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Federal Farm Subsidies: A History of Governmental Control, Recent Attempts at a Free Market Approach, the Current Backlash, and Suggestions for Future Action

by

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FEDERAL FARM SUBSIDIES: A HISTORY OF GOVERNMENTAL CONTROL, RECENT ATTEMPTS AT A FREE MARKET APPROACH, THE CURRENT BACKLASH, AND SUGGESTIONS FOR FUTURE ACTION

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I. AN INTRODUCTION TO FARM SUBSIDIES

The history of government farm subsidies in the United States is one of generally popular price support payments coupled with less popular limits on production.[1] It must be remembered, however, that the creation of government farm subsidies is of recent vintage, beginning in 1928 with the Federal Farm Board program instituted by President Herbert Hoover.[2] This approach of price supports for production-limited agricultural commodities was the policy of the United States for nearly seventy years.[3]

In 1996, after the rightward shift in the makeup of Congress due to the 1994 midterm elections, the ideology of free trade became the dominant force in agricultural policy.[4] This ideology espoused the idea that the federal government should not be in the business of limiting farmers' ability to produce what and how much they want. Nor should the federal government, by the imposition of price supports, artificially set commodity price targets that are independent of free market forces.[5]

The most recent farm bill, the Farm Security and Rural Investment Act of 2002, abandons the free trade ideology of the 1996 Federal Agriculture Improvement and Reform Act ("FAIR"), otherwise known as the "Freedom to Farm" bill, by reinstating a scheme of commodity target price supports and counter-cyclical farm program payments.[6] The five year experiment of a phase-out of price supports and production limits was deemed a failure by many, evi-

1. *See, e.g.*, Agricultural Adjustment Act of 1938, ch. 30, 52 Stat. 31 (codified as amended at 7 U.S.C. §§ 1281-1393 (2003)).

2. *See* DAVID E. HAMILTON, FROM NEW DAY TO NEW DEAL: AMERICAN FARM POLICY FROM HOOVER TO ROOSEVELT, 1928-1933 47-48 (Univ. of N.C. Press 1991) (noting that President Hoover's farm bill established a Federal Farm Board to deal with depressed commodity prices).

3. *See, e.g.*, ANNE B.W. EFFLAND, USDA, U.S. FARM POLICY: THE FIRST 100 YEARS, *in* AGRICULTURAL OUTLOOK, 21, 24 (Mar. 2000).

4. *See generally* Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104-127, 110 Stat. 888 (1996) (codified at 7 U.S.C. § 7201 (2003)) (authorizing the use of production flexibility contracts).

5. *See generally id.* (the author notes the Act's use of *flexible* production contracts).

6. *See* Farm Security and Rural Investment Act of 2002, 7 U.S.C. §§ 7901-8317 (2003).

denced by the congressionally appropriated ad hoc relief payments to farmers that totaled in the billions of dollars during the period.[7]

II. FARM SUBSIDIES IN PRACTICE

Artificial price supports by the federal government are self-defeating, and "[g]overnment attempts to hold prices above those determined by commercial markets have simply made matters worse time after time."[8] Artificially higher prices encouraged "even more unneeded output from the most efficient producers at the same time they discouraged utilization, consequently pushing surpluses higher and prices lower."[9] In addition, supply controls have also proven ineffective.[10] Restricting the amount of land a farmer may utilize merely causes that farmer to utilize the remaining land even more productively, effectively negating the governmental purpose of supply reduction.[11]

However, it is unlikely the political pressures that caused Congress to abandon free market ideology in the 2002 Farm Bill will be any less effective in the foreseeable future.[12] Therefore, a method must be found that does both the least amount of damage to the goal of free trade and placates the popular will for subsidies.

III. FREE TRADE AS THE GOAL

The United States must live up to its oft-stated position of supporting free trade, lest a significant number of United States trading partners enact retaliatory subsidies or import tariffs that would either inhibit American farmers from procuring good prices for their commodities abroad, or prevent access to those fertile markets altogether.[13] Consistent access to foreign markets is abso-

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7. *See* EFFLAND, *supra* note 3, at 25 (discussing low agricultural commodity prices in 1998 and the resulting return to income support payments); *see also* Anuradha Mittal, *Giving Away the Farm: The 2002 Farm Bill*, 8 BACKGROUNDER (Inst. of Food and Dev. Policy), Summer 2002, at 2-3 (highlighting the payments made during the period when the 1996 Farm Bill was in effect).

8. USDA, FOOD AND AGRICULTURAL POLICY: TAKING STOCK FOR THE NEW CENTURY 47 (Sept. 2001), *available at* http://www.usda.gov/news/pubs/farmpolicy01/fullreport.pdf.

9. *Id.*

10. *See id.*

11. *See id.* at 47-48 (noting that governmental restrictions on the amount of farmland in production simply causes the remaining land to be farmed more intensively).

12. *See, e.g.*, Editorial, *Stop the Farm Bill*, WASH. POST, May 2, 2002, at A22.

13. *See generally* Laura D'Andrea Tyson, *The Farm Bill Is a $200 Billion Disaster*, BUS. WK. ONLINE, June 3, 2002 (stating that the farm bill threatens trade negotiations between America and Europe), *at*

lutely crucial to the problem of agricultural oversupply in this country, if farmers are to have any chance of obtaining good prices for their commodities.[14] In the view of some, it can not be realistically argued against that it is far better to have farmers' incomes rise due to international demand than due to domestic agricultural subsidies.[15] The former grants a net-increase of capital into the United States, while the latter requires the shifting of scarce domestic resources to the agriculture sector or an increase in taxation, hardly good alternatives.

A. *Caps and Limits on Subsidies as a Present Course of Compromise*

To ensure we do the least amount of violence to free trade principles (both for theory's sake and for agriculture's long-term pecuniary interest), any price supports and production controls must be narrowly tailored to help those that truly require governmental assistance, namely small family farmers.[16] It is difficult to rationalize subsidizing multi-million dollar corporate agricultural entities with general tax revenue, which will only cause massive domestic overproduction that foreign markets will be unwilling to absorb, ultimately causing domestic commodity prices to fall.[17] True, such large corporate farmers will be adequately compensated by subsidies, but the average family farmer, who received little to none of the subsidy money, will only suffer under the lower commodity prices caused by the subsidy system.[18]

Meaningful caps on subsidy payments are needed to ensure that small family farmers are not sacrificed in the name of corporate welfare for large agricultural concerns.[19] In the author's view, the sole rationale for agricultural subsi-

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http://www.businessweek.com/print/magazine/content/02_22/b3785037.htm?mainwindow (last visited Oct. 31, 2004).

14. *See* John E. Frydenlund, Dir. of the Ctr. for Int'l Food & Agric. Pol'y, Statement Before the Office of the U.S. Trade Rep. (June 24-25, 1999), *available at* http://foodstuff.org/Food&Trade/Frydenlundtradetestimony.htm.

15. *See id.*

16. *See* ENVTL. WORKING GROUP, ABOUT THE 2002 FARM BILL: A MISSED OPPORTUNITY (2004), *at* http://www.ewg.org/farm/farmbill/stake.php (last visited Oct. 31, 2004).

17. *See id.* (stating that subsidies to corporate sized farms already create excess cotton and grains, and that further encouraging subsidies will spur more overproduction and result in depressed crop prices); *see also* Jordan Hylden, *Growing Pains: America Needs a New Approach to Support Farmers*, HARV. POL. REV., (Jan. 2003) (explaining how heavily subsidizing commodities encourages overproduction which artificially lowers market prices), *available at* http://www.hpronline.org/news/2003/01/25/Cover/Growing.Pains-356763.shtml.

18. *See* ENVTL. WORKING GROUP, *supra* note 16.

19. *See* Keith Ashdown, *Congress Increases Handouts to Absentee Landlords, Corporate Agribusiness: The Farm Bill Fiasco*, THE PROGRESS REPORT, *at* http://www.progress.org/tcs108.htm (last visited Oct. 31, 2004).

dies is that while free trade will ultimately offer the best solution to low commodity prices caused by domestic overproduction, the inequality in bargaining power of the small family farmer vis-à-vis large corporate agricultural entities compels the federal government to establish an economic "safety net" for small family farmers.[20] This "safety net" is achieved by subsidies bridging the gap between current market prices and government-mandated minimums, so family farmers might continue to compete in the transition.[21]

B. *A Ban on Packer Ownership of Livestock Prior to Slaughter as a Present Course of Compromise*

Another proposed means of assisting small family farmers includes a ban on packer ownership of livestock prior to slaughter.[22] Currently, a few large entities control the domestic slaughter market; allowing these same few entities to own animals before slaughter permits them to extend their monopsony power in purchasing and processing livestock into a new monopsony over production of cattle.[23] If such behavior is not checked, the inequity of bargaining power between these large entities and small livestock producers will be severely exacerbated.[24] In other words, if meatpacker monopsonies control the vast majority of the supply they will be able to completely dictate the price of such supply.[25] Under this scenario, the average family farmer has a narrow opportunity to receive a true market price for his goods.[26] Therefore, just like caps on agricultural subsidies, a ban on packer ownership of livestock prior to slaughter could ameliorate many of the negative effects of this variance from free trade principles, while actually helping small family farmers.

Unfortunately, meaningful caps on subsidies to individual farm operators are absent from the most recent farm bill, as is any ban on packer ownership of livestock prior to slaughter.[27] Some fear that the United States is sliding back into trade protectionism that will handicap international trade, and international

20. *See* USDA, *supra* note 8, at 51.
21. *See id.*
22. *See* U.S. Sen. Chuck Grassley, *Farm Bill Clears Hurdle*, Capitol Gains and Losses, (Feb. 15, 2002), *at* http://grassley.senate.gov/cgl/2002/cg02-02-15.htm (last visited Oct. 31, 2004).
23. *See* Roger A. McEowen, *The Problem of Buyer-Power (Monopsony) in Agricultural Markets*, 21 AGRIC. L. UPDATE (Am. Agricultural Law Ass'n, Eugene, OR), Aug. 2004, at 4-5 (defining a monopsony as a market characterized by buyer-power instead of seller-power); *see* Grassley, *supra* note 22.
24. *See* Grassley, *supra* note 22.
25. *See id.*
26. *See id.*
27. *See id.*

trade appears to be the only way to effectively reduce the glut of domestic agricultural supplies.[28] The worst aspect about this whole affair, however, is that the 2002 Farm Bill was sold as a boost to small family farmers' incomes, but many now view its provisions as merely a cruel hoax.[29] Small family farmers were used as the justification for ending the transformation to a free market agricultural economy, but in reality, they will continue to suffer under a system that rewards overproduction by large corporate entities.[30]

IV. THE HISTORY OF FARM SUBSIDIES

A. *The Rise of Federal Control*

1. *The Hoover Years*

First, to understand the present state of national farm policy in the United States, one must look to its history over the last seventy years. As mentioned earlier, President Herbert Hoover initiated the first federal attempt to stabilize agricultural prices with the creation of the Federal Farm Board in 1928.[31] The Federal Farm Board was intended to act as a giant lender, when needed, to farm cooperatives.[32] It was hoped these cooperatives would ensure adequate prices for the individual farmers who belonged to them with all members working together in purchasing inputs, marketing commodities, and agreeing to voluntarily reduce planted acres.[33] Additionally, low-interest loans were made available to agricultural cooperatives, allowing the cooperatives to make capital investments and attract members.[34]

However, after just one year in existence, it became clear that most farmers participating in the cooperatives were not voluntarily curbing their production, in defiance of the Federal Farm Board.[35] This exacerbated oversupply and lowered market prices, meaning that President Hoover's plan to stabilize agricultural prices through voluntary curbs on production had failed to achieve its objective.[36]

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28. *See* Tyson, *supra* note 13.
29. *See Congressional Hogwash*, THE CINCINNATI POST, May 7, 2002, *available at* http://www.cincypost.com/2002/may/07/edita050702.html.
30. *See* ENVTL. WORKING GROUP, *supra* note 16.
31. *See* HAMILTON, *supra* note 2, at 47.
32. *See id.* at 47-48.
33. *See id.* at 47-49, 55.
34. *See id.* at 48.
35. *See id.* at 84.
36. *See id.* at 84-88.

2. *The Roosevelt Years*

After the onslaught of the Great Depression in late 1929, agricultural commodity prices deteriorated.[37] In the election of 1932, Governor Franklin D. Roosevelt of New York was elected President of the United States, promising, among other things, federal production controls on agriculture to stem the tide of low commodity prices.[38] The result was the passage of the Agricultural Adjustment Act of 1933 ("AAA").[39]

The AAA authorized the federal government to enter into agreements with farmers to pay them money (i.e., subsidies), and farmers were to keep their production amounts within acceptable bounds (i.e., production controls) in an attempt to raise overall commodity prices.[40] In addition, the AAA levied processing taxes which were to pay for production adjustment and market development.[41] The AAA's constitutional authority rested upon the powers to tax and spend for the general welfare of Article I, section 8, and not upon the Commerce Clause.[42]

The United States Supreme Court struck down the AAA in *United States v. Butler*, finding it to be an invalid use of the taxing power, as Congress had expressly declared that the legislation's purpose in taxing was to regulate agricultural production, not to raise revenue for the United States (which, the Supreme Court reasoned, would be the only constitutional reason to impose a federal tax).[43] The Court further found that the constitutionally-defective tax tainted any suggestion that it was to be used to promote the general welfare of the United States.[44] In other words, the Court found that Congress was actually attempting to regulate agricultural production as commerce.[45] The Court found this com-

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37. *See* MURRAY R. BENEDICT, FARM POLICIES OF THE UNITED STATES, 1790-1950 247 (1953).

38. *See* JOHN MARK HANSEN, GAINING ACCESS: CONGRESS AND THE FARM LOBBY, 1919-1981 71 (Benjamin I. Page ed., 1991).

39. Agricultural Adjustment Act of 1933, ch. 25, 48 Stat. 32 (struck down in United States v. Butler, 297 U.S. 1 (1936)).

40. *See id.* at § 608(3).

41. *See id.* at § 609.

42. At this point in American history, it was thought by most that the Commerce Clause, itself, would not constitutionally authorize Congressional regulation of farming, which was thought to be a purely local (i.e., intrastate) activity. On the other hand, taxing farm output to provide for the general welfare was thought by many in Congress, among others, to be a valid constitutional means of regulating production levels via incentive. *See* United States v. Butler, 297 U.S. 1, 57-68 (1936).

43. *See id.* at 57-64.

44. *See id.* at 57-65.

45. *See id.*

merce to be purely an intrastate activity, which meant it was not reachable by Congress through the use of the Commerce Clause.[46]

Congress tried again to enact price supports for agricultural commodities, this time making them mandatory for corn, cotton, and wheat.[47] This was coupled with marketing quotas (i.e., production limits) to ensure that an oversupply of such products did not occur, with the goal of ensuring adequate prices for these goods.[48] This act was entitled the Agricultural Adjustment Act of 1938 ("AAA II").[49]

One might think that the precedent of the *Butler* case, in which a voluntary system of subsidies and production controls was found to be outside Congress's power, would necessarily mean that a mandatory system attempting the same goal would also be unconstitutional.[50] This, however, was not the case.[51] In the subsequent lawsuit of *Wickard v. Filburn*, the Court found intrastate agricultural activity that had an effect on interstate commerce could be constitutionally regulated by Congress by means of the Commerce Clause, regardless of whether the means used were direct or indirect.[52] In other words, it was now clear that Congress could regulate both production and price levels of agriculture.[53] Incidentally, AAA II is permanent "default" legislation for commodity programs and price supports, meaning that it goes into effect whenever temporary programs (e.g., the farm bills of 1996 and 2002) reach their end-date without replacement temporary legislation.[54]

B. *The Failed Attempt at a Rollback, per Stated Federalist Ideals: The Eisenhower Years*

Upon the Presidential election of Republican Dwight D. Eisenhower in 1952, it was thought by many that federal governmental control over agricultural

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46. *See id.* at 63-64.

47. *See, e.g.*, Agricultural Adjustment Act of 1938, ch. 30, 52 Stat. 31 (codified as amended at 7 U.S.C. §§ 1281-1393 (2003).

48. *See id.*

49. *Id.*

50. *See Butler*, 297 U.S. at 74 (finding that Congress may not accomplish the goals of the AAA by "taxing and spending to purchase compliance").

51. *See* Wickard v. Filburn, 317 U.S. 111, 124-25 (1942) (noting that the Commerce Clause does not restrain Congress as much as previous decisions have held).

52. *See id.* at 123-25.

53. *See id.*

54. *See* ECON. RESEARCH SERV., USDA, FARM POLICY: GLOSSARY OF POLICY TERMS, *at* http://www.ers.usda.gov/features/farmbill/2002glossary.htm (last visited Oct. 31, 2004).

commodity prices and production levels would be lessened.[55] Indeed, the Eisenhower Administration, through its Secretary of Agriculture Ezra Taft Benson, did implement flexible price supports that allowed Congress to set support payments at less than ninety percent parity, the previous level of the New Deal price supports.[56] The Eisenhower Administration reasoned that such a policy shift to lower price support guarantees would discourage farmers from overproducing, therefore lowering oversupply of commodity goods, which, in turn, would increase commodity prices through the natural mechanisms of the free market.[57] As such, the federal government would interfere with agriculture only to the extent needed to ensure an adequate farm safety net during periods of extreme market difficulty; confidence in the free market would return to ideological and practical dominance, producing positive pecuniary results for all those involved.[58] However, the Eisenhower Administration's insistence on free market ideology was not complete.[59] The Administration ended up advocating for continuing production controls, based on the reasoning that lowering price supports would not ultimately increase commodity prices if farmers were not governmentally-limited in the number of acres they could utilize.[60] This "compromise," of sorts, pleased practically no one in Congress, as many wanted to go further by also ending governmentally-imposed production limits.[61] Others wanted no change, meaning continuance of the high commodity support payments of the FDR era.[62] It is no surprise, then, that the Eisenhower Administration was unable to fundamentally end, or even substantially alter, the federal farm programs of the New Deal era.

C. *A Failed Attempt at Strong Federal Control Coupled with Significant Farmer Involvement: The Kennedy & Johnson Years*

With the election of John F. Kennedy in 1960, a fresh approach was suggested by the new administration.[63] President Kennedy proposed creating a

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55. *See* EDWARD L. SCHAPSMEIER & FREDERICK H. SCHAPSMEIER, EZRA TAFT BENSON AND THE POLITICS OF AGRICULTURE: THE EISENHOWER YEARS, 1953-1961 39-40 (1975) (discussing Ezra Taft Benson's unfavorable view of price supports).

56. *See id.* at 84-86.

57. *See id.* at 39-40.

58. *See id.* at 70-74.

59. *See id.* at 95.

60. *See id.* at 94-95.

61. *See generally id.* at 91-96 (illustrating the opposing political pressures put on the Administration to change the farm program).

62. *See id.* 91-96.

63. *See* James N. Giglio, *New Frontier Agricultural Policy: The Commodity Side, 1961-1963*, AGRIC. HIST., Summer 1987, at 53-54.

commodity committee selected by the Secretary of Agriculture.[64] The Secretary would select two-thirds of the members from nominees elected by farmer committees administering commodity programs, and the Secretary would choose the other one-third of the membership from different farm organizations.[65] The commodity committee's function would be to fashion recommendations of specific commodity price support levels and production controls and then to submit such recommendations to the Secretary of Agriculture.[66] From such recommendations, the Secretary was to fashion actual proposals to submit to Congress.[67] If Congress did not exercise its veto power, and the President agreed to a particular proposal, the proposal was then submitted to farmers of the respective commodity in a referendum.[68] In this way, the Kennedy Administration wished to ensure adequate farmer participation in the process, reasoning that the amount allocated to price supports would go down and farmers would be more likely to go along with a new system in which they had a direct say.[69]

President Kennedy argued that "to circumscribe to some degree complete freedom to act in one field, to achieve a highly prized and generally accepted goal is, I repeat, the act of rational and civilized men."[70] Ultimately, the 1962 farm bill, i.e., the Food and Agriculture Act of 1962, passed by Congress allowed only one commodity, wheat, to have its price support level and production limits set by such a commodity committee.[71] Such referendum was defeated by a majority vote of wheat farmers in May 1963.[72] In response, Congress passed legislation allowing individual wheat farmers to voluntarily accept production limits in exchange for price supports, which was accepted by the wheat farmers in a subsequent referendum.[73] This voluntary approach was extended to all major commodities in the Food and Agriculture Act of 1965, and was reauthorized in

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64. *See id.* at 61.
65. *See id.*
66. *See id.*
67. *See id.*
68. *See id.* (stating that the referendum would then require two-thirds support to become law).
69. *See id.* (noting that after the Presidential approval, the bill then was submitted to the farmers producing the commodity in a referendum requiring two-thirds support before becoming law).
70. Statement by Senator John F. Kennedy, Agricultural Policy for the New Frontier (Oct. 9, 1960), *at* http://www.jfklink.com/speeches/jfk/oct60/jfk091060_agpolicy.html (last visited Oct. 31, 2004).
71. *See* Giglio, *supra* note 63, at 62.
72. *See id.* at 65.
73. *See id.* at 66-67.

1968 for an additional two years.[74] As such, stricter mandatory production controls, even with the inclusion of farmers in the process, ultimately failed to carry the day.[75] The cycle of limited production controls and relatively high price supports continued the slide towards gluts of supply and, despite the price supports, decreased farm profits.[76]

Thus, in the Author's view, it would appear that this "hybrid" free market system neither took advantage of the benefits of the free market system (e.g., the unlikelihood of prolonged oversupply) or strict governmental control (e.g., the impossibility of prolonged oversupply). This system further failed to avoid the disadvantages of the free market system (e.g., the fact that some commodities' producers will receive far less in profits than others) or governmental control (e.g., persons having to adjust their otherwise private decisions to governmental control). In other words, federal farm policy had become logically inconsistent as the federal government never really "controlled" farm production or prices.[77] This inconsistency led to results that pleased no one. Relatively high price supports drained the federal treasury and the glut of supply resulted in ever lower commodity prices, requiring even more federal money to pay the commodity price supports; thus creating a vicious cycle.[78]

D. *Federal Control, Yet Voluntary: The 1970s and 1980s*

During the Nixon Administration, the same policies of the 1968 Act were continued, both in the Agricultural Act of 1970 and in the Agriculture and Consumer Protection Act of 1973.[79] Indeed, even with another change of administrations, the Food and Agricultural Act of 1977 retained the same philosophy, with only minor tinkering with loan rates and target prices.[80]

With the election of President Ronald Reagan in 1980, a serious attempt was made to reduce the role of the federal government in commodity price sup-

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74. WILLARD W. COCHRANE & MARY E. RYAN, AMERICAN FARM POLICY, 1948-1973 54-55 (1976).

75. *See id.* at 56 (noting new Secretary of Agriculture, Clifford Hardin, said no drastic changes would be made in farm programs for 1969 and 1970).

76. *See id.* at 54-60 (providing a summary of how the lack of new farm programs effected agricultural markets).

77. *See* COCHRANE & RYAN, *supra* note 74 at 55 (describing the difficulty of Republicans and Democrats to focus on a clear-cut farm issue).

78. *See* WILLARD W. COCHRANE & C. FORD RUNGE, REFORMING FARM POLICY: TOWARD A NATIONAL AGENDA 48-50 (1992).

79. *See id.* at 49 (discussing the Agricultural and Consumer Protection Act of 1973); COCHRANE & RYAN, *supra* note 74, at 61 (discussing the Agricultural Act of 1970).

80. COCHRANE & RUNGE, *supra* note 78, at 50.

ports and production controls.[81] Ultimately, that effort was unsuccessful.[82] The Agriculture and Food Act of 1981 continued the hybrid nature of voluntary federal price supports and production controls, a pattern that was to continue through the rest of the decade.[83]

E. *An Attempt at a Gradual Phase-Out of Federal Government Involvement with Price Supports and Production Controls: The Era of Freedom to Farm*

After the midterm congressional elections of 1994, which saw the Republican Party gain control of both the U.S. House of Representatives and the U.S. Senate for the first time in forty years, a paradigm shift in agricultural policy occurred.[84] Free market ideology surfaced again, but unlike the 1950s, the ideology succeeded in becoming law with passage of the FAIR Act of 1996, also known as "The Freedom to Farm Act."[85]

The 1996 Farm Bill suspended the permanent legislation for agriculture, notably the AAA of 1938.[86] This prohibited the federal government from making any further "deficiency payments" (i.e. commodity price support payments) to farmers, which the government had previously made whenever the price for a given commodity fell below a federally-set floor.[87] In place of deficiency payments, "production flexibility contracts" were available to farmers of select commodities, most notably wheat, feed grains, upland cotton, and rice.[88] These production flexibility contracts gave seven years of fixed payments, based upon an individual farmer's per-acre output, to any producer who signed up for them.[89] Such payments were to decline each year, until, in theory, farmers were completely weaned off of government price supports by 2002.[90]

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81. *See* DAVID ORDEN ET AL., POLICY REFORM IN AMERICAN AGRICULTURE: ANALYSIS AND PROGNOSIS 72 (1999).

82. *See id.*

83. *See* COCHRANE & RUNGE, *supra* note 78, at 51-55.

84. *See generally* GEOFFREY S. BECKER, CONG. RESEARCH SERV., RS20848, FARM COMMODITY PROGRAMS: A SHORT PRIMER (2001) (discussing the shift in farm policy toward a more "market-oriented" approach), *available at* http://www.ncseonline.org/NLE/CRSreports/Agriculture/ag-105.cfm?&CFID=8632341&CFTOKEN=64108059.

85. *See generally id.* at CRS-1 (noting that the FAIR Act provided income support, price support, and/or supply management).

86. *See id.*; Christopher R. Kelley, *Recent Federal Farm Program Developments*, 4 DRAKE J. AGRIC. L. 93, 96 (1999).

87. Kelley, *supra* note 86, at 96.

88. *See* BECKER, *supra* note 84, at CRS-2.

89. *See id*, at CRS-3.

90. *See id.*

In other words, the federal government was getting out of the business of regulating agriculture. The reasons for this momentous decision were plentiful; discussion of the two arguably most important reasons follows.

First of all, when the federal government first began regulating agricultural production in the 1930s, there were *six million* farms, and nearly *twenty-five percent* of our Nation's citizens were involved in farming.[91] Lest it be forgotten, the Great Depression of the 1930s, coupled with the Dust Bowl of the same period, had rendered this group of citizens, on the whole, almost destitute.[92] The safety and well-being of the entire country depended upon a ready supply of fresh, safe food, so it truly could be said that ensuring the survival of large numbers of small, family farms was a federal concern of the highest importance.[93]

Contrast the 1930s with the present time. "In 1997, about 157,000 large farms, with annual agricultural sales averaging about $900,000 accounted for 8% of all U.S. farms but 72% of all farm sales."[94] "Farm residents now account for less than *two percent* of the general U.S. population."[95]

As a result, "one size fits all" federal agricultural programs, based on the assumption that all farms are small, independently owned operations on which many of our citizens live, are outdated and incorrect.[96] Clearly, the agricultural world is not the same as it was in 1938. Why then, as the proponents of the 1996 Farm Bill asked, did the federal government's agricultural policy still presume such a state of affairs?[97] Many felt it made perfect sense to end a system that effectively subsidized large, corporate agricultural concerns (after all, the larger the farm, the greater the government payments), to the detriment of small family farms under the guise of "helping the farmer."[98] Such "help" is not only an insult to the average farmer, but a proverbial "nail in the coffin," and the 1996 Farm Bill recognized this.

Second, on a theoretical level, price supports frustrate the actual free market principles under which the United States purports to live. This leads to

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91. *See id.* at CRS-5 (emphasis added).

92. *See generally id.* (stating the government's perceived need to address the severe economic problems faced by the nation).

93. *See generally id.* (noting the need to ensure an abundant supply of food and fiber at reasonable prices).

94. *Id.* at CRS-6.

95. *Id.* (emphasis added).

96. *See* USDA, *supra* note 8, at 25.

97. *See generally* BECKER, *supra* note 84, at CRS-6 (stating that the supporters of the 1996 Farm Bill legislation intended to move outdated U.S. farm policy towards a market oriented policy).

98. *See* ENVTL. WORKING GROUP, *supra* note 16 (stating large corporate sized agribusinesses collect at least two-thirds of the payments, while sixty percent of U.S. farms do no grow any of the ten subsidized crops and don't benefit from crop subsidies).

ever higher levels of price support in order to overcome the market depressing surpluses that price supports generate.[99] In other words, the more agricultural commodity prices are "propped up" by government support payments, the less private food distributors and companies will pay farmers for those goods. After all, these food distributors and companies know that the government will pick up the difference between the price they pay to farmers and the guaranteed price support level.[100] This shifts the cost from private business to the government, effectively shifting the cost to taxpayers. This cost shifting, coupled with the previous argument against price supports, namely that they subsidize corporate farms to the detriment of the small family farmer, clearly demonstrates the farm policy regime of 1938 no longer benefits the originally intended beneficiaries.

In addition, it should be noted that for the agricultural policies of 1938 to truly work, there would need to be *mandatory and enforced* commodity production limits, which have never been passed into law.[101] After all, how can the government ensure adequate commodity prices through supply control if participation in the farm program is voluntary? A federal farm program that does not require all producers to participate in mandatory supply control will always be at the mercy of the "free riders," those farmers who remain outside the program in an attempt to receive the benefits of higher commodity prices without the burden of limiting production. [102]

V. THE ABANDONMENT OF FREEDOM TO FARM: A RETURN TO BAIL-OUTS

Though the 1996 Farm Bill did ultimately become law, the philosophy underlying its adoption became extremely unpopular in the following few years, notably because of an unexpected downturn in the agricultural markets in the late-1990s.[103] Ad hoc relief (i.e., emergency appropriations passed by Congress) became a common recurrence in each year of the 1996 Farm Bill's authoriza-

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99. *See generally* USDA, *supra* note 8, at 47 (noting that, historically, price supports are "self-defeating").

100. *See generally* BECKER, *supra* note 84, at CRS-3, CRS-4 (explaining that non-recourse marketing assistance loans and loan deficiency payments pay farmers the difference between a federally set loan rate and current market price).

101. *See* COCHRANE & RUNGE, *supra* note 78, at 41-63 (providing an overview of U.S. agricultural policy and enacted law since 1938, evidencing a continued lack of mandatory, enforced production limits).

102. *See* RANDOM HOUSE WEBSTER'S UNABRIDGED DICTIONARY 764 (2d ed. 2001) (defining free rider as a person who obtains something without effort or cost).

103. *See* BECKER, *supra* note 84, at CRS-6.

tion.[104] Indeed, "[f]or calendar 2000, direct farm payments reached a total of $24 billion – a figure representing over one-half of net farm income for the year."[105]

Many farmers came to associate such dire economic conditions with the 1996 Farm Bill.[106] Although many appreciated the government ad hoc relief, most thought a more predictable system of government support would better enable farmers to adequately plan their respective operations.[107] Even though the vast majority of price support payments under the 1996 Farm Bill went to large agribusiness (indeed, even the vast majority of ad hoc relief went to the same concerns), the idea of capping price support payments, i.e., paying relief to each particular farm based on a determination of need, not total acreage, ultimately lost out to the idea of scrapping the 1996 experiment, with a return to the regime of 1938.

VI. THE 2002 FARM BILL: A RETURN TO THE REGIME OF 1938

The 2002 Farm Bill, officially known as the Farm Security and Rural Investment Act of 2002, did indeed officially end the 1996 experiment with a free trade/free market system.[108] Deficiency payments were resurrected, tied to each covered commodity's respective price on the market.[109] According to the 2002 Farm Bill's sponsors, most notably Democratic Senator Tom Harkin of Iowa and then-chairman of the Senate Agriculture Committee, the 2002 Farm Bill would fix the flaw in Freedom to Farm, namely the scheduled demise of subsidy payments through annual degradation.[110] A return to the old regime was said to ensure more predictable farm income than the 1996 Farm Bill ad hoc emergency appropriations.[111]

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104. *See id.*

105. *Id.* (emphasis removed).

106. *See id.*

107. *See id.* (noting that most policymakers and farm groups would prefer a more reliable method for supporting farm income than ad hoc laws).

108. *See generally* Farm Security and Rural Investment Act of 2002, 7 U.S.C.A. §§ 7901-8137 (making direct payments and loan deficiency payments once again available to producers).

109. *See id.* at § 7935(c).

110. *See* Elizabeth Becker, *Senator Offers Farm Bill, Retaining Subsidies, as a Compromise*, N.Y. TIMES, Nov. 2, 2001, at A15, *available at* LEXIS, News Library, NYT File.

111. Roger Runningen, *Farm Bill Boosts Subsidies*, St. Paul Pioneer Press, Apr. 27, 2002, *available at* http://www.twincities.com/mld/twincities/business/3147178.htm. (quoting N.D. Sen. Kent Conrad, "[t]his is going to strengthen farm income.")

A. *The 2002 Farm Bill & the Debate on Commodity Payments Caps*

During debate on the 2002 Farm Bill, attempts were made to cap commodity support payments.[112] The Senate voted 66-31 in favor of such a cap, choosing an *annual limit of $275,000 per farm.*[113] Agribusiness lobbies opposed *any* cap.[114]

U.S. Representative Republican Larry Combest, of Texas, then-chairman of the House Agriculture Committee, led the House opposition to caps on commodity payments:

[T]he reason some people get more money is because they produce more. They are more at risk. They are the ones who provide the food and fiber for this country. . . . They are heavily at risk every year with weather and with pricing conditions over which they have no control, and with huge increases in the price of production.[115]

Representative Combest went on to say, later in the same debate:

> So just by capping, you are hurting the people who actually need the help the most. The people who have good crops, the people who have good prices are not going to be affected because that is the design of our program. They are not going to get that payment, anyway. But the person who actually would need it, because the prices are so low, is going to be the one that is damaged the most [if they were subject to caps], so it seems to me to be extremely inequitable.[116]

Democratic Representative Kind, of Wisconsin, adroitly countered the anti-caps argument, quoting the Bush Administration's position on the issue:

> Some of our Nation's producers are in serious financial straits, especially smaller farmers and ranchers. Rather than address these unmet needs, [the 2002 Farm Bill] will continue to direct the greatest share of resources to those least in need of government assistance. Nearly half of all recent government payments have gone to the largest [eight] percent of farms, usually very large producers, while more than half

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112. *See generally* 147 CONG. REC. H6300-01 (daily ed. Oct. 4, 2001) (stating that some legislators supported caps so that free market principles would only be compromised to the extent necessary to help those who truly needed it to survive, namely, small, family farmers, though it must be said that others supported caps irrespective of any free market concerns). The reader will have no trouble discerning that the former reason is much preferred by the author, for reasons obviously stated throughout this note.

113. *See* CHRIS STEBBINS & JULIE INGWERSEN, STEWARDSHIP AMERICA, U.S. FARM GROUPS PROTEST SUBSIDY LIMITS, (Feb. 8, 2002), *at* http://privatelands.org/articles/farm_bill_Reuters_2-8-2002.htm (last visited Oct. 31, 2004) (emphasis added).

114. *See id.* (stating that U.S. farmers needed the support to compete in world markets) (emphasis added).

115. 147 CONG. REC. H6300 (daily ed. Oct. 4, 2004) (statement of Rep. Combest).

116. *Id.*

> of all U.S. farmers share in only [thirteen] percent of the payments. [The 2002 Farm Bill] would only increase this disparity.[117]

In other words, a return to deficiency payments without payment limitations would not only violate our Nation's free market principles, but would do so for the ostensible reason that the farmers need help to survive.[118] Such "help" would only assist large agribusiness concerns, instead of the average family farmer, which demonstrates the very disingenuous reasons given in support of the bill.[119]

Indeed, even a cursory glance at the list of persons receiving farm subsidy payments illustrates why a cap is needed. For example, Ted Turner has received $176,077 for his herd of bison—presumably because he needs the help as an average, struggling farmer.[120] As a major stockholder in AOL Time Warner, even with its recent troubles, Mr. Turner has a personal worth of roughly five billion dollars, demonstrating the absolute absurdity of his supposed need of governmental assistance.[121]

Perhaps the best articulation of why caps on commodity payments are needed was uttered by Tom Buis, the vice-president of the National Farmers Union, when he said:

It's one thing to help a guy farming two thousand acres in central Illinois, trying to make a full-time job of it and support his family, versus helping someone with ten thousand or twelve thousand acres to get bigger and bigger and bigger.[122]

Therefore, in the author's view, it is quite a shame that Congress ultimately did not include any meaningful cap on commodity subsidies, allowing an individual farmer to get up to $360,000 a year in subsidies.[123] Indeed, even that limit is subject to enough exceptions to render it merely symbolic.[124]

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117. *Id.* at H6301 (statement of Rep. Kind).
118. *Id* at H6300 (statement of Rep. Combest).
119. *See id.* at H6301 (statement of Rep. Kind).
120. *See* Caroline Overington, *U.S. Taxpayers Count Cost of Farm Bill*, THE AGE, May 16, 2002, *available at* http://www.theage.com.au/articles/2002/05/15/1021415011858.html.
121. *See id.*
122. Dave Aftandilian, *Farm Bill 2002: Corporate Welfare or Farmer's Friend?*, CONSCIOUS CHOICE, July 2002, *available at* http://www.consciouschoice.com/note/note1507.html.
123. *See id.*
124. *See id.*

B. *The 2002 Farm Bill & the Debate on a Ban of Packer Ownership of Livestock Prior to Slaughter*

Besides the contentious debate on capping commodity support payments, a possible ban on packer ownership of livestock prior to slaughter was another hotly contested issue during the debates over the 2002 Farm Bill.[125] Currently, a few large entities control the domestic slaughter market.[126] By allowing these same entities to own the animals before slaughter, it permits them to extend their monopsony power in purchasing and processing livestock into a new monopsony over production.[127] This monopsony power can only hurt the bargaining power of small, family farms vis-à-vis agribusiness, which inevitably leads to fewer small, family-owned farms.[128]

Although a prohibition on packer ownership of livestock prior to slaughter would seem to be inconsistent with free market ideals, it was thought by many lawmakers to be a proper check on large agribusiness concerns.[129] As such, a ban on packer ownership of livestock prior to slaughter was seen as a proper compromise between the competing interests, as well as a legitimate attempt to diminish the ill-effects monopolies and monopsonies have on free trade principles.[130] Such a move would also have the practical consequence of reassuring the world that the United States practices what it preaches regarding free trade.[131] Sadly, a majority of Congress did not see it that way, so the ban on packer ownership of livestock prior to slaughter failed to make it into the final bill.[132]

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125. *See* Marvin L. Hayenga, *Cutting Verticals Down to Size: Congress, the Farm Bill, and Packer Control*, CHOICES, Summer 2002, *available at* http://www.findarticles.com/p/articles/mi_mOHIC/is_3_17/ai_96266503/print.

126. *See generally* NATIONAL CATHOLIC RURAL LIFE CONFERENCE, CONCENTRATED ANIMAL FEEDING OPERATIONS: RESTORE COMPETITION TO AGRICULTURE (stating that just four corporations control over eighty percent of the beef market and approximate sixty percent of the pork market), *at* http://www.ncrlc.com/Restore-Competition.html (last visited Oct. 31, 2004).

127. *See generally id.* (implying the imbalance in market power allows such a transfer of power to occur).

128. *See* News Release, Senator Tim Johnson, Johnson Says Ban on Packer Ownership of Livestock is Key to Restoring Competition (July 16, 2002), *at* http://johnson.senate.gov/~johnson/releases/200207/2002718836.html (last visited Oct. 31, 2004).

129. *See* Hayenga, *supra* note 125.

130. *See generally* PETER C. CARSTENSEN, ORG. FOR COMPETITIVE MKTS., THE ROLES OF ANTITRUST AND MARKET REGULATION LAW IN MARKETS FOR AGRICULTURAL PRODUCTS (2003), *available at* http://www.competitivemarkets.com/library/academic_reports/2003/7-25Carstensen.htm (providing an overview of regulatory attempts in the livestock industry, and focusing on the "potential for legal reform as a matter of substantive options and practical politics").

131. *See id.*

132. *See* Farm Security and Rural Investment Act of 2002, 7 U.S.C.A. §§ 7901-8317.

VII. THE WAY FORWARD: TOWARD A FREE TRADE FUTURE THROUGH COMPROMISE

In conclusion, it must be remembered that no farm bill lasts forever. There will be a chance, in the not too distant future, to alter federal agricultural policy again. It is the author's contention that such opportunity must be seized for all that it is worth, for nothing less than the future of American agriculture is at stake. Indeed, nothing less than the future of American trade with foreign nations is at stake, as no foreign country will trade with us when they deem our trade practices parochial and fundamentally inequitable.

We all must answer the question as to whether we want to preserve the family farm, not merely as a symbolic strand stretching silently into our past, but as an active participant in the American agriculture of tomorrow. Otherwise, we might as well admit that the purpose of the federal agricultural program is no longer directed towards such a lofty goal, but has denigrated itself into mere corporate welfare.

The United States must maintain the concept of free trade, of a free market system, in the future. It will ultimately lead to the best results for most everyone, as the incentives and disincentives of the market will best affect a proper supply of agricultural goods *and* a just remuneration to those who grow such supply.

Present compromises, such as *limited* commodity price supports (limited based on *need*–not acreage) would do the least harm to such long-term free market ideals. In addition, banning packers from owning livestock prior to slaughter would result in a better balance between the packer monopsony and the multitudes of small, family farms, which would further obviate the need for price support payments to such farms into the future.

In other words, our goal should be to create a system in which supply and demand are in balance, i.e., allowing an adequate supply to feed all concerned *and* pay farmers a reasonable return on their hard work and investment, while also ensuring that the market is truly a free one, allowing small, family farms a fair chance to compete into the future. Because of all its stated flaws, the author believes the 2002 Farm Bill will not meet these objectives. Hopefully, the next farm bill will do so—for the sake of American agriculture and its future.