptance of the idea would have to be wide-spread again in order to get any private support for the measure.

Do these potential alternatives address animal sentience in a way that the global public governance framework has not? Throughout this paper, animal sentience has been used as the gateway term to determine whether the interest of animals is considered morally relevant. Legislation that requires a set reduction of consumption or production might have animal sentience as the basis for its legislation, but I do not believe that a reduction is a sufficient way to fully consider animal interest *unless* the underlying goal of the legislation would be to ban the total commodification of animals<sup>42</sup>. The transition from current-day farmed animal welfare concerns and relevant legislation to a legislation mandating a reduction of animal product production or consumption is substantial; however, humans already accept the relevance of the so-called "humane treatment of animals" meaning it is possible to extend a framework beyond current beliefs since welfare frameworks do not go far enough in protecting animals (Francione 2002). Francione argues that because humans already love *some* animals as sentient beings, continuing the false separation of certain species of animals as property further confuses our view of them. A reduction of animal product production continues to operate under the property-paradigm. The solution that I argue offers the best alternative to the current governance

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<sup>42</sup> Animal can be killed without being commodified; I am critiquing the political economy of animal commodification though, not natural life processes like killing to eat for survival.

framework would be legislation that creates a framework for the abolition of animal product production and consumption.

### **The Abolition of Animal Product Consumption and Production**

How do I propose we move from weak farmed animal welfare measures to a complete abolition of animal product production? I recognize that a strong reduction of consumption and production is the most feasible and challenging alternative to TAG as it is now; however, this alternative seems inconsistent. A reduction of consumption and production seems to best as a means to an end, not the end itself. Francione uses the example of a rapist: one does not demand the rapist to rape less, but to not rape at all (2000). To critique the industry of animal agribusiness for ignoring the livelihoods of animals, and then to recommend a reduction of killing does not take into account the livelihoods of the animals left who would still be stuck on their way to slaughter. Abolition of animal production consumption and production follows more logically.

Through existing governance avenues, I can imagine several ways that an abolition of animal product consumption and production could come to fruition. Through domestic public governance, education programs and strong legislation would be established. How could transnational animal agribusiness transform itself into vegan companies? The WTO could support the AoA's Green Box subsidies to help producers transition. There is a potential for companies to use grains previously fed to animals in creating value-added vegan products or to feed them to people as they are. The FAO could recognize the surplus of grain that would become available and could support the redistribution of it for hungry people around the world. Markets would create other value-added substances and true production costs would be incorporated so that consumers and citizens knew more about the farmers, the chemicals, the land, and the transportation involved in creating a product. (I assume here that overcoming the animals-as-



property mindset will encourage consumers to identify more strongly with the entire production process of their food.) Consumers would want to support the transition of markets from animal-product-laden to animal-product-free because they have become aware of the issues. Zoonoses and disease outbreaks due to intensive factory farming would disappear. Education programs would encourage healthier eating and lifestyle habits so that healthcare costs would go down and could subsidize local organic farming programs in food deserts. These farming programs would benefit from a re-stabilized climate with consistent weather from the reduction of greenhouse gas emissions from animal agriculture. Farmed animal sanctuaries could be established so that children and the public could visit and interact one-on-one with animals; these interactions would foster the development of empathy and nonviolence which could in turn reduce criminal acts of violence and reduce prison populations. The education programs would probably have to confront common arguments against veganism such as the anarcho-historical, health, or environmental concerns; all of these concerns see eating animals as necessary to survive—something which has been disproved by many scientists and many living, healthy vegans. Overall, the abolition of eating animals could unveil a peaceful and abundant vegan world.

The major problem with this regulatory proposal is social acceptance. Social acceptance needs to occur before any change; therefore, I will deliberate on how humans can begin to consider animals as worthy of their consideration. First, we need to change the way we frame animals, then attitudes and behaviors will change. I will use Butler's concept of grievability to shape my discussion.

Given that all we know about animal sentience, why do people continue eating animal flesh, animal eggs, and drinking animal milk? Most people don't know, or more accurately, refuse to learn about the reality of animal agriculture. If we are to adopt Judith Butler's logic on grievability in *Frames of War* to examine the lives of animals, we see that humans are obligated to stop killing animals. Because even though precariousness underlies all animal (both human and

non-human) life, it is the human-caused precarity of animal lives which necessitates a sort of re-framing and obligation (Butler 2010). This precarity, defined as a “politically induced condition in which certain populations suffer from failing social and economic networks of support and become differentially exposed to injury, violence, and death,” can easily be extended to animals<sup>43</sup>. Farmed animals are not only bred for their slaughter (their death more valued than their life), but in their short existence, they endure immense amounts of pain and suffering (25). Butler claims that “precisely because a living being may die, *it is necessary to care for that being so that it may live*” (14, emphasis added). Butler also finds that “grievability is a presupposition for the life that matters” so that “without grievability, there is something living that is other than life” (14, 15). I ground my use of grievability in the human use of animals as commodities within an economic commodity chain, so I avoid addressing the issue of human use of animals simply for survival. With this framing in mind, I ask: in what ways does the framing of animal agriculture depict who is grievable?<sup>44</sup> Second, how can Butler’s conception of “non-violence” re-frame issues in a way that not only extends the frames to include animals as subjects and objects of compassion but inspires humans to be actively responsive to the current condition of animals in the world?

These questions deserve deeper reflection and analysis because of humanity’s hypocritical relationship to most other animals on the planet. For example, to mourn certain commodified animals, like pets, is considered acceptable and is understood. Even to grieve species that are going extinct or are suffering due to human encroachment is allowed. But to mourn the deaths of the 58 billion nameless animals killed for food each year is criticized as “crazy” and is distinctly disallowed from contemporary culture. To be at lunch with someone

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<sup>43</sup> How am I certain this can be extended to animals? In contrast to Agamben (and a long line of other philosophers) who use *zoe* to name animals, Butler uses *bios* for humans and animals, a move which ascribes sociality and a certain political weight to animals. She claims “there is no firm way to distinguish in absolute terms the bios of the animal from the bios of the human animal” (19).

<sup>44</sup> I focus here on animal agriculture in particular because this practice constitutes 98% of all human use of animals.

eating a chicken flesh sandwich and to become overcome with sadness at the recognition of the chicken's (or perhaps multiple chicken's) flesh itself is considered rude. To begin crying or vocalizing your grief at the barbarity, or to be in a moment of as my friend calls it, "utter suffocation of being in the hall of death" is to become even more socially outcast. (This is an experience I have gone through many times since childhood, one that prompted bullying, scarred me, and frankly, led to my distancing myself from those who might reveal this internal vulnerability). I share this because Butler provides a way to reconnect with this grieving as a politically-engaged process in relationship with all other beings. She asserts that using this perspective can propel moral theory into a social critique. The moral theory of veganism, that animals are not ours to confine, eat or take advantage of in any way, seems to suffer from its perceived inability to affect large-scale change. If it can be propelled into social critique, more people might be compelled to learn more and more animals could be saved. I ground my analysis of the human consumption of animals in the commodified world in which a vegan diet is easily accessible but I do not limit my critique to factory farming. Reversing the commodification of animals is a moral shift that recommends not eating animals *regardless of scale*. Out of respect for cultural relativity, I do not universally extend my analysis to the human use of animals for survival. I argue that a transition from viewing farmed animals first as "killable and ungrievable," to "grievable yet killable," to "unkillable and grievable" must accompany the transition from moral theory to social critique for human commodification and consumption of animals.

The difficult transition from ungrievable to grievable is not to be underestimated. Derrida argues that we have waged a "war on pity" in allowing factory farms and other crimes against animals to continue. He says "Everybody knows what terrifying and intolerable pictures a realist painting could give to the industrial, mechanical, chemical, hormonal, and genetic violence to which man has been submitting animal life for the past two centuries" (Derrida 2002: 395). I use Butler's concept of grievability to not just mean that animal lives matter but that our use of

animals requires a moral sense of sadness that might translate into duty (representing moral theory into social critique or action). This sense of sadness is something that I originally thought might come from a recognition of animal sentience within the current frameworks, but I ultimately conclude that it must come from a recognition of the grievability of animals. The fact is that our human survival in the developed world does not depend on the death of certain named “food-animals” anymore than our survival as a nation depends on the death of certain framed “enemy combatants.” Indeed, whereas certain humans or groups of humans are accused of “doing” something to us, animals used for food are killed daily simply for “being” (Adams 2007: 26). This fact reaffirms my belief that grievability allows no exceptions for farmed animals in the Western world; all farmed animals have sentience and their deaths and even their lives which represent “something living that is other than life” are grievable (Butler 2010: 15). By Butler’s theory, humans are obligated to let animals live since they have no need to kill animals to eat. Recognizing the sentience of animals may be dismissed by more scientific-minded but I believe that the sentimentality which animal activists are often accused of is important for recognizing how far removed our emotions are from our eating habits. In this thesis, I aim to incorporate this grievability in a deeply sentimental and sincere way so as to lead the way from unkillable to grievable and killable to unkillable.

### **Who is grievable?**

To answer my first question “In what ways does the framing of animal agriculture depict who is grievable?” I will examine typical framings of animal agriculture through various perspectives. I will move through the perspective of the producer, the consumer, the advocate, and the government, all key perspectives within the commodification of animals within animal agribusiness. The category of producer includes producers and common associates: the “family farmer,” animal scientists who work with producers, animal agribusinesses and retailers, and employees in meatpacking plants. The consumer viewpoint entails typical consumers, as well as

concerned consumers. The advocate consists of animal activists, food activists, and environmental activists. The government category contains federal, state and local legislation and efforts of regulatory agencies.

### *The Producer*

The category of producer immediately objectifies animals as products without agency, and the actors in this category seem to embody that sentiment. Yet, surprisingly there is sometimes room for grieving as I found with my analysis of a small-scale producer who runs a family farm. To Mr. Godfrey, animals are seen as interesting variables who affect his profit, and who are occasionally--notably--grievable. Godfrey Family Farms keeps a regular blog with updates on their eggs, dairy, Icelandic sheep, pastured pork, pastured poultry, and pastured veal<sup>45</sup>. One blog post in particular—"Tough Decision" (01/16/11)—highlights the paradoxical nature of the farmer's relationship with animals, specifically the grievability of a "cull" cow, Mocha (Godfrey 2011). The author begins the emotional post: "I have nearly finished weeping, nearly." He gives a historical account of the cow's flaws: she was a "dairy reject;" she "lost" all calves born to her; and worst of all, her nipples have had mastitis—a potentially fatal mammary gland infection which spoils milk—off and on with one "quarter" (one nipple) permanently infected. At the same time, the author reiterates her importance by claiming that he "just fell in love with her" because of her gentle disposition. He continues:

And yet, for the past 18 months, we've spent time together most every day. A half hour at least, often more. I've told her my problems and she has listened patiently. My time with her has been the closest thing to time alone that I have these days. Mocha feels like a friend. Granted, she is an 800 lb furry friend who has the disposition of a recalcitrant 4-year-old, but sometimes you just have to be grateful to have someone around who listens. Even if it is a cow.

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<sup>45</sup> Godfrey Family Farms was one of the first returned hits on a Google search with search terms "family farms + meat" (5/09/11). Their terms for the products, I will argue later, purposefully re-frame their product without naming the living animal that died or lived a confined life for the product.

Yet, even while he waxes sentimental, the author concludes that because of her inability to breed and her low levels of milk production, he needs to kill her. His emotions and his logic contradict each other representing a disjunction between them. He explains his internal conflict on her impending slaughter: “I called the butcher yesterday and I hated him for agreeing to come even as I thanked him for moving Mocha to the front of the line. He will be here in an hour. I know that sounds crazy, but I just wanted someone to fix it.” This begs the question, “fix what?” “Fix it” removes Mocha from the companion status and into the instrumental realm. The farmer leaves unspoken an alternative life for Mocha, not as a dairy cow or breeding cow which she has not succeeded in, but as a companion, a rescued animal living out her life. Ultimately he reassures himself, “But farm life—any life—doesn’t work like that....and I will grieve the loss of my cow.” Thus, even though subsequent blog posts mock the livelihood of other animals on his farm (for not knowing how to stay warm or avoid death at his hands) this cow in particular became grievable while remaining killable.

Temple Grandin is a professor of animal science who works with slaughterhouses and animal farms to improve animal welfare conditions. She qualifies as a key paradoxical perspective for informing animal agribusinesses and their auditing and certification organizations. On the one hand, she claims that her autism allows her to know cows and other animals in a deeper emotional and physical sense than most people. On the other, she argues that humans genetics require meat eating so the best humans can do in addition to “caus[ing] as little pain as possible” is to respect animals’ emotional lives by not scaring them (Grandin and Johnson 2005: 179). She claims that cows are unaware when they are going “up the chute” for slaughter, but they can become easily startled by shiny things or noises. Because of this, she has designed slaughtering facilities that avoid spook-worthy distractions so that the animals experience supposed higher welfare on their way to slaughter.

While her stamp of approval on slaughterhouses in effect encourages the continued industrialized slaughter of animals, an action which on the whole causes more pain to animals rather than less, her privileging of the emotional lives of animals is significant. In looking at a dairy cow whose calf, destined for veal, was taken from her that morning, Grandin remarked: “That’s one sad, unhappy cow. She wants her baby. Bellowing for it, hunting for it. She’ll forget for a while, and then start again. It’s like *grieving, mourning* – not much written about it. People don’t like to allow them thoughts or feelings” (Grandin qtd. in Sacks 1996, emphasis added). There is an important distinction between the actual grievability of the cow and the cow’s ability to grieve, the latter of which is to what Grandin refers. She frames the cow as “like us” (but not us) by referring to commonly considered human actions of “grieving, mourning”—this is a notable step in moving animals from un-grievable to grievable. The grief of this cow in this particular moment is striking, yet it seems clear that Grandin’s overall perspective on animals used for food is that their lives should be respected, but not grieved. In respecting the animals’ need for less pain and less scariness in their lives, Grandin works to reduce the precarity of their everyday situation. Her framing of their experience as farmed animals as a necessary part of human life ignores that too many humans, grief also emerges naturally at the sight of animals being killed for food.

In light of the perspectives of Godfrey Family Farms and Temple Grandin, other producers (and associates) offer less compelling paradoxes of their relationship with their products. Animal agribusiness and retailers provide animal welfare statements (speaking to the growing importance of animal welfare concerns in the market) but the grievability of animals, even specific animals is absent. Retailers have struck success with consumers in marketing their animal welfare concerns. As such, many retailers including grocers and restaurants provide animal welfare statements that have little enforceability without third-party audits or certification

groups<sup>46</sup>. First, I briefly note the attempts by several producer groups to capitalize on this public concern before explaining why animal welfare standards do not frame animals as grievable.

Since 1999, McDonald's has been following the animal welfare standards set forth by the American Meat Institute whose audit tools were developed by Temple Grandin. On its website, it claims "We care about the humane treatment of animals, and we're committed to working with suppliers and outside experts to continuously improve our standards and practices, both within McDonald's and across the industry" (McDonalds 2011). Burger King and Wendy's International also follow these standards in their international sourcing of animal products.

Another animal welfare auditing organization, the Global Animal Partnership, independently began in 2008 after outgrowing its role as auditor with by Whole Foods in 2005. It developed a "5-Step Animal Welfare" program implemented in Whole Foods stores in 2009. These five steps go further than many other standards suggested. The perspectives of animal welfare advocates, animal scientists, and farmers were considered in creating the levels:

- Step One: No crates, no cages and no crowding
- Step Two: Indoor environments must include minimal enhancements to encourage natural behaviors
- Step Three: Outdoor access required along with environmental enhancements to encourage natural behaviors
- Step Four: Pasture centered – improved standards for outdoor areas
- Step Five: Animal centered – all physical alterations prohibited
- Step Five Plus: Animal centered – animals spend their entire life on the same farm (Farm Sanctuary 2009).

Animal agribusinesses have attempted to capture consumer interest in animal welfare as well. Smithfield, the world's largest pig meat producer, announced in 2007 that it would begin phasing out gestation crates used in the intensive confinement of pregnant sows in order to improve the welfare of pigs (Smithfield 2007). Tyson, as one of the largest global chicken product producers, also claims to make decisions on "animal well-being" (its term for "animal welfare") based on recommendations from the "best available scientific research and ... animal

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<sup>46</sup> If these statements could be enforceable by public authorities, my analysis might change.



well-being experts in the industry” (Tyson 2010b). It welcomes third-party auditors to rate the welfare of the animals within its plants across the USA. According to the auditing group, Food Safety Net Service’s (FSNS) website, all of Tyson’s auditors are PAACO (Professional Animal Auditor Certification Organization) certified and trained to calibrate audits using animal welfare standards developed again, by Dr. Temple Grandin (Food Services 2009). Tyson concerns itself with animal well-being through its Office of Animal Well and its veterinarian, its Core Values, its Mission Statement on Animal Well-Being, and its Sustainability Report. Tyson’s mission statement on animal well-being claims to be “committed to the well-being, proper handling, and humane slaughter of all the animals that are used in our food products” (Tyson 2011a). Tyson makes claims of legitimacy by referring to external organizations’ animal welfare standards like the National Chicken Council’s Animal Welfare Guidelines and Audit Checklist, as well as internal programs like the Trained Animal Handler Certification, and the Risk Assessment, Control, and Evaluation program.

While concerned with animal welfare, animal agribusinesses and retailers are not seeking to re-frame animals in the public mind, and they most assuredly are not attempting to frame animals as grievable, something which might put their business in jeopardy. Instead, they attempt to assuage public concern with animal welfare statements to improve improper and inhumane slaughter and handling, and in rare cases, confinement. As I mentioned in the beginning of this chapter, the welfare frame does not theoretically lend itself to an abolition framework because the welfare frame ignores the property-status of animals in favor of improving the conditions of their environment.

Alternatively, employees of producer organizations often are considered as ungrievable as the animals with whom they deal. Workers in slaughterhouses and meatpacking plants suffer tremendous physical and psychological tolls for their strenuous work. The turnover of employees is often one hundred percent in a year; the positions are highly racially segregated and sexist; and

most employees are working illegally and fear risking deportation with any complaints (Hawthorne 2011). One worker, an inmate at a local prison, complained about his job “This job’s for an ass. They treat you like an animal” (LeDuff 2003: 187). Another said, “Really, it’s not a slaughterhouse of cows. It’s a slaughterhouse of people” (Andreas 1994: 112). The job is considered a job “of last resort” for these reasons. The taxing physical conditions under the labor of the employees and the mechanized slaughter of the animals is strangely similar in that as Alex Bennett, a chicken hanger in a chicken slaughterhouse describes:

It gets into your eyes, into your nose, into your mouth, into your ears. There is no adequate description of what it’s like to have to stand on the line for hours and have the chickens defecate all over you. The fecal matter hits you under your clothes, and you can feel it slowly running down your body. It doesn’t matter how much clothing you wear or how much tape you use, it’s still going to happen. It’s absolutely inevitable (Hawthorne 2011: 40).

He continues to describe the relentless nature of the chicken hanging line. With his requirement to hang 35 fully conscious birds a minute by their feet into shackles moving them to an electric stun bath, he says he and other workers often urinate “right on the equipment—on the poles and beneath the live-hanging conveyor belt that brought the birds in from outside” and defecate in their pants to avoid slowing down the line (Hawthorne 2011: 40). The precarity of the animals is undeniably intertwined with the precarity of the workers.

### *The Consumer*

The next perspective I will examine under Butler’s concept of grievability is the consumer. The following consumer-based information is grounded with random surveys and interviews that aim to capture the opinion of typical consumers. Around the world, consumers are said to prefer higher welfare standards for farmed animals, and are analyzed under willingness-to-pay models. They are often touted as the driving force in changing animal production methods (Eurobarometer 2005; Lusk et al. 2007). Lusk et al. (2007) found that 76% of surveyed USA citizens claimed animal welfare was more important than low meat prices.

Tonsor (2009) also finds that “consumer desires initiate change” while “perceptions [of farmed animal welfare] drives decisions.” Tonsor (2009) conducted a national survey of 2,000 USA residents which found 70% national support for supporting a law that required farmers to “confine calves raised for veal, egg-laying hens, and pregnant pigs *only* in ways that would allow these animals to lie down, stand up, fully extend their limbs, and turn around freely” (emphasis added). Because perceptions can be easily changed in the short-term, typical consumers often revert back to their traditional purchasing habits even if they are attempting to incorporate higher welfare animal products or a new lifestyle like veganism. All in all, typical consumers claim to want higher farmed animal welfare standards and will vote accordingly, but do not necessarily shop under this principle.

Typical consumers transition to concerned consumers<sup>47</sup> by adopting forms of ethics inspired by increased awareness. Even most concerned consumers, by virtue of the willingness-to-pay scheme, agree that animals are still to be eaten. Still, concerned consumers can change their definitions of who is edible and who is not. After a *salmonella* crisis with chicken eggs, consumers might avoid eating them. Or, more importantly to this paper: after the release of a powerful documentary like the Academy Award-winning *The Cove* consumers might avoid buying dolphin meat or possibly mislabeled fish products from Japan. This is because consumers who become informed via the news, advocacy groups, labeling schemes and other respected sources might perceive the grievability of animals in different, more long-term ways, depending on their news source and their concern. Consumers might be influenced by concerns about one or a combination of these factors: contamination or food safety, worker safety, zoonoses, health, economics, or animal welfare. Animal welfare appears to be the only factor that might change the consumer’s sense of animal grievability.

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<sup>47</sup> I recognize the distinction between concerned and typical consumers is somewhat weak, but I’m trying to explain the variability in consumer purchasing by aligning concerned consumers with more long-term decisions and ethics and typical consumers with more short-term decisions and home economics, though obviously news and information easily changes both groups’ purchasing habits.

Consumers are in some ways seriously affected by ungrievability of farmed animals in that consumers often suffer directly from meat contamination and disease that they then eat, and indirectly because of zoonoses. This issue focuses back on human health, however, the interrelatedness between the illness of animals and the illness of humans is something that can be used to point to the grievable nature of both. The ungrievability of a “downed” cow can be seen in its inclusion in the slaughter line to be processed into “food” either for humans, or fed back to cows as “meat and bone meal” feed instead of being humanely killed. This practice symbolizes ungrievable lives in that “There is something living that is other than life” (Butler 2010: 15). Living cows close to death are fed back to other living cows close to slaughter, who are fed to unknowing consumers who become deathly ill. Feeding downed cows to other cows was responsible for many consumer illnesses and deaths in the mid-1990s due to mad-cow disease or BSE (bovine spongiform encephalopathy) which is infectious to humans. Contamination of all factory farmed animals flesh occurs on an increasing basis. A simple search for meat or egg recalls brings up many instances. The largest recall of chicken eggs in USA history was in August 2010 when over half a billion eggs were thought to have salmonella (Goodman 2010). The eggs were traced to just two factory farms in Iowa. Recalls for produce like spinach, or even nuts, can often be traced to pathogens in the manure used on the product, linking almost all recalls back to animal agriculture. Zoonoses can be linked to the intensive confinement of animals in factory farms as well. The 2009 “swine flu” pandemic is suspected to have originated in a pig factory farm in La Gloria, Mexico while the 2005 “bird flu” outbreak is thought to have mutated into the deadly H5N1 form from intensive confinement of chickens in China (Lacey 2009; Lean 2006). Again, the precarity of their human lives, not even necessarily as consumers of animal products, mirrors the precarity of the animals.

### *The Advocate*

Concerned consumers interested in animal agriculture often turn into advocates like animal activists, food activists, and environmental activists. Grievability of animals varies widely in each form of activism. For advocates, who they eat or do not eat becomes a defining facet of their identity, yet these definitions are not always consistent with the underlying ethic of the movement. For example, locavores often only eat animals that were raised and killed locally, yet think only about the end product. Environmentalists may stop eating fish due to the depletion of many of the world's fisheries yet continue to eat other animal flesh. Animal activists may stop eating the flesh of animals but continue eating dairy and eggs even though dairy cows give birth to veal calves, and all male chicks in hatcheries are thrown away. Those examples of minimal adoption of the groups' ethics reflect the wider perception of these groups' ethical foundations.

I would argue that as advocates became more involved in activism, their definitions of "who we eat" would shift more to possibly embrace the grievability of all animals, although locavorism might not offer the same potential at the other groups though since many locavores are adamantly vocal about eating animals who lived locally. While a committed locavore might only eat food that she raised and killed herself, another locavore might extend her frame of analysis to question the grain fed to the animals. If the grain had travelled too far, then she would not eat the animal. A re-framing like this while a more accurate reflection of the animal's life-cycle, also ignores the morality of eating animals. Similar re-framings occur within the environmentalist movement (in fact, some would argue food activism like locavorism sprung out of the environmentalist movement). Many environmentalists work for the "good of the species" meaning that killing some animals to save others is acceptable, whereas I argue that grievability makes no exceptions. Most animal advocacy groups actively recruit people to veganism as the strongest step towards recognizing animal grievability. Using heart-wrenching undercover footage and intensive awareness campaigns across the country and the world, these groups have

established themselves as legitimate forces against animal agriculture. Yet, their effectiveness is compromised by what is seen as excessive sentimentality. Many criticize the large animal advocacy groups like the Humane Society of the United States and Mercy for Animals for sensationalizing their videos and portraying crimes at factory farms as status quo.

Finding a way to portray animals as grievable in a way that points to human bias against the grievability of animals seems fundamental here. I will discuss this idea when I analyze the second question on nonviolence. The grievability of animals killed for food has the potential to be recognized within environmentalists and animal activists groups, but only if the ethical perception of those who identify with the groups consistently extends consideration to all animals equally.

### *The Government*

The government category contains federal, state and local legislation and efforts of regulatory agencies. The framing of animal agriculture can be seen most clearly under the legislation passed by these government officials, so here I will explain how farmed animals, legally defined as property with limited protections under the law, are effectively rendered ungrivable by the egregious absence of even minimal protection from cruelty and abuse on the farm, during transport, and slaughter. As I discussed in a previous chapter, the USA only has two federal bills that directly regulate farmed animal welfare, while the EU has many Directives that regulate farmed animal welfare through life on the farm, transport and slaughter. Does outlawing acts of animal cruelty or intensive confinement then transform animals into grievable lives? I argue that it does not for two reasons: 1) it does not communicate sadness at the constant precarity of animal lives in their imminent death and 2) it inspires “happy” animal agribusiness campaigns which appease public worry over animal welfare; in effect it encourages people to eat more animals, not less. The USA’s two federal laws, state ballot initiatives, and the EU’s legislative efforts including regulatory agencies do little to mitigate the commodification of

animals. Under these changes even the stricter confinement phase-out initiatives, animals are still seen as killable and ungrievable. In this way, addressing the precarity of the animals is less important than addressing their ungrievable status.

In my analysis of the ways various perspectives' frame animal agriculture and find animals either grievable or ungrievable, I've found feeble attempts at animal welfare through producer and governmental efforts, and complex personal lifestyle and dietary changes regarding animal agriculture through consumerism and advocacy groups. What perspective succeeded in framing animals as grievable? In terms of both grievability and killability, only certain concerned consumers and animal activists seem to declare animals as unkillable and grievable under most circumstances, with veganism for consumers or vegan advocates portraying the framing of farmed animals as absolutely unkillable and grievable. Within the producer category, family farms and animal scientists can sometimes see animals as potentially grievable but not necessarily unkillable. Other producer groups like animal agribusinesses, auditing groups, and retailers do not frame animals as grievable or unkillable since to do so would jeopardize their business. In a similar way, the USDA whose major constituents are agribusinesses (and family farmers, but their lobby is not as large as the former) does not frame animals as grievable or unkillable.

### **How can non-violent action inspire compassion and change?**

If consumers and advocates have the ability or predisposition to frame animals as grievable, how can they become more effective? Interestingly, producer and governmental actors have increased the precarity of those actors through legislation called the Animal Enterprise Terrorism Act. If an animal enterprise can prove that it lost money due to the actions of animal activists (or consumer boycotts led by activists), the activists can be tried as terrorists (Lovitz 2010). Additionally, consumers, already in a precarious position through the risk of disease from animal agriculture, can be seen as powerless in another way because animal activists portray the

only consumer action as non-action through not buying animal products. A consumer's decision to see an animal as unkillable removes consumption from the consumer. In an attempt to re-frame non-action as action, I will discuss the second question, "how can Butler's conception of non-violence re-frame issues in a way that not only extends the frames to include animals as deserving of compassion but inspires humans to be actively responsive to the current condition of animals in the world?"

In the sense that nonviolence is a very active struggle and response to violence (Butler 2010: 170), veganism as a nonviolent "nonaction" should be re-framed as to be equally valuable as "action." Even so, removing animal products from diets and lifestyles as vegans is not a perfect principle; vegans often attest to situations that contest their ethical boundaries<sup>48</sup>. Similarly, Butler "doubt[s] very much that nonviolence can be a principle" because it must constantly be in struggle with changing and reiterating norms and the violent origin of its subject's subjectivity (166). Animal products are constantly reiterated as the main components of society's eating norms; however, nonviolent action could engage in a moral struggle with the imperfect<sup>49</sup> concept of nonviolent vegan eating and living while at the same time recognizing humanity's survival because of speciesism (the social origins of animal agriculture). To those who would argue that eating animals is natural, like Temple Grandin, Butler might argue that the violence inherent in our origins (of humanity or as an individual human) can be changed. She says "it should still be possible to claim that a certain crucial breakage can take place between the violence by which we are formed and the violence with which, once formed, we conduct ourselves" (167). It stands that

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<sup>48</sup> For example, killing ticks or fleas on companion animals, killing mosquitoes or dangerous spiders, eating non-vegan food from non-English speaking host in a foreign country, wearing thrifted or old clothing made with animal products, using camera film with gelatin, asking about brands of sugar in desserts or ingredients in veggie burgers in restaurants, eating something with a minute amount of honey in it, eating dumpstered non-vegan food, using sleeping bags with down feathers, putting rescued gold fish in an outdoor pond where they might die, are all examples of seemingly small but difficult decisions I or other vegans I know have discussed or experienced.

<sup>49</sup> Nonviolent vegan eating and living is admittedly an imperfect ideal. Animals are harmed in any form of agriculture through displacement, chemicals, and so on. Animals and humans living in close proximity will also always threaten each other in some way.



we can receive proper nutrition from non-animal sources, therefore, we no longer need to conduct ourselves violently.

The reason this “break” with the norms of animal eating is so difficult might be that the human relation to animals is based on the idea of “other.” This relationship “is one of annihilation and preservation” or a sort of “moral sadism” (Klein qtd. on Butler 173). The human conception of the other as animal is perhaps the hardest dichotomy to overcome since it is most likely the original form of discrimination; in fact, Adams finds that “all forms of oppression can be traced back to the treatment of animals by humans” (Adams 2006: 28). Butler overcomes the concept of the other by emphasizing compassion and responsibility: “In the name of preserving the precarious life of the other, one crafts aggression into modes of expression that protects those one loves...” (177). This mode of expression might look like “a certain ethical practice, itself experimental, that seeks to preserve life better than it destroys it” (177). From this, I argue that consumers and advocates can engage nonviolently with the idea of speciesism and animal agriculture if they note *not* the precariousness of all animals, but “the possibilities of one’s own violent actions in relation to those lives to which one is bound, including those whom one never chose and never knew” (179). This re-framing of one’s ethical stance as including considerations for those whom “one never chose and never knew” is a radical widening of a person’s scope of compassion and responsibility. This scope of compassion and responsibility could and should involve animals. Consumers and advocates can use this new conception to advocate for animals as grievable, not because of their precarious lives, but because of their human-caused precarity for which the very same consumers and advocates speaking for them are in some part responsible.

Consumers and advocates can use this critique to respond to animal agriculture in two ways under Butler’s conception of nonviolence: “to act against a certain violent act, or to defer to the “non-act” in the face of violent provocation”—these could represent the activists and the consumer, respectively, in the face of animal agriculture (180). The activists act directly in the

face of animal agriculture by calling the practice out on its ungrievable notion of animals while concerned consumers non-act by not buying animal products. Butler continues, “when acting reproduces the subject at the expense of another, not to act is, after all, a way of ... registering and demanding equality affectively. It is even a mode of resistance” (184). This re-framing empowers non-action and consumers as a form of political resistance against animal agriculture.

Through this discussion of the second question, I have answered how re-framing widens our scope of compassion to include animals and requires humans to actively respond to the condition of animals in the world by actions and non-actions; additionally, in my discussion of the first question, I explained most of the ways humans frame animal agriculture as a reflection of their ethical stance. If we are to truly re-frame the issue of animal agriculture, it seems important especially in the case of animals who are always seen in a diminutive way next to humans, to invoke all of our senses, senses which we have in common with those sentient beings we slaughter. Butler also respects the call to responsibility that emerges through our senses: “The claim upon me takes place, when it takes place, through the senses, which are crafted in part through various forms of media: the social organization of sound and voice, of image and text, of tactility and smell” (180). Recognizing the way we frame our sensate experience of the world is necessary before we can struggle non-violently “over the domain of appearance and the senses, asking how best to organize media in order to overcome the differential ways through which grievability is allocated and a life is regarded as a live worth living or, indeed, as a living life” (181-2). Here, I provide examples of the current ways our senses are controlled through the norms of animal agriculture. Regarding our sight: most humans have never made eye contact with an animal before slaughter. We never physically see the conditions of suffering animals before slaughter either. Regarding our hearing: we never hear the cries of cows whose calves are being taken away, the cries of horror as animals are slaughtered still conscious, or the cries of new chicks calling for their mother being thrown in the “chipper.” Regarding our sense of smell: the

smell of Greeley or of nearby cows, and manure lagoons occasionally makes its way to our noses, but this is the smell that those animals live in every day of their lives. Regarding our sense of taste: It is hard for us to imagine the taste of raw rotting meat that has never been cooked, and never been seasoned. Can we imagine eating it warm right off of the animal's bones? This is the reality we hide from ourselves. Regarding our sense of touch: most of us never have real life interactions with farmed animals. Have we ever touched or felt the skin of another animal? Not many have, though those that have and have continued to eat animals, I wonder what they feel.

The sensate experiences of animals plodding through their lives of misery until their conscious slaughter is only brought to us through the lens of undercover photographers and videographers. Even that is at risk- a current bill before the Iowa house would outlaw the production or reproduction of any visual media from inside a slaughterhouse. Similar bills are being considered in Florida and Michigan right now. These bills would further separate humans from the process. Human knowledge of animal agriculture is becoming highly regulated although Derrida claims:

No one can deny the unprecedented proportions of this subjection of the animal... No one can deny seriously, or for very long, that men do all they can in order to dissimulate this cruelty or to hide it from themselves, in order to organize on a global scale the forgetting or misunderstanding of this violence that some would compare to the worst cases of genocide (there are also animal genocides: the number of species endangered because of man takes one's breath away) (2002: 394).

We already package up animal bodies in cuts that leave the resulting product far from the original animals, and most likely composed of part of multiple animals. For humans, ordering animal flesh, eggs, or dairy for lunch or buying these products at the grocery store is far removed from the animals' actual death. We speak of their death in false mass terms, since meat functions as a mass term defining entire species of non-humans. Meat also represents an absent referent since "behind every meal of meat is an absence: the death of the nonhuman animal whose place

the meat takes” (Adams 2006: 23). In our war on animals, we even bury their bodies in our own as just as in any Holocaust or genocide, the bodies disappear.

Through noticing the framing of our senses, our feelings of animal grievability, and our circle of compassion and responsibility, humans can embrace their obligation to stop causing harm to commodified animals through farming and consumption. In this way, Butler’s grievability concept offers a stepping stone from seeing animals as killable to unkillable. To understand grievability, humans must embrace empathy and compassion as a powerful manifestation of grieving. Butler says “how we interpret what we feel actually can and does alter the feeling itself”(42). Most humans have an intuitive sense of how our existence as Butler says, is “bound up with others,” but humans have maintained a separation between them and other animals which has blinded us to the true experiences of animals in this world. Humans themselves cannot continue living without understanding animal grievability though since “there is no life without the conditions of life that variably sustain life, and those conditions are pervasively social” (Butler 19). The “interdependency of persons...[includes] relations to the environment and to non-human forms of life” (19). Human interdependence relies on relationships with animals as well.

## CONCLUSION

Through this discussion, I have hoped to show how animal agriculture, as shaped by our social and political conditions, is “radically unjust” while humans remain responsible (Butler 2010). Animal agribusiness, as one of the largest industries world-wide, perpetuates the violence against commodified animals without end. The governance of farmed animal welfare framework is entirely insufficient. A reduction in production and consumption seems possible but only with a re-framing of the grievability of animals can humans begin to revoke the killability of animals. I favor an abolitionist approach to governing animal agriculture though it must incorporate a methodology for earning social acceptance, possibly through Butler’s concept of grievability as I have discussed here. That these re-framing actions are political must be emphasized; these actions will depend on the temporal and historical contexts of every situation but they will have political ramifications. Global and public governance will only change once it is pushed by particular consumers and advocates. Consumers and advocates are already given the chance to stop participating in the violent actions as Butler describes: “When the norms of violence are reiterated without end and without interruption, non-violence seeks to stop the iteration or to redirect it in ways that counter its driving aims” (183). Stopping the iteration or redirecting the violence of animal agriculture is the social critique necessary to elevate moral theory into a usable constant nonviolent strategy. This strategy would ultimately conclude with a more just governance system that sees animals as sentient beings, just like humans.

This thesis began asking whether TAG was governed, whether the governance of TAG addressed FAW and whether the governance addresses animals. I moved through the elaborate

mechanics of the way transnational animal agribusiness moves and replicates around the world. It continued with an analysis of farmed animal welfare measures as a potential strategy to alleviate TAG's undeniable exploitation of animals. I have explored the ways public institutions have governed TAG, and the way they've addressed FAW, and I have come to the conclusion that there is a governance deficit when it comes to animals. An extended discussion of the WTO, OIE, and the FAO unfortunately left readers without a promising avenue through which one, as either an individual or a state, could help animals. The analysis of FAW within TAG governance in the EU and the USA found strong legislative efforts in the EU and minimal voluntary measures in the USA. These efforts correspond with each region's efforts to mitigate other risks to society and the planet as well. Overall, the forms of governance pursued by the WTO, OIE, FAO, the USA, and the EU remain limited with regards to animals. Animals are not considered appropriately as sentient beings, even when the regulation explicitly mentions animal sentience. I have questioned the efficacy of these governance mechanisms and have deemed other strategies necessary. I see the need for a fundamental shift in our understanding of animals from a perspective that views them as commodities, property, and ungrievable to one that views animals as sentient beings with livelihoods and grievable lives. An exploration of alternatives found that a reduction of animal product consumption and production seems possible if the grievability of animals is recognized first.

Further areas of study could address the capitalism of animal agribusiness in a more profound way in that it seems as though my suggested alternatives to animal agribusiness are distinctly anti-capitalist. Further research should continue to trace the changes in governance as TAG and FAW measures increase around the world. Developments with the USA's COOL within the WTO may change the way the EU and the USA trade, though it seems unlikely that this will allow the EU's stricter standards to influence the USA, or more importantly, that these standards would actually reduce the consumption or production of animal products. Additionally,

studies should address the views of commodified animals in other parts of the world. Are animals always seen as inferior to or as property for humans? If not, what does animal agribusiness look like? How are commodified animals seen as grievable in other ways? Another avenue could explore in what ways veganism is becoming a successful social movement advocating for the recognition of animal sentience and whether or not those avenues could be replicated through regulatory means.

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