

### WTO and the Trade Liberalization-Animal Welfare Conflict: The Clever Political Economy behind International Institutions

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**Abstract:** What is "animal welfare"? Who will benefit from this concept and/or favor from policies based on this concept? And who may be worried about the disadvantages, if animal welfare regulations are enforced and wrongful acts are punished? The analysis of these questions is considered from a political economy perspective within this paper, suggesting that even the EU citizens whose attitude to animal welfare is usually appreciated by literature often do not match their daily purchasing decisions. This gap, actually, is hard to fill through official intervention in the way of government subsidies to producers. To consider this phenomenon deeply and thoroughly will bring us to raise the question of why very few governments subsidize their citizens purchasing meat in good animal care and management, but do otherwise. The answer is doing so will not only increase costs to producers but also jeopardize profitable business into uncertain. In this sense, the industry will undoubtedly do whatever they can to influence or even to hinder the governmental policies and the WTO's regulations. This is the clever political economy behind the scenes in the field of international food trade.

Keywords: Animal Welfare, Food Trade, Food Safety, Subsidies, WTO

### **1. INTRODUCTION**

During the last 20 years, consumer groups, mostly in industrialized countries, have brought much more attention to the issue of animal welfare. Basically, as consumers grow wealthier, their access to an adequate quantity of food becomes assured. At this point, consumers tend to turn their attention to the quality of foods. Such quality concerns are generally identified as food safety and sanitation that includes specific issues regarding how food is made, and the impact that food production methods have on animals.<sup>1</sup> The relationship between animal welfare and production is undoubtedly complex, partly because animal welfare *per se* is a controversial term. Producers often claim that the welfare on their farms for animals is qualified; however, there is no denying that people vary in their attitude to animal welfare, emphasizing either physical aspects, mental aspects, naturalness, or a combination of all.<sup>2</sup>Different aspects of animal welfare are not necessarily correlated and may even be incompatible, so there is no simple and clear relationship between animal welfare and production, and no precise definition or description of animal welfare.<sup>3</sup>

In the European Union (EU), animal welfare has received a great deal of attention from the public and legislators. A number of laws regulating how farm animals are to be treated have been passed.<sup>4</sup> Additionally, a number of other countries outside the EUalso have more or less animal welfare regulations, although thosegenerally do not specify production methods in as much detail as those in the EU.<sup>5</sup>However, it is worth noting that the laws of animal welfare both in the EU and non-EU

<sup>&</sup>lt;sup>1</sup> F. Bailey Norwood, "Animal Welfare and Food Safety," *Food Safety* (Feb/Mar 2013), via at: https://www.food safetymagazine.com/magazine-archive1/februarymarch-2013/animal-welfare-and-food-safety/

<sup>&</sup>lt;sup>2</sup> D. Fraser, et al., "A Scientific Conception of Animal Welfare that Reflects Ethical Concerns,"*Animal Welfare*, Vol. 6 (1997): 187-205.

<sup>&</sup>lt;sup>3</sup>Caroline Hewson, "What is Animal Welfare? Common Definitions and Their Practical

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<sup>&</sup>lt;sup>4</sup>Bart Driessen, "Fundamental Animal Rights in European Law," *European Public Law*, Vol. 23, No. 3(2017): 547-585.

<sup>&</sup>lt;sup>5</sup>*Ibid*.: 551.

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countries only can regulate domestic production, but cannot regulate production abroad.<sup>6</sup>In this sense, different national standards about animal welfare lead to trade frictions inevitably either because: (1) countries with what they perceive as higher standards wish to exclude animal products that originate in countries that are perceived as having lower standards or because: (2) countries wish to use trade sanctions to induce other countries that have what they consider unacceptable production methods to improve their practice for animal welfare.<sup>7</sup> Put simply, the growth in legislation based on the concept of animal welfare has increased the likelihood of trade disputes nowadays.

As an international institution in the field of global trade, the World Trade Organization (WTO) prefers a common deal as the tool for solving food trade disputes happened between its members. However, differences in culture and economic development may make such solution unrealistic, particularly in areas such as animal welfare. Fairly accommodating such differences is a crucial challenge for the WTO if trade liberalization is not to undermine ethical concerns for animal welfare. This perspective to some extent is popular and can be easily found in most current literature;<sup>8</sup> however, if people realize that unless consumers are committed to the continually improving animal welfare by actually buying the higher standard animal products, producers at the domestic level are hard to be expected to adapt and adjust. In other words, consumers have to back up their decision not only by requiring higher animal welfare, but also by supporting improved standards through their actual purchases. Therefore, consumers play a critical role in the issue of animal welfare, and the reason of whether we can witness a better animal welfare level lies in political and economic structure at domestic level. Trade liberalization supported by and lots of rules required from the WTO are just not friendly with animal welfare, but are definitely not the barrier for fulfilling our ethical responsibility to treat farm animals.

### 2. BEHIND THE SCENES: THE INTERNAL LOGIC OF ANIMAL WELFARE

In almost all countries, to varying degrees, individual acts of cruelty to animals are deemed ethically unacceptable and may be punished under the law. Nevertheless, it is also true to some degree that every country allows animals to be lawfully used and killed for human benefit and some purposes, for instance food production. In this regard, trade-related animal welfare is often related to the process or production method (PPM).<sup>9</sup>That is, in the real world, animals are confined in large numbers, often with no room to move, to exercise or to behave naturally. Further, the use of antibiotics, hormones and breeding techniques put an extra burden on animals, resulting in welfare problems. In the past two decades scientific information has underlined the animal welfare problems associated with certain production methods. This, together with growing public concerns about animal welfare, environment, food sanitation and safety, has prompted a reappraisal of intensive production methods in farms. This is leading to policy initiatives that seek to reverse some of the effects of Concentrated Animal Feeding Operations (CAFO), but the result is to increase costs for producers and economic burden to consumers.<sup>10</sup>

For a competitive, efficient as well as profit-oriented meat industry, there is always a trade-off between better animal welfare and higher productivity – improved animal welfare generally increases costs. However, Lusk and Norwood demonstrate this point in another way, providing detailed analysis in their study to claim that "production economics reveals that producers will not maximize animal welfare, even if animal well-being is highly correlated with output".<sup>11</sup>On the consumer side, higher meat product prices are doomed from the start unless consumers are committed to the continually

<sup>7</sup> Katie Sykes, "Sealing Animal Welfare into the GATT Exceptions: The International Dimension of Animal Welfare in WTO Disputes," *World Trade Review*, Vol. 13, No. 3 (July 2014): 471-498.

<sup>&</sup>lt;sup>6</sup> The conventional view is that while a WTO member country may prohibit the use of cruel farming practices in its own jurisdiction, it cannot restrict the import of products derived from these practices in other countries.

<sup>&</sup>lt;sup>8</sup> For instance, Anand S. Das and Anand V. Narayan, "Settling the Debate of Animal Welfare, Public Morals and Trade: In the Light of the EC-Seal Products Case," *Global Trade and Customs Journal*, Vol. 11, No. 6 (2016): 267-279.

<sup>&</sup>lt;sup>9</sup> Laura Nielsen, *The WTO, Animals and PPMs* (Leiden: MartinusNijhoff Publishers, 2007): Ch. 1

<sup>&</sup>lt;sup>10</sup>D. Hughes, "Animal Welfare: The Consumer and the Food Industry," *British Food Journal*, Vol. 97, No. 10 (1997): 3-7.

<sup>&</sup>lt;sup>11</sup>Jayson Lusk and F. B. Norwood, "Animal Welfare Economics," *Applied Economic Perspectives and Policy*, Vol. 33, No. 4 (Winter 2011): 463-483.

improving standards by actually preferring and buying expensive meat-based products with the higher animal welfare standard. In other words, consumers have to be willing to back up their governments' decisions about appropriate animal welfare standards by purchasing meat from their own local producers and supply chains, and then the regulations will succeed to improve animal welfare.<sup>12</sup>

Unfortunately, income is often distributed unevenly in a country and peoples' preferences for improved animal welfare are highly differentiated and heterogeneous;<sup>13</sup>therefore, imposition of a single and uniform set of animal welfare conditions for everyone (presuming that such a level can even be unambiguously defined) cannot possibly do more good than harm. Moreover, consumers' concerns about animal welfare frequently appear to be of secondary importance when compared to human health concerns related to food safety,<sup>14</sup> which means part of consumers will purchase beef, pork, chicken and everything else from farms with a worse animal welfare if producers there can guarantee that their meat and meat products are qualified.

### 3. ANALYSIS

For many years, a principal puzzle to students of food politics generally, and the status of animal welfare in international trade specifically, has been the need to take into account both the domestic political economy and the strategic interaction among member states within the WTO. While lots of studies recognized the domestic and international levels as necessary building blocks of a more comprehensive analysis of animal welfare issue, the difficulty of finding a persuasive answer is evident. This section tries to offer its analysis from the perspectives of domestic and international level respectively, and points out a new possibility to solve the puzzle.

### **3.1. The International Level**

The Agreement on Agriculture (AoA) that resulted from the Uruguay Round of negotiations under the General Agreement on Tariffs and Trade (GATT), completed in 1994, sought to impose disciplines on measures used by countries to protect their agriculture. For instance, the provision of price and income support to farmers and the use of various types of subsidies, particularly trade-distorting subsidies. In the next year, the creation of the WTO represented the first time that different agricultural policies around the world could be legally addressed under one common authority through multilateralism.<sup>15</sup> The AoA was negotiated at a time when international prices for food were low and a major aim of the AoA was to limit the price-depressing effect of support measures used by wealthy countries because these measures reduced the earning potential of farmers who did not receive subsidies from their home governments.<sup>16</sup> Yet, paradoxically, consumers in import-dependent or low-income countries benefited from the lower prices.

Among its controversial features, the peace clause, established under Article 13of the AoA, is to limit challenges to agricultural support measures used by WTO members. This issue led to debates involving a number of divergent interest groups with very different approaches to providing agricultural support.<sup>17</sup>The European Communities and the US were the largest two at then.<sup>18</sup> Each

<sup>15</sup> Theodore Cohn, "The World Trade Organization and Global Governance," in Simon Lee and Stephen

Mcbride, eds., Neo-Liberalism, State Power and Global Governance (Dordrecht: Springer, 2007): 201-215.

<sup>&</sup>lt;sup>12</sup>HeinkeHeise and Ludwig Theuvsen, "Citizens' Understanding of Welfare of Animals on the Farm: An Empirical Study," *Journal of Applied Animal Welfare Science*, Vol. 21, No. 2 (2018): 153-169.

<sup>&</sup>lt;sup>13</sup>*Ibid*.For instance, Consumer attitudes toward animal welfare differ widely across the EU. Citizens in developed EU members appear to be more sensitive than those living in either developing or newly entered member states.

<sup>&</sup>lt;sup>14</sup>Steven White, "Legislating for Animal Welfare: Making the Interests of Animals Count," *Alternative Law Journal*, Vol. 28, No. 6 (2003): 277-281.

<sup>&</sup>lt;sup>16</sup> Jennifer Clapp, "WTO Agriculture Negotiations: Implications for the Global South," Third World Quarterly, Vol. 27, No. 4 (2006): 563-577.

<sup>&</sup>lt;sup>17</sup>Please see: https://www.wto.org/english/tratop\_e/agric\_e/ag\_intro05\_other\_e.htm

<sup>&</sup>lt;sup>18</sup>The EU and the US now present their agricultural support as more WTO-compatible and use the exceptions under Article 6 and Annex 2 of the AoA. This has led some to assume that major producers will try to use issues such as environment, rural economy, the multifunctional approach and perhaps animal welfare to disguise continued agricultural protectionism. Actually, both the EU and the US provide substantial financial support for their domestic agriculture since 1995 (or even earlier), although in different ways. Both systems of subsidy have

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employed different means of protecting domestic production, while wanting to open external markets. By contrast, the Cairns group of 15countries (e.g., Australia, New Zealand, Argentina and South Africa) was dedicated to amore free market approach and seeks substantial opening of markets and elimination of domestic subsidies. Many net-food importing countries claim domestic support and market restrictions are justified to prevent dependence and vulnerability. These are mainly Less Developed Countries (LDCs), whose principal concern is food security (rather than food safety). Obviously, as an international trade regime, the WTO from very beginning has run its business with political concerns and specific members exerted a large and significant influence on the AoA.<sup>19</sup> It is worth nothing that the AoA's controversy is only a part of food politics. If we focus on food safety and animal welfare debates, the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), setting sanitary standards to protect human and animal health from risks arising from additives, toxins, diseases, and disease-carrying organisms, is more politically sensitive.<sup>20</sup>

In brief, farm animal welfare, as a part of agricultural issues, is an emerging topic on the international scene, trade in particular. However, it is now desirable to reach a universally agreed basis to regulate the WTO members on this subject, but the absence of convergence in political and economic interests appears to inevitably have a gap between the importing and exporting countries.

### **3.2.** The Domestic Level

There is an inevitable difference of preferred animal welfare level within any given society. While doing animal welfare research, it is essential to take into account that each entity has its own political and social context. When comparing the animal welfare situation in different countries but in a common pool (e.g., EU), it is really important to consider the levels of the national legislations regarding animal welfare scould be quite different. For instance, people in Sweden much concerned about animal welfare than citizens of France or Italy.<sup>21</sup> In these southern countries, it seems to be more indirectly concerned with animal welfare because they are more interested in food quality. To them, the good animal welfare is just assumed to be a prerequisite of food production.<sup>22</sup>

Generally, competitive markets may easily fail to deliver optimal outcomes of animal welfare since a decent animal welfare is a public good, which means that once animal welfare is provided for one person; it is also provided for everyone and no one can be prevented from enjoying the benefits of improved animal welfare.<sup>23</sup>However, Mann argues that the public good argument needs substantial clarification in the case of animal welfare.<sup>24</sup>It is clear that cruelty to animals is a public 'bad' instead of 'good', at least as far as most modern societies are concerned. There are more and more people are discomforted by the knowledge that animals are being cruelly treated in their society (particularly on their table), and take steps to ensure that this public 'bad' does not happen. In theory, citizens can persuade their governments to outlaw the wrongful acts which cruelly treat farm animals, and can take the necessary measures to ensure that their governments will enforce the laws as possible.

generally encouraged large-scale intensive production, sometimes resulting in surpluses that can undermine foreign producers who do not have such support. For more information or details, see: USDA, "Agreement on Agriculture (AoA): Issues Series," April 8, 2010, via at: http://www.ers.usda.gov/Briefing/wto/uraa.htm; Franz U. Ray and Christian Henning, "The Organization of Influence on the EC's Common Agricultural Policy: A Network Approach,"*European Journal of Political Research*, Vol. 36, No. 2 (October 1999): 257-281.

<sup>&</sup>lt;sup>19</sup> The similar perspective can refer to: Wei-En Tan, "State-Centric Realism Eclipsed: TNCs as the Rising Powerful Actors in the Age of Trade Liberalization," *Journal of Politics and Law*, Vol. 8, No. 4 (2015): 223-225.

Powerful Actors in the Age of Trade Liberalization," *Journal of Politics and Law*, Vol. 8, No. 4 (2015): 223-225. <sup>20</sup>Actually, this issue is a hot debate within the epistemic communities, please see: Boris Rigod, "The Purpose of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS),"*European Journal of International Law*, Vol. 24, No. 2 (May 2013): 503-532; Wei-En Tan and Yao-Ming Hsu, "On the Food Safety Standard and Its Adequacy in WTO/SPS Agreement and Codex/Ractopamine,"*Technology Law Review*, Vol. 12, No. 1 (July, 2015): 1-55.

 <sup>&</sup>lt;sup>21</sup>Frida Lundmark, et al., "Content and Structure of Swedish Animal Welfare Legislation and Private Standards for Dairy Cattle," *ActaAgriculturaeScandinavica*, Vol. 66, No. 1 (2016): 35-42.
<sup>22</sup>Ibid.: 38.

<sup>&</sup>lt;sup>23</sup>Richard Bennett, "The Value of Farm Animal Welfare, "*Journal of Agricultural Economics*, Vol. 46, No. 1 (January 1995): 46-60.

<sup>&</sup>lt;sup>24</sup>Stefan Mann, "Ethological Farm Programs and the "Market" for Animal Welfare," *Journal of Agricultural and Environmental Ethics*, Vol. 18, No. 4 (August 2005): 369-382.

Nevertheless, it is apparent that many people as citizens did not do what they said. Put differently, people usually want to support animal welfare, and are apt to claim that more could and should be done to improve animal welfare conditions, reflecting their moral and ethical values. However, do people actually pay for such improvements or pay only lip service to animal welfare?

Compared with other places, Europeans are more willing to pay for traceable meat attributes in general. According to Gianni Cicia1and Francesca Colantuoni, Europeans' marginal willingness to pay (the extra money for an additional attribute for the average meat product) is a highly significant 15% above the base.<sup>25</sup> Of possible variables, higher income proved the strongest and most significant explanation of European greater willingness to pay for animal welfare. In spite of this apparently stronger willingness to pay, the market for improved animal welfare products is regarded as niche rather than mainstream. People in Europe undoubtedly profess substantial concern about animal welfare but do not put their money where their mouths are. There is no denying that if more people were prepared to spend more money on improved animal welfare products, the market would be encouraged to respond by providing them. Specifically, in the case of a group of people who are in higher income level but do not actually support animal welfare in their food consumption is a research-worthy phenomenon.

There is a growing literature on the difference between animal welfare preference (or attitudes) and purchasing behavior regarding animal welfare. For instance, Verbeke suggests that "Although the importance that citizens claim to attach to animal welfare seems relatively strong, consumers' interest in information about animal welfare is only moderate compared to other product attributes, and the market shares of products with a distinct animal welfare identity remain small."<sup>26</sup> However, if consumers do not express their willingness to pay for animal welfare friendly products, markets will have no incentive to run forward that direction. In any event, therefore, no matter how serious regulation required in the WTO's AoA and SPS agreements or how rigorous laws regarding animal welfare issued by home governments, the rule of thumb is that markets do not respond to consumers' preference in the air without the necessary inducement of payment. In the market, it is crystal clear that money is everything.

### **3.3.** Where is the Difficulty?

As mentioned earlier, economists consider animal welfare to be a form of 'public good.' Public goods are things such as street lighting, clean air without PM 2.5, or national defense, which are non-excludable. Unlike a normal good, enjoying a public good does not depend on preventing other people from enjoying it. Indeed the nature of public good is that we cannot prevent others within the same group from enjoying the benefits derived from it. Animal welfare is a sort of public goods that can be enjoyed by everyone, even who are not care about it. In this context, one might be more prepared to switch his or her consumption towards more animal welfare friendly products through paying a higher price if he or she could be sure that other people would also do the same. But if not, there is a strong temptation to consider that my own efforts in favor of better animal welfare are too small to make any substantial difference, and hence are not worth the effort and spending. These consequences are aspects of the free-rider problem; namely the root cause of potential market failure in the case of animal welfare.<sup>27</sup>

Additionally, sometimes the labeling of animal welfare friendly products is not sufficiently obvious or reliable to attract consumers or convince them that their additional spending will really improve welfare on farms. Moreover, it is closely related that the information available for consumers about animal welfare and the improved standards used in producing some products is insufficient or confusing for them to make choices. Last but not least, consumers are not only concerned about animal welfare and their food safety. They have plenty of other things to consider or care, and on

<sup>&</sup>lt;sup>25</sup> Gianni Cicia and Francesca Colantuoni, "Willingness to Pay for Traceable Meat Attributes: A Metaanalysis,"*International Journal on Food System Dynamics*, Vol. 3 (2010): 252-263.

<sup>&</sup>lt;sup>26</sup>W. Verbeke, "Stakeholder, Citizen and Consumer Interests in Farm Animal Welfare," *Animal Welfare*, Vol. 18, No. 4 (November 2009): 325.

<sup>&</sup>lt;sup>27</sup>David Harvey and Carmen Hubbard, "The Supply Chain's Role in Improving Animal Welfare,"*Animals*, Vol. 3, No. 3 (Sep. 2013): 767-785;S. Hoffmann, Food Safety Policy and Economics: AReview of the Literature," via at: www.rff.org/files/sharepoint/WorkImages/Download/RFF-DP-10-36.pdf

which to spend their time, effort, and money.

In short, animal welfare legislation will generally increase the cost of providing more animal friendly and safer food products, but food markets very often restrain consumers in a case which suggests a low willingness to pay in spite of consumers' concerns about animal welfare. If we genuinely want to address this problem and fix the current situation, the implementation of a consumption subsidy would be a doable choice which is substantially easier than a production subsidy as what most governments have done for a long time. Unfortunately, on the one hand the WTO has not well managed the domestic support by members in favor of their agricultural producers, and, on the other hand, lots of governments offering different subsidies to producers rather than consumers. Actually, many WTO members identify farm subsidies as an effective strategy of decrease in production costs, which allows producers to expand benefit instead of increase in animal welfare that lead producers to bear the cost.

### 4. CONCLUSION

It is obviously in the public interest to outlaw commonly agreed cruel practice on farms. Nevertheless, a regulated food market will very likely increase the costs of providing animal friendly products (as in the case of the ban on battery cages). In this scenario, domestic producers will undoubtedly be in competition with less friendly and cheaper alternatives from outside. Therefore, either producers at the domestic level are hard to be expected to adapt and adjust unless consumers actually pay the price for higher standard animal products, or these producers are available to get subsidies from home governments through some policies that are *de fact* disguised restriction on international trade.

At the domestic level, particularly in the US and EU, the influence of producers in agricultural policy is so powerful that subsidies and protectionist policies are impossible to be fully removed. This is the one of main reasons why the Doha negotiators cannot agree on how to do for two decades. In fact, the implementation of a consumption subsidy would be substantially easier than a production subsidy. A consumption subsidy can be applied to any private or voluntary brand or label or product which adheres to verifiable welfare standards. The subsidy would thus be entirely compatible with existing international trade law and would not raise any trade disputes between the WTO members. The consumer subsidy would also be perfectly compatible with existing commitments about trade liberalization, since the subsidy would apply to any welfare superior animal product, regardless of their origin, so long as the authenticity of the improved welfare conditions can be substantiated.

Given this, why does the policy system appear so predisposed towards producer subsidies? A major part of the answer lies in the historic evolutionary path of a long period of negotiating commitments on agricultural policies among sovereign states globally.<sup>28</sup> The other part of it is consumers' willingness which has been seriously influenced by the structural factors in food markets. The historical impact could be balanced through promoting more sustainable forms of production on farms (both animals and vegetables); however, doing so inevitably relies on consumer support in their purchasing and at the same time jeopardizes profitable business into uncertain. In this sense, the food and agricultural industries will undoubtedly do whatever they can to hinder the governmental policies. This is the clever political economy behind the scenes in the field of international food trade.

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<sup>&</sup>lt;sup>28</sup> David R. Harvey, "Policy Dependency and Reform: Economic Gains Versus Political Pains," *Agricultural Economics*, Vol. 31, No. 2-3 (December 2004): 265-275.

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