

## **The Lesson the United States of America Can Learn from the EU Law Regarding Laying Hens**

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## 1. Introduction: An Overview of the EU (European Union) Law Banning Battery Cages

In the United States (the U.S.), 95-98% of eggs are produced from hens raised in high-density wire “battery” cages.<sup>2</sup> Despite common use of the practice in many countries,<sup>3</sup> use of the “battery cage” is considered one of the cruelest factory farming practices.<sup>4</sup> As of 2013, the “un-enriched cage (battery cage)” is completely illegal in the European Union (EU) in light of public concern for animal welfare.<sup>5</sup>

Article 13 of the EU Treaty of Lisbon recognizes animals as “sentient beings” and requires “full regard be given to the welfare requirements of animals while formulating and enforcing some EU policies.”<sup>6</sup>

Council Directive 1999/74/EC<sup>7</sup> of the European Union establishes minimum requirements<sup>8</sup> for laying hens’ treatment such as banning the use of battery cage. It categorizes rearing systems for laying hens into three types: “non-cage systems,”<sup>9</sup>

<sup>2</sup>Eurogroup for Animals, Press Information, Notes 3, (October 6, 2011) The battery cage system causes various health problems such as poor feather cover and bone weakness caused by the inability to move normally. Bone fragility can cause up to 30% of cages hens to experience broken bones by the time they are slaughtered. “Many birds in battery cages also have ulcerated feet and long claws which can get caught and torn off in the wire mesh cage floors.”

(United Egg Producers, the egg-industry trade group, affords each laying hen a floor space of 67 square inches -a letter-sized sheet of paper under its guideline). The egg industry cuts off the ends of hens’ beaks without anesthetic and kills and disposes male chicks. Cheryl L. Leahy, *Large-Scale Farmed Animal Abuse and Neglect: Law and Its Enforcement*, 4 J. Animal L. & Ethics 63 (May 2011) 64-66

<sup>3</sup>According to the graph of International Egg Commission, approximately 98.7% of eggs in Japan are produced from hens kept in cages in 2009.

Masanori Takeuchi, Animal Welfare regarding laying hens and chickens (October 26, 2010) 20http://shiehishii.harugis.com/window/201010.pdf

<sup>4</sup>Bruce Friedrich, *The Cruellest of All Factory Farm Products: Eggs From Caged Hens*, (January.14, 2013), [http://www.huffingtonpost.com/bruce-friedrich/eggs-from-caged-hens\\_b\\_2458525.html](http://www.huffingtonpost.com/bruce-friedrich/eggs-from-caged-hens_b_2458525.html)

<sup>5</sup>The OIE, The World Organization for Animal Health, regulates a variety of multilateral standards about animal hygiene and animal welfare practice and its definition of the word “Animal Welfare” is widely used.

The OIE Terrestrial Animal Health Code (2011 7.1.2) provides guiding principles for animal welfare 2: That the internationally recognized ‘five freedoms’ (freedom from hunger, thirst and malnutrition; freedom from fear and distress; freedom from physical and thermal discomfort; freedom from pain, injury and disease; and freedom to express normal patterns of behavior).

<sup>6</sup>Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, COM(2012) 6 final/2, (February 15.2012), 2

Article 13 states that “(i)n 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.” European Commission, Health and Consumers, The EU and animal welfare: policy objectives [http://ec.europa.eu/food/animal/welfare/policy/index\\_en.htm](http://ec.europa.eu/food/animal/welfare/policy/index_en.htm)

<sup>7</sup>Council Directive 1999/74/EC of 19 July 1999 lays out minimum standards for the protection of laying hens.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1999:203:0053:0057:EN:PDF>

<sup>8</sup>These are “minimum” requirements since the Directives allow rules that are more stringent than the Directives. Article 13, 2

<sup>9</sup>European Commission Health and Consumers, Animal Welfare on the Farm- Laying hens, [http://ec.europa.eu/food/animal/welfare/farm/laying\\_hens\\_en.htm](http://ec.europa.eu/food/animal/welfare/farm/laying_hens_en.htm) (with nests (at least one for 7 hens), adequate perches and where laying hens have at least 750 cm<sup>2</sup> of cage area per hen.)

“enriched cage systems,”<sup>10</sup> and “non-enriched cage systems.”<sup>11</sup> It then provides clear regulation for Member States that non-enriched cage systems cannot be built or utilized for the first time after January 2003 and provides that they are completely prohibited from use after January 2012. Adding to this groundbreaking ban on battery cages, this law requires State Members to meet objective measurable and numeric criteria in compliance with the new law. In addition, it has greatly improved the welfare of hens since the law made it clear how hens should be treated. For instance, stating the size of cages and requiring nests and other tools that encourage hens to express their natural behavior helps inspectors to judge the legality of farm practices and improve hens’ welfare.

Because of the great impact the Directive has on the welfare of hens in Europe, this research report first explores the impact of the Council Directive 1999/74/EC of the European Union in light of hens’ welfare, and analyzes how this movement can be exported to the U.S. Part 2 discusses the passage and the positive outcomes of the European Commission Directive that outlawed the battery cage. In order to find out if the EU legal system can be the model regarding hen welfare, Part 3 analyzes the challenges and potential negative effects of the Directives. Part 4 compares current U.S. protection for hens and the EU system and Part 5 offers conclusions.

## 2. Achievements of the EU law regarding laying hens

As of 2013, some of the outcomes of the Directive that completely banned battery cages in 2012 can be seen. Some are good, and some are showing that the law has room for improvement. The positive results with respect to hens’ welfare are discussed in this part. The Directive was successful in the following three ways. One of them is the reason for its success and the latter two are the impacts: (1) a strong system of enforcement, (2) shrinking the egg production market, and (3) raising awareness both among legislators and consumers.

### 1) Strong Enforcement System

Although requiring all the Member States to shift to enriched cages was not easy work, the Directive had a strong enforcement system which enabled its total ban. The Directive implemented a 12 year-long transitional period due to the difficulty of phasing out the battery cage system. Effective enforcement was crucial to achieving compliance with this phase of the Directive as well as the complete ban that went into effect in January 2012. The ban on battery cages seemed difficult to achieve in the EU as almost 70% of a total of 389 million laying hens in the EU-25 were in battery cages in

<sup>10</sup>Directive 1999/74/EC, where laying hens have at least 750 cm<sup>2</sup> of cage area per hen.

<sup>11</sup>Directive 1999/74/EC, so-called “battery cage” where laying hens have at least 550 cm<sup>2</sup> of cage area per hen.

2007.<sup>12</sup> It has not been a smooth transition; 13 countries were not enforcing the Directive at the time of the total ban in January 2012. Applying the infringement procedure of EU law,<sup>13</sup> the Commission sent a letter of formal notice asking the 13 countries concerned to take action to address deficiencies in the implementation of the EU Directive on January 26, 2012, followed by a reasoned opinion, a formal request from Commission to comply with EU law,<sup>14</sup> on June 21, 2012.<sup>15</sup>

As of July 2013, only two Member States, namely Greece and Italy, remain non-compliant among the 25 EU Member States,<sup>16</sup> and they have been referred to the Court of Justice of the European Union by the European Commission for their failure to comply with the Directive.<sup>17</sup> This can cause serious consequences. In this case, Member States have failed to implement the Directive within the deadline agreed by the EU's Council of Ministers and the European Parliament, and the Commission may request that the Court impose a financial penalty on the Member State. If a Member State still fails to act despite the first ruling, the Court can impose financial penalties on the Member State concerned based on the duration and severity of the infringement and the size of the Member State. This can be a daily penalty payment for each day after a second Court ruling until the infringement ends.<sup>18</sup> Therefore, complying with the rule of the Directive is important for every Member State. While many animal welfare (or protection) laws in the world can be ambiguous and leave room for the infringement,<sup>19</sup> this law is a great success as it is clear and has substantial penalties for noncompliance.

<sup>12</sup>Eurogroup for Animals, Areas of Concern 2010, p. 36, Laying Hens , [http://eurogroupforanimals.org/files/otherpolicies/downloads/219/falaying\\_hens.pdf](http://eurogroupforanimals.org/files/otherpolicies/downloads/219/falaying_hens.pdf)

<sup>13</sup>Article 258 of the Treaty on the Functioning of the EU (TFUE) gives the Commission the authority to take legal action against a Member State that is not respecting its obligations under EU law. EUROPA, Press Releases, "Infringements: Frequent Questions". [http://europa.eu/rapid/press-release\\_MEMO-12-12\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-12-12_en.htm?locale=en)

<sup>14</sup>europa.eu, Press releases database, Infringements: Frequently Asked Questions, (Strasbourg, January 17th 2012) "Article 258 of the Treaty on the Functioning of the European Union (TFUE) gives the Commission, acting as Guardian of the Treaties, the power to take legal action against a Member State that is not respecting its obligations under EU law. The infringement procedure begins with a request for information (a "Letter of Formal Notice") to the Member State concerned, which must be answered within a specified period, usually two months. If the Commission is not satisfied with the information and concludes that the Member State in question is failing to fulfill its obligations under EU law, the Commission may then send a formal request to comply with EU law (a "Reasoned Opinion"), calling on the Member State to inform the Commission of the measures taken to comply within a specified period, usually two months." [http://europa.eu/rapid/press-release\\_MEMO-12-12\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-12-12_en.htm?locale=en)

<sup>15</sup>Eurogroup For Animals (20/04/2013) "Greece and Italy Referred to Court for Failure to Enforce Ban on Cages for Laying Hens" <http://eurogroupforanimals.org/news/greece-and-italy-referred-to-court-for-failure-to-enforce-ban-on-cages-for>

<sup>16</sup>In 95% of infringement cases, Member States comply with their obligations under EU law before they are referred to the Court. EUROPA, Press Releases, "Infringements: Frequent Questions" [http://europa.eu/rapid/press-release\\_MEMO-12-12\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-12-12_en.htm?locale=en)

<sup>17</sup>European Commission's Press Release IP/13/366 (Brussels, 25/04/2013)

<sup>18</sup>EUROPA, Press Releases, "Infringements: Frequent Questions" Financial penalties are proposed by the Commission and the Court may modify these amounts in its ruling.

<sup>19</sup>Act on Domestic Animal Infectious Diseases Control (Act No.166 of May 31st, 1951) In Japan, for instance, the current Standards of Rearing Hygiene Management (revised in 2011) requires farmers "not to breed farm animals under overcrowded condition such that cause bad effects on their health." However there are no further detailed numbers or limitations on the requirements which make these requirements vague and ineffective.

Further, the EU system takes seriously its obligation to enforce the Directive, as evidenced by its current enforcement action.

## 2) Shrinking Egg Production Market

The population of laying hens in Spain fell by 22% after adoption of the EU Directive to ban battery cage according to the Spanish Association of Egg Producers (ASEPRHU).<sup>20</sup> The reduction of laying hens population seems to be a trend in the EU.<sup>21</sup> The process of adaptation and innovation to comply with the Directive required approximately a 600 million euro investment<sup>22</sup> and it brought about a “significant reduction of EU production.”<sup>23</sup> This reduction is beneficial because it achieves the purpose of the Directive to improve hens’ welfare. The connection of hens’ welfare to mass marketing is discussed later. Concerning the imported battery cage produced eggs from other countries that can be cheaper, the association has indicated that society must be aware of the greater food safety and animal welfare after the implementation of the Directive and accept the extra costs involved.<sup>24</sup>

## 3) Raising Awareness both of Legislator and Consumers

As a response to greater awareness about the condition of hens in egg production, the total number of free-range hens in the EU had already increased to 16.9% in 2007 from 2.43% in 1996.<sup>25</sup> This shows that laws can affect the attitude of both the market and consumers. Since the creation of the Directive required the survey of the experts such as the Scientific Veterinary Committee,<sup>26</sup> discussions among both producers and consumers eventually raised awareness of the animal welfare issues. Changes in price of eggs and purchasing preferences are discussed in the next part.

## 3. Challenges of the EU law of laying hens

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<sup>20</sup>Epsocial, *El censo de gallinas ponedoras en España cae un 22% tras la adaptación a la nueva directiva de la UE* (October 17, 2012) <http://www.europapress.es/epsocial/ong-y-asociaciones/noticia-censo-gallinas-ponedoras-espana-cae-22-adaptacion-nueva-directiva-ue-20121017180716.html> (consulted on June 12, 2013)

<sup>21</sup> In May 2012 it was estimated by the Commission that the hen population is now down to 326 million. <http://www.animalwelfareintergroup.eu/issues/laying-hens/>

<sup>22</sup>Epsocial, *supra*, more than 90% of the hens of Spain’s second largest egg producer in the EU are in cages.

<sup>23</sup> In May 2012 it was estimated by the Commission that the hen population is now down to 326 million in EU. <http://www.animalwelfareintergroup.eu/issues/laying-hens/>

<sup>24</sup>Epsocial, *supra*

<sup>25</sup>Eurogroup for Animals, *Areas of Concern 2010*, p. 36, *Laying Hens*, [http://eurogroupforanimals.org/files/otherpolicies/downloads/219/falaying\\_hens.pdf](http://eurogroupforanimals.org/files/otherpolicies/downloads/219/falaying_hens.pdf)

<sup>26</sup>Official Journal L 203, 03/08/1999 P. 0053 - 0057 (7) concluding that the welfare conditions of hens kept in current battery cages and in other systems of rearing are inadequate and that certain of their needs cannot be met in such cages; the highest possible standards should therefore be introduced, in light of various parameters to be considered in order to improve those conditions.

Despite the positive consequences discussed above, the Directive still faces several challenges. First, although the Directive seeks better treatment for hens by enlarging the size and type of cages, the introduction of mandatory perches and banning of certain practices such as forced molting, this is still not the best condition for hens because it still allows some farming practices that are controversial from an animal welfare point of view.<sup>27</sup> Additionally, the Directive may have a fundamental problem because consumers might be encouraged to continue consuming eggs that were produced from hens who suffered. These two concerns are closely related. Farmers' struggles and strategies are discussed below based on my interview with a farmer in Spain.

### 1) Animal Welfare Problem remains

The EU Directive replaced battery cages with enriched cages. Enriched cages give hens greater spaces, artificial nest, litter and perches for greater animal welfare.<sup>28</sup> However, enriched cages are not the final answer regarding establishment of hens' welfare.<sup>29</sup> For instance, enriched cages still have welfare problems such as severe locomotor restriction of cages that constrain hens from expressing exploratory behavior. The restriction also prevents hens from obtaining normal amounts of exercise and leads to poor skeletal strength and other pathologies.<sup>30</sup> Genetic selection for hens that lay eggs in large, unnatural quantities causes hens to suffer from various health problems.<sup>31</sup> Beak trimming is still common, and any egg production system, including enriched cages egg production, cannot avoid the disposal of unwanted male chicks in order to maximize the profit as male chicks are of no use to the industry.<sup>32</sup>

The "need for beak trimming can be seen as a litmus test" for the chickens' environment.<sup>33</sup> Beak trimming is a farming process to remove "the touch sensitive

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<sup>27</sup>Andrew, Humane? An Enriched Cage is Still a Cage, Animal Welfare Approved website, (July 13, 2010) <http://www.animalwelfareapproved.org/2010/07/13/an-enriched-cage-is-still-a-cage/>

<sup>28</sup> The European Parliament's Intergroup on the Welfare and Conservation of Animals, Laying Hens, "enriched cages", i.e. cages where laying hens have a little bit more space (700cm<sup>2</sup> instead of 550, a nest, litter, perches, and a few limited improved features)." <http://www.animalwelfareintergroup.eu/issues/laying-hens/> (consulted September 29, 2013)

<sup>29</sup> The Humane Society of the United States, *An HSUS Report: Welfare Issues with Furnished Cages for Egg-Laying Hens*, [http://www.humanesociety.org/assets/pdfs/farm/welfare\\_issues\\_furnished\\_cages.pdf](http://www.humanesociety.org/assets/pdfs/farm/welfare_issues_furnished_cages.pdf)

<sup>30</sup> *An HSUS Report: Welfare Issues with Furnished Cages for Egg-Laying Hens*, supra

<sup>31</sup> Sandra Higgins, BSc (Hons) Psych, MSc Couns Psych, Director, Eden Farm Animal Sanctuary, Ireland, *A Report on the EU Directive Banning Battery Cages for Egg Laying Hens*, p.14 (April 16, 2013)

<sup>32</sup> Shifting towards animal welfare farming does not solve these kinds of practices. "Male chicks from selectively bred egg-laying strains are not suitable for meat production and so are killed at 1-3 days old. There is a 50/50 chance of a male chick being born and it is estimated that around 30 million are destroyed annually by a number of permitted methods. These include the use of mechanical apparatus producing immediate death, (such as a homogenizer which minces chicks alive), exposure to gas mixtures or dislocation of the neck (1). Other methods include decapitation, neck-breaking or suffocation. A limited number of the dead chicks are used as low-priced animal feed-stuff (at zoos and wildlife parks) with the remainder usually going into landfill." Vegetarian Society, Fact Sheets, Laying Hens, <https://www.vegsoc.org/sslpage.aspx?pid=587>

beak tip, an important sense organ (arguably second most important after the eyes)<sup>34</sup> in order to avoid pecking and cannibalism.<sup>35</sup> The process has been considered a “most undesirable mutilation which should be avoided if at all possible,” by FAWC (Farm Animal Welfare Council).<sup>36</sup> It is still allowed because some farmers claim it is necessary.<sup>37</sup> However, history illustrates that beak trimming is needed in industrial egg production, not in egg production itself. In the long history of farming,<sup>38</sup> it was only in 1943 that beak trimming was introduced into the egg production process.<sup>39</sup> In other words, it was not done before industrialization. If crippling parts of the body that can be the most important for one is “essential,” mass scale agriculture practices in general should be under discussion. To meet the animal welfare requirement fully, egg producers need to engage in practices that do not require beak trimming.<sup>40</sup> Otherwise, the demand for eggs must be reduced so that producers can avoid mass production.<sup>41</sup> It is arguable whether the law can reach that point or not, but the discussion should not halt at the point when there is still a major animal welfare problem that cannot be dismissed.<sup>42</sup>

<sup>33</sup>“The most effective measure of preventing cannibalism seems to be to give the birds good grass range. Beak trimming was invented to prevent cannibalism for birds not on free range.” Jull, Morley A. (1938). *Poultry Husbandry*. McGraw Hill. pp. 346–347.

<sup>34</sup> EU Ban on Battery Cage, 107, “Furthermore, the operation is painful in the short term and, if done in adults, in the long term (Gentle, 1986, 1997).”

<sup>35</sup> Phil Glatz and Michael Bourke, BEAK TRIMMING HANDBOOK FOR EGG PRODUCERS: BEST PRACTICE FOR MINIMISING CANNIBALISM IN POULTRY, CSIRO publishing, (2006)

<http://books.google.com/books?>

[id=X0AJtoHqguIC&pg=PT19&lpg=PT19&dq=history+of+beak+trimming&source=bl&ots=F7dB6orEk3&sig=s\\_XyRPiIUDBcWAVdiUVS9-](http://books.google.com/books?id=X0AJtoHqguIC&pg=PT19&lpg=PT19&dq=history+of+beak+trimming&source=bl&ots=F7dB6orEk3&sig=s_XyRPiIUDBcWAVdiUVS9-)

[TuzeI&hl=en&sa=X&ei=ItsUr3IJs7BiwKam4GQAw&ved=0CDYQ6AEwAg#v=onepage&q=history%20of%20beak%20trimming&f=false](http://books.google.com/books?id=X0AJtoHqguIC&pg=PT19&lpg=PT19&dq=history+of+beak+trimming&source=bl&ots=F7dB6orEk3&sig=s_XyRPiIUDBcWAVdiUVS9-)

<sup>36</sup> FAWC (Farm Animal Welfare Council), Opinion on Beak Trimming of Laying Hens, 4, (November 2007) <http://www.fawc.org.uk/pdf/beak-trimming.pdf>

<sup>37</sup> Neville G. Gregory, Temple Grandin, Animal Welfare and Meat Production, p. 123

<http://books.google.com/books?>

[id=RTeyiR0rSEwC&pg=PA123&lpg=PA123&dq=beak+trimming+necessity&source=bl&ots=NZK\\_kiq](http://books.google.com/books?id=RTeyiR0rSEwC&pg=PA123&lpg=PA123&dq=beak+trimming+necessity&source=bl&ots=NZK_kiq) (consulted September 30, 2013)

<sup>38</sup> incredible! History of Egg Production, From Ancient Times, “East Indian history indicates that wild fowl were domesticated as early as 3200 B.C. Egyptian and Chinese records show that fowl were laying eggs for man in 1400 B.C. Europe has had domesticated hens since 600 B.C.”

<http://www.incredibleegg.org/egg-facts/basic-egg-facts/history-of-egg-production/from-ancient-times> (consulted September 7th 2013)

History of Egg Production, The Early 1900s, “In the 1920s and 30s, egg farms were still mostly backyard systems. Many farmers had laying hens to supply their own families with eggs and would sell any extra eggs at local farmers’ markets. As selling eggs became profitable, some farms started building up flocks of about 400 hens. The hens roamed around outside with a coop for roosting.”

<http://www.incredibleegg.org/egg-facts/basic-egg-facts/history-of-egg-production/the-early-1900s>

<sup>39</sup> BEAK TRIMMING HANDBOOK FOR EGG PRODUCERS, supra

<sup>40</sup> Sean Poulter, Battery hens to be banned, Daily Mail, “Agriculture Minister of the UK, Elliot Morley, announced an action plan to end the practice of ‘beak trimming.’” (consulted October 1, 2013)

<sup>41</sup> Sean Poulter, supra

<sup>42</sup> In Switzerland, both cages and beak trimming have been banned since 1992, suggesting that the need to beak trim can be avoided. “The reason for this success is unknown but is possibly related to farm type or size, bird type, husbandry and other factors.” 3, <http://www.fawc.org.uk/pdf/beak-trimming.pdf>

## 2) The Risk of Increasing Egg Consumption

Although some farming practices that cannot be ignored still remain,<sup>43</sup> consumers receive the positive image from words “enriched cage” or “free range.” The feeling of “making an ethical choice” can encourage consumers to greater egg consumption after the battery cage ban. Research in Ireland illustrated that 358 million eggs were purchased in Ireland from July 2011 to July 2012. In the same year, egg consumers who buy eggs on a weekly basis increased by 11% compared to the previous year.<sup>44</sup> This survey clearly shows that more eggs are being consumed in Ireland since the battery cage ban.<sup>45</sup> The advertisement of enriched cage system or free range system and the lack of information about vegan alternatives may be associated with this consequence.<sup>46</sup>

The attempt to ban the battery cage system probably should not have impacts like this if the goal is respect for animal welfare and sustainability.<sup>47</sup> If the consumption of eggs increases after the ban of battery cages, the number of hens who suffer from the various animal welfare issues increase. Moreover, giving increased number of hens more space to express natural behaviors is not environmentally sustainable. Farmers needs more land to raise farm animals humanely.<sup>48</sup> Thus, greater consumption of eggs can jeopardize the goal of the Directive to improve animal welfare and environmental protection.<sup>49</sup> Considering the risks that the Directive can create and concerning the huge number of the hens who continue to suffer, further discussion should seek the way to make less egg consumption compatible with even better treatment for hens. How law can answer this issue is very important but it is beyond the scope of this paper.

## 3) Farmers' struggle

From the visit to a medium-sized farm in Spain that produces eggs from hens in “enriched cages,”<sup>50</sup> my analysis regarding the need for overall reform of hen farming is summarized below.

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<sup>43</sup>Joy, one of the rescued hens from an enriched cage, was “exceptionally light, with a mere covering of skin and feathers over her sharply protruding keel or breast bone. She had ammonia scalds on her skin.” Hens in free-range or organic systems still suffer from various diseases and the negative effects of artificial selection to maximize production. For instance, egg laying hens suffer respiratory infection, egg peritonitis, liver and heart disease, parasitic disease and so on. *Enriched Cages and Embodied Prisons*, supra, p.12-15 [http://www.upc-online.org/battery\\_hens/enriched\\_cages\\_and\\_embodied\\_prisons.pdf](http://www.upc-online.org/battery_hens/enriched_cages_and_embodied_prisons.pdf)

<sup>44</sup>*Enriched Cages and Embodied Prisons*, supra, p.21

<sup>45</sup> *Enriched Cages and Embodied Prisons*, supra, p.21

<sup>46</sup> *Enriched Cages and Embodied Prisons*, supra, p.22

<sup>47</sup> James E. McWilliams, *The Myth of Sustainable Meat*, N.Y. TIMES, April 12, 2012, 32

[http://www.nytimes.com/2012/04/13/opinion/the-myth-of-sustainable-meat.html?\\_r=0](http://www.nytimes.com/2012/04/13/opinion/the-myth-of-sustainable-meat.html?_r=0) (consulted October 1, 2013)

<sup>48</sup> James E. McWilliams, supra

<sup>49</sup> Council Directive 1997/74 EC of July 1999 laying down minimum standards for the protection laying hens (5) states “the protection of laying hens is a matter of Community competence.”

<sup>50</sup> egg id, What is written on the egg? Now in EU, all eggs from hens in “enriched cages” are coded “3” so that consumers can make their own choice to buy which eggs to consume. <http://www.eggstamp.com/EGG-CODE-Why-the-writing-on-the-egg.23.0.html>

The current EU directives balanced the interest of farmers and animal welfare with the introduction of a 12 year moratorium phase-in and strict enforcement. Unless the government further encourages and supports farmers who participate in animal welfare improvement, further improvement cannot be achieved. However, after the moratorium, farmers are struggling from the investment cost of introducing new types of cages and the unsolved problem of the unfair egg market caused by the lack of regulation regarding egg imports from non-EU country with different laying hen welfare standards.

While the shrinking egg market can be positive in terms of the number of hens who suffer, as noted earlier, those who went out of business altogether were small- or medium-scale farmers who could not afford the facility investment. Large companies made the transition, and this can be negative for animal welfare reform in the long term. As discussed above, mass egg production is associated with the fundamental problem of hen welfare because it is almost impossible to induce natural behaviors in hens if thousands of hens are put together.<sup>51</sup> Considering the scale of the factory farming and the level of animal welfare, a much smaller scale farming system is needed to produce eggs humanely when society is ready for much better animal welfare by reducing its egg consumption dramatically.<sup>52</sup> However, if the phenomenon of smaller farmer bankruptcy continues, there will be no farmers who can take a role to provide humane egg production by the time the society can function with smaller scale farmers and no longer needs industrialized farming.

In addition, farmers are facing an unfair egg market. The farmers have not received any subsidies from governments for the investment needed to meet the EU Directives although they were promised that this would be provided. While the animal testing ban for cosmetics in EU, applied in 2013, also banned the import of animal tested cosmetic products,<sup>53</sup> eggs that were produced outside EU with lower animal welfare standards are still imported in EU. Most of imported eggs are produced under worse conditions regarding hens' welfare than under EU standards. If importing eggs is not regulated, EU consumers may not realize the difference in the animal welfare

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<sup>51</sup> Free Range Farmers Association Inc. stating that "de-beaking or beak trimming would almost certainly be required because the hens are simply overcrowded and resort to pecking each other." (consulted July 5th 2013) <http://www.freerangefarmers.com.au/hen-welfare.html>

<sup>52</sup> YY Guo, ZG Song, HC Jiao, QQ Song and H Lin, *Effect of group size and density on welfare*, Animal Welfare 2012, 21:41-49, (2012) 47, (The research results showed that "decreased stocking density or group size in conventional cage systems is beneficial for the laying performance and welfare state.") <http://www.ufaw.org.uk/documents/guo.pdf>

<sup>53</sup> PRNewswire, London, EU Set to Ban Animal Testing for Cosmetics Forever, (January 30, 2013) <http://www.prnewswire.com/news-releases/eu-set-to-ban-animal-testing-for-cosmetics-forever-189013971.html>  
The EU import ban of cosmetics produced with animal testing encouraged foreign cosmetic companies to stop animal testing to keep market share in EU. For instance, Shiseido, a Japanese leading cosmetic company, decided to ban the testing of their products on animals in order to keep export to EU.  
<http://www.refinery29.com/2013/03/43832/shiseido-stops-animal-testing-cosmetics>

conditions between imported eggs and EU eggs,<sup>54</sup> and they may choose imported eggs solely based on the reduced price. In the other words, EU farmers are legally forced to pay for the cage reforms and do not receive enough market protection to compete with imported cheaper eggs produced by those who do not face the same regulation.<sup>55</sup>

Furthermore, Humane Society International, Compassion in World Farming and Four Paws, animal welfare groups, discovered that the money of EU citizens is indirectly used to support poor welfare farming practices abroad.<sup>56</sup> International banks and credit agencies with financial backing of Member States in the EU are financially supporting non-EU agricultural companies that fail to meet the EU's standards for animal welfare. Although the close relationship of banks and farm industries outside EU does not necessarily show the connection with outsourcing business, outsourcing of egg production from EU to other countries is a growing business.<sup>57</sup> For instance, NG Jayasimha of Humane Society International stated that the lack of laws that govern egg production in India encouraged EU countries to outsource egg production to India due to cheaper costs and the outsourcing of egg production has been "one of the reasons for the bad conditions of farms in India."<sup>58</sup>

In the beginning, it was expected that the additional costs associated with animal welfare for egg production could be covered by consumers paying a higher price for eggs. The price of eggs raised in various EU countries has varied so far.<sup>59</sup> However, the number of eggs in the EU market did not change due to imported eggs and the farmers in Spain have not gained additional profit to afford their transition costs. Although regulating the condition of imported products needs a great amount of negotiation with other countries not to contravene the international fair trade

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<sup>54</sup> Since 2004, table eggs have to be marked with a distinguishing code that identifies the level of welfare. "In the case of table eggs imported from Third Countries other than those that have an agreement of equivalence with the EC, eggs shall be clearly and legibly stamped in the country of origin with the ISO code of the country of origin preceded by: 'non-EC standards'." Commission of the European Communities, Commission working document on a Community Action Plan on the Protection and Welfare of Animals 2006-2010 Strategic basis for the proposed actions, SEC (2006) 65, 11, (January 23, 2006) [http://ec.europa.eu/food/animal/welfare/work\\_doc\\_strategic\\_basis230106\\_en.pdf](http://ec.europa.eu/food/animal/welfare/work_doc_strategic_basis230106_en.pdf) However, as I interviewed several consumers in the EU, most of them were not familiar with the code of shell eggs and so they did not choose eggs based on the information.

<sup>55</sup> European Parliament website, European Parliament resolution on the EU laying hens industry: the ban on the use of battery cages from 2012 2010/2979 (RSP), <http://www.europarl.europa.eu/sides/getDoc.do?language=EN&reference=B7-0705/2010>

<sup>56</sup> Website of Four Paws, European's money invested in animal suffering, (June 17, 2013) (consulted July 2<sup>nd</sup> 2013), <http://www.vier-pfoten.org/en/news-press/press-archive/2013/europeans-money-invested-in-animal-suffering/>

<sup>57</sup> Activists push for free-ranging farming of chickens for eggs, The Times of India, (Feb 1st, 2011) [http://articles.timesofindia.indiatimes.com/2011-02-01/chennai/28357112\\_1\\_battery-cages-chicken-farm-egg-production](http://articles.timesofindia.indiatimes.com/2011-02-01/chennai/28357112_1_battery-cages-chicken-farm-egg-production)

<sup>58</sup> Activists push for free-ranging farming of chickens for eggs, supra

"On an average, every chicken farm in India houses 50,000 chickens that are confined to wire battery cages. Every bird receives a living space less than an A4-sized sheet of paper," said Jayasimha. "In such a caged environment, a bird does not have the opportunity to experience natural behaviours like perching or laying eggs in nests," he added.

<sup>59</sup> Alistair Driver, 'Record' egg prices seen on back of battery cage ban, Farmers Guardian, (April 23, 2012) <http://www.farmersguardian.com/home/livestock/record-egg-prices-seen-on-back-of-battery-cage-ban/46433.article>

arguments,<sup>60</sup> in order to maintain and encourage the animal welfare Directive of the EU, such regulation is necessary. It is important to restructure the egg market as a whole, but further analysis of the import regulation is outside the scope of this paper.

It is simple, and quicker to focus on animal welfare regulation to realize better farming practices regarding hens' condition, but to achieve goals, overall and specific reform of the market is crucial.

#### 4. What can the U.S. learn from the EU law regarding hens' welfare?

The EU Directive states that the protection of laying hens is a matter of Community responsibility. However, in the U.S., poultry receives almost no legal protection. This part of the report analyzes the current situation in the U.S. and evaluates potential changes the U.S. can attempt.<sup>61</sup> Currently in the U.S., there is no federal law protecting farmed animals.<sup>62</sup> The federal Animal Welfare Act (AWA) and most state animal cruelty laws specifically exclude farmed animals from legal protection even though numbers reach as high as 10 billion each year. The 28 Hour law, regulating the condition of farm animals' transportation, and the Humane Methods of Livestock Slaughter Act, regulating the way of slaughtering farm animals, do not apply to birds despite the fact that birds constitute at least 90% of land animals killed for food.<sup>63</sup>

As an exception, some state laws such as in California, Michigan, Ohio and Oregon have advanced provisions that protect welfare of laying hens. California state law considers that a person who prevents farm animals, specifically including egg-laying hen, from (a) lying down, standing up, and fully extending his or her limbs; and (b) turning around freely is guilty of a misdemeanor.<sup>64</sup> However, this is new legislation which will be in effect on January 1, 2015. Thus the impact of this state law on other states is yet unknown.

Regarding the likelihood of the U.S. having a similar laying hen welfare law as the EU, Ian J.H. Duncan, Ph.D., Emeritus Chair in Animal Welfare at the University of Guelph in Ontario, said there was little to indicate that a transition like the EU's would

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<sup>60</sup> The NYU Institute of the Park, The Impact of the WTO on EU Decision-making, Case Study One: The Cosmetics Directive,

<http://centers.law.nyu.edu/jeanmonnet/archive/papers/00/000601-03.html> (consulted September 29, 2013)

<sup>61</sup>EU COUNCIL DIRECTIVE 1999/74/EC (5)

<sup>62</sup>Animal Legal Defense Fund, Farmed Animals and the Law, <http://aldf.org/article.php?id=1027>

<sup>63</sup>ASPCA, Legal Protections for Farm Animals <http://www.aspc.org/Fight-Animal-Cruelty/farm-animal-cruelty/legal-protections-for-farm-animals>

<sup>64</sup>Health and Safety Code Section 25990-25994

happen in North America, where the vast majority of eggs are produced using battery cages.<sup>65</sup>

However, the “egg bill”<sup>66</sup> has been discussed as a proposed federal law. A so-called egg bill, S. 820 and H.R. 1731, the Egg Products Inspection Act Amendments of 2013, is a bill that would provide for a uniform national standard for the housing and treatment of laying hens.<sup>67</sup> If this bill passes, the baseline of the amount of space for each hen will mandatorily increase in about 15 years and forced molting will be prohibited.<sup>68</sup> The United Egg Producers (UEP)<sup>69</sup> supports this bill by saying that Federal legislation is necessary to ensure a uniform baseline for laying hen standards within the U.S. egg industry, and “it is the only way to preempt state laws that call for conflicting standards.”<sup>70</sup>

Because this so-called “Egg-bill” encourages a “cage system” and for other reasons such as other harmful features and a long transition, some animal welfare organizations have been opposed to the bill.<sup>71</sup> Furthermore, the bill could be a real risk for animal welfare in advanced States such as California as mentioned above. The EU Directives allows the Member States to maintain or apply for the protection of laying hens which are more stringent than the standard of the Directive.<sup>72</sup> However, Section 4 of H.R. 1731, the Egg Products Inspection Act Amendments of 2013 in the U.S., prohibits States and local authorities from having additional or different requirements related to minimum space allotments for housing egg-laying hens in commercial egg production.<sup>73</sup> On the other hand, major progress would be that it would be the first time federal law recognizes the need for protection of the welfare of farmed animals, especially the totally left out hens. This legal paradigm shift would be significant.

In addition, some large companies such as International House of Pancakes (IHOP) and Burger King have started to change toward cage-free eggs slowly. These industrial movements illustrate that consumer preferences have been changing

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<sup>65</sup>James Andrews, *supra*

<sup>66</sup>The Egg Product Inspection Act amendments have been sent to Congress to be concerned. The Humane Society of the United States (HSUS) and United Egg Producers (UEP) made an agreement “to phase-in of larger cages at a cost the industry group has estimated at \$4 billion.” Dan Wheat, *Egg bills set to return to Congress*, Capital Press, (April 09, 2013) <http://www.capitalpress.com/content/djw-eggbills-040913>

<sup>67</sup> govtrack.us, S. 820: Egg Products Inspection Act Amendments of 2013, “introduced on April 25, 2013 after the bill failed in previous year.” <http://www.govtrack.us/congress/bills/113/s820> (consulted September 26, 2013)

<sup>68</sup> H. R. 1731, 113th Congress, 2013-2015, § 7A. Housing and Treatment of Egg-Laying Hens. (a) (d)

<sup>69</sup>UEP is a national egg producer organization that represents more than 90% of U.S. egg production. see website of UEP <http://www.eggbill.com/faqs.html#faq5> (last viewed on June 11, 2013)

<sup>70</sup>Website of UEP <http://www.eggbill.com/faqs.html#faq5> (last viewed on June 11, 2013)

<sup>71</sup>Dan Wheat, *Egg bills set to return to Congress*, Capital Press, (April 09, 2013) <http://www.capitalpress.com/content/djw-eggbills-040913>

<sup>72</sup> Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens Article 13, 2. “The Member States may, while respecting the general rules laid down in the Treaty, maintain or apply within their territories provisions for the protection of laying hens which are more stringent than those envisaged by this Directive. They shall inform the Commission of any measure taken to that end.”

<sup>73</sup> govtrack.us, *supra*

towards humanely raised animals and these changes affect production.<sup>74</sup> However, the term “free range,” typically meaning that free-range hens are un-caged inside or outside barns and “have some degree of outdoor access,”<sup>75</sup> has no legal standards in the U.S. and what constitutes raising a free range animal is entirely decided by the producer of the product.<sup>76</sup> There are clearly signs of change, but the absence of a legal framework has created confusion in the egg market.<sup>77</sup>

Some argue that the ban of cages or egg consumption itself are the only way to stop exploitation of laying hens, and changing battery cages to enriched cages means so little for hens that work on the new law is wasting resources.<sup>78</sup> However, given the great number of hens used for egg production and people who are involved in the business including consumers,<sup>79</sup> even if it were possible to stop all egg production in the end, this would take a huge amount of time. Therefore, it is necessary to take two measures to seek the protection of laying hens that suffer hereafter. First, the U.S. government can use the legal framework that regulates the minimum requirements like the EU Directives we see in the Egg Bill movement, and the government also needs to put greater effort into raising awareness to reduce egg consumption through the use of a labeling system and various educational systems. Although the U.S. government has not accepted idea that animals are not just property, the labeling of animal welfare practices is needed in light of strengthening consumers’ informed choices. A survey in 2011 found out that 62% of survey respondents indicated they support introduction of mandatory labeling of eggs produced using laying hen cages.<sup>80</sup> According to the same report, the typical U.S. resident was estimated to “be willing to

<sup>74</sup> Cookson Beecher, Concerns About Animal Welfare, Food Safety Spur Industry Changes, Food Safety News, (May 23rd, 2013) <http://www.foodsafetynews.com/2013/05/concerns-about-animal-welfare-food-safety-spur-industry-changes/#.Ui1HWs3qqeY>

<sup>75</sup> The Humane Society of the United States website, Egg Carton Labels, A brief guide to labels and animal welfare, “While the USDA has defined the meaning of ‘free-range’ for some poultry products, there are no standards in ‘free-range’ egg production... Since they are not caged, they can engage in many natural behaviors such as nesting and foraging. There are no restrictions regarding what the birds can be fed. Beak cutting and forced molting through starvation are permitted. There is no third-party auditing.” (April 10, 2013) [http://www.humanesociety.org/issues/confinement\\_farm/facts/guide\\_egg\\_labels.html](http://www.humanesociety.org/issues/confinement_farm/facts/guide_egg_labels.html)

<sup>76</sup> Kat Kinsman, CNN Eatocracy, Egg-splained: Free-range, cage-free and organic, (August 20, 2012) <http://eatocracy.cnn.com/2010/08/20/egg-splained-free-range-cage-free-and-organic/>

<sup>77</sup> Greg Muller, Consumers misled over free range labelling: Choice, IABC, Bush Telegraph, (October 2, 2013) <http://www.abc.net.au/radionational/programs/bushtelegraph/free-range-eggs/4993466>

<sup>78</sup> Nedim C. Buyukmihci, V.M.D. A Veterinarian’s Perspective on The Rotten Egg Bill, Stop the Rotten Egg Bill, A project of the Humane Farming Action Fund, [http://stoptherotteneggbill.org/site/c.8qKNJWMwFbLUG/b.7942331/k.5D6D/Humane\\_Farming\\_Association\\_A\\_Veterinarian8217s\\_Perspective\\_on\\_The\\_Rotten\\_Egg\\_Bill.htm](http://stoptherotteneggbill.org/site/c.8qKNJWMwFbLUG/b.7942331/k.5D6D/Humane_Farming_Association_A_Veterinarian8217s_Perspective_on_The_Rotten_Egg_Bill.htm)

<sup>79</sup> Born Free USA website, Get The Facts: Facts About the Poultry Industry, “Egg-laying hens in the United States number more than 459 million. Of these millions of birds, 97% are confined to ‘battery’ cages, tiny cages roughly 16 by 18 inches wide. Five or 6 birds are crammed into each cage, and the cages are stacked in tall tiers. As many as 50,000 to 125,000 battery hens, in sheds with minimal light, strain to produce 250 eggs per year, ten times the number of eggs they would produce in the wild.” <http://www.bornfreeusa.org/facts.php?more=1&p=374> (consulted October 1, 2013)

<sup>80</sup> Glynn T. Tonsor (Kansas State University) and Christopher A. Wolf (Michigan State University), Mandatory Labeling of Animal Welfare Attributes: Public Support and Considerations for Policymakers, (July 2011)

pay about 20% higher prices” for egg products in exchange for mandatory labeling information conveying the type of laying hen cages.<sup>81</sup>

A legal framework is needed to provide definitions for different egg production systems to avoid misconceptions between producers and consumers<sup>82</sup> and to ensure only better facilities will be built or used from now on.<sup>83</sup> A slow transition process has been used in the U.S. to regulate air pollution from the industrial facilities by requiring that all industries that emit certain amount of air pollution have to meet certain requirement when they rebuild or modify their facilities.<sup>84</sup> The new welfare law can use the simple requirement that only enriched cage systems or free ranged systems are allowed going forward. By using the slow transition process with some adequate phasing out period, the law can balance existing business interests and the animal welfare group interests.

In addition to legal attempts to reduce the suffering of individual hens by changing production systems from battery cages to better conditions in the long term, the main work has to be encouraging more consumption of plant based food. Because shifting the production system does not solve the fundamental problem of hens’ welfare, it is important to change gears to shift the size of the market from mass egg market towards a much smaller and sustainable market.<sup>85</sup> Also, concerning various health issues caused by diets high in animal products, including high rate of heart disease,<sup>86</sup> consumers directly benefit from less animal based food consumption. Awareness and interpretation of consumers is hugely influenced by the government and market policy.<sup>87</sup> Therefore, the government should stop promoting animal based food (including free-range eggs) for health and consumer protection reasons, and move slowly to advocate plant based food for health and protection of consumers who

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<sup>81</sup> Mandatory Labeling of Animal Welfare Attributes, *supra*

<sup>82</sup> Labels like “happy cows” created a misconception among consumers about how the product has been created and these misleading labels without a standardized definition of words brought about an unfair business market.

<sup>83</sup> This kind of law, like banning future import of dolphins in the aquarium in Switzerland, has almost no additional costs to implement since it does not require changing facilities so that it can avoid “wasting” government resources.

<sup>84</sup> Section 112 of the Clean Air Act, 42 USC § 7412 - Hazardous air pollutants (1990) (5) Modification: The term “modification” means any physical change in, or change in the method of operation of, a major source which increases the actual emissions of any hazardous air pollutant emitted by such source by more than a de minimal amount or which results in the emission of any hazardous air pollutant not previously emitted by more than a de minimal amount.

<sup>85</sup> James E. McWilliams, *supra*

<sup>86</sup> PETA, *Animal Products Are Linked to Heart Disease*, (consulted September 27, 2013) <http://www.peta.org/issues/animals-used-for-food/heart-disease.aspx>

<sup>87</sup> Philip C. Burger and Alladi Venkatesh (1979), “A Study of Public Policy Impact on Consumer Decision-Making”, in *NA - Advances in Consumer Research* Volume 06, eds. William L. Wilkie, Ann Arbor, MI : Association for Consumer Research, Pages: 508-513. “Both government and corporate policies can result in the creation and elimination of products which in turn have a direct impact upon consumers.” <http://www.acrwebsite.org/search/view-conference-proceedings.aspx?Id=9606>

support humane treatment of farm animals. The humane education<sup>88</sup> and labeling system<sup>89</sup> also can be used efficiently to educate consumers to make informed choices.

## 5. Conclusion

As of 2013, the use of battery cages, one of the cruelest and most widely used farming practices, is illegal in the EU. This change opened discussions about the serious problem of common farming practices to the world,<sup>90</sup> and gave other parts of the world a chance to face the problems. Using this opportunity, the U.S. and other countries that use battery cages can address this issue in two ways, namely: improve the hens' welfare in the current production systems, and minimize the egg demand to solve the fundamental problem of mass egg production.

Because consumers in the EU are very aware and interested in the condition of farm animals, they are more ready to hear how mass egg markets inherently create hen suffering and to make informed choices to reduce consumption, to be vegetarian or to purchase less cruelly produced eggs.<sup>91</sup> From the EU experiences, the U.S. can learn how a ban can educate consumers, accept that animals are sentient, help with costs of transition, give evidence of the need for a transition, ban a production system, take enforcement seriously, and avoid competition issues from other egg producing countries.

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<sup>88</sup>New York State Law encourages humane education to be delivered to children for better society. The non-profit organization HEART converts the law into practice by providing various humane education programs in some states in the U.S. Sec. 809. Instruction on the humane treatment of animals. It is important to develop the legal requirements and practices of humane education to induce better decisions in future generations.

<http://teachhumane.org/heart/advocacy/human-ed-laws/>

<sup>89</sup>The label (or placement of the link for further information on the internet) that informs and warns consumers about the common farming practices such as beak trimming can be effective to allow consumers to make an informed choice. The staff of the Farm Animal Sanctuary in Ireland argues that the government should inform its citizens regarding the fundamental problem of the farming practices and the option of vegetarianism. [http://www.upc-online.org/battery\\_hens/enriched\\_cages\\_and\\_embodied\\_prisons.pdf](http://www.upc-online.org/battery_hens/enriched_cages_and_embodied_prisons.pdf)

<sup>90</sup>In Japan, although the phrase "animal welfare" is still new, some animal protection groups discuss the problem of the common use of battery cage all over Japan. While the discussion about the adequacy of farming practices is very rare in Japan, this kind of change in another part of the world can be very influential in society and should have some effects. For instance, the agricultural innovation research center in Kanagawa prefecture, associated with Azabu University, started to validate the "the animal welfare improved cage" by providing hens some perches to improve welfare in reasonable manner.

Validation of hens breeding technology that take in account of the hens' comfort (October 2010) <http://www.agri-kanagawa.jp/tikugi/jyouho/201010/jyouho-k201010.html>

Likewise, there is some reaction in Japan after the animal testing ban in the EU. The leading Japanese company, Shiseido, announced that it would stop animal testing, and a symposium was held to send a message to consumers about the cruelty free beauty.

JAVA (Japan Anti-Vivisection Association)

<http://www.java-animal.org/topics/2013/02/11/937/>

<sup>91</sup> Gemma Harper & Spencer Henson, *Consumer Concerns about Animal Welfare and the Impact on Food Choice*, EU Fair CT98-3678 Final Report, (December 2001). The research project financed by the EU Commission concludes that "(C)onsumers clearly want more information on how their food is produced so that they can make informed choices."