THE PURPOSES OF extraterritorial jurisdiction—to ensure domestic animal law remains effective and to adequately respond to globally entangled facts—cannot only be achieved by using norms that are indirect or direct extraterritorial but also through “extended extraterritorial jurisdiction.” By this, I mean jurisdiction over persons, objects, facts, or events abroad that is mutually established by states, assigned to international bodies, or determined in processes of self-regulation. Human rights law frequently makes use of foreign policy rules like trade policies, export credit regulation, or investment principles to affect the enjoyment of human rights abroad.\(^1\) Human rights law also uses subtler modes of extraterritorial regulation, like corporate social responsibility (CSR), codes of conduct, best practices, and other, more informal measures. Because these means of extended extraterritorial jurisdiction developed alongside the jurisdictional principles, they are not easy to categorize in the same terms.\(^2\) Extended jurisdiction is not typically considered extraterritorial jurisdiction \emph{stricto sensu}, since affected states agreed beforehand to common jurisdictional norms or because regulatees voluntarily subjected themselves to the jurisdiction of foreign states.

At least in rudimentary form, some forms of extended extraterritorial jurisdiction exist in animal law. The way animals are treated has gained importance in negotiations about investment principles, export credits, best practices, and CSR. How these tools can be

\(^1\) See, e.g., Mark Gibney & Sigrun Skogly, \emph{Introduction, in Universal Human Rights and Extra-Territorial Obligations} 1, 3 (Mark Gibney & Sigrun Skogly eds., 2010).

\(^2\) For example, impact assessments are not regulation per se, CSR does not form part of state jurisdiction, and investment rules are typically based on prior voluntary submission.
systematically used for animal law, however, is unexplored, as is the question of whether foreign policy rules can usefully complement direct and indirect extraterritorial jurisdiction in animal law. In this chapter, I explore the potential of these norms to protect animals abroad. I begin by describing options under foreign commerce, including investment law, export credit rules, bilateral investment treaties, free trade agreements, and impact assessments, and then examine corporate self- or mixed regulation, like reporting duties, CSR, codes of conduct, and best practices. Studying these forms of extended jurisdiction alongside direct and indirect extraterritoriality should give us a better picture of the options available to states that want to better protect animals within and outside their territory.  

§1 Extended Extraterritorial Jurisdiction

A. Investment Rules

International investment law primarily deals with protecting investments, i.e., securing foreign investments from interference by the host state. These treaties are known to be asymmetrical, granting investor states far-reaching liberties while bereaving host states of regulatory power over investors. Lately, home states have acknowledged greater responsibility and increasingly use their regulatory influence over investors to encourage responsible social performance and hold investors accountable for their actions abroad. Progressive investment treaties and guidelines accordingly identify home states and investors as duty bearers.

One of the most well-known and widely used investment guidelines is the International Finance Corporation’s (IFC) Performance Standards. The IFC, a member of the World Bank Group, is a global development institution that provides investment for the private sector. The institution has a AAA credit rating and a portfolio of 67 billion USD from 2,011 companies. Since 2012, the IFC has recommended that investment and advisory clients observe and meet its “Performance Standards” for environmental and social sustainability. As part of its strategy to ensure environmental and social sustainability, the IFC prioritizes the following areas: agribusiness, climate change, financial institutions, gender, oil, gas, mining, and infrastructure. The IFC acknowledges the pivotal contribution of agribusiness to food security, poverty reduction, and development. Between 2010 and 2016, it increased its investments from 1.9 to 5.6 billion USD to finance projects in farm production, sourcing, processing, trade and distribution, wholesale and retail, infrastructure, and logistics.

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3 The arguments made herein were applied to a specific case and published in Charlotte E. Blattner, Tackling Concentrated Animal Agriculture in the Middle East through Standards of Investment, Export Credits, and Trade, 10(2) MIDDLE EAST LAW AND GOVERNANCE 141 (2018).
4 Christoph Schreuer, International Protection of Investments, in MEPIL 1 (Rüdiger Wolfrum ed., online ed. 2013).
IFC’s recommendations identify eight performance standards. These are assessment and management of environmental and social risks and impacts (performance standard 1), labor and working conditions (performance standard 2), resource efficiency and pollution prevention (performance standard 3), community health, safety, and security (performance standard 4), land acquisition and resettlement (performance standard 5), biodiversity conservation and sustainable management of natural resources (performance standard 6), indigenous peoples (performance standard 7), and cultural heritage (performance standard 8).\(^8\)

Performance standard 6 is the most relevant standard in matters of animal protection. Its objectives include protecting and conserving biodiversity, maintaining benefits from ecosystem services, and promoting sustainable management of living natural resources “through the adoption of practices that integrate conservation needs and development priorities.”\(^9\) Performance standard 6 applies both to projects in natural environments, and projects that “include the production of living natural resources (e.g., agriculture, animal husbandry, fisheries, forestry).”\(^10\) This is surprising because environmental concerns rarely extend to animals that do not form an integral part of ecosystems.\(^11\) Performance standard 6, strictly seen, precludes the IFC from funding CAFOs because they make poor use of natural resources, cause considerable environmental pollution, and are key drivers of biodiversity loss.\(^12\) Performance standard 6 is broadly applicable, covering supply chains and primary production purchases.\(^13\) This gives the IFC a great deal of influence over agribusiness, allowing it to apply its standards to business partners, whether or not they have explicitly agreed to them.

Less well known than its performance standards, the IFC’s Draft Good Practice Note on improving animal welfare in livestock operations identifies poor animal welfare performance as an investment risk:

Increased market awareness of environmental, social, and commercial values is driving changes in the way business is done, leading to the recognition of new risks and opportunities. In the case of animal welfare, failure to keep pace with changing consumer expectations and market opportunities could put companies and their investors at a competitive disadvantage in an increasingly global marketplace.\(^14\)

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\(^8\) International Finance Corporation (IFC), Performance Standards on Environmental and Social Sustainability 1 (World Bank, Washington D.C. 2012).
\(^9\) Id. performance standard 6, 1.
\(^10\) Id.
\(^11\) See further on the limited reach of environmental protection, Chapter 3, §2 E. I.
\(^12\) See Chapter 7, §3 on environmental effects of CAFOs.
\(^13\) IFC, Performance Standards on Environmental and Social Sustainability, performance standard 6, 7 (2012): “Purchasers face a duty to evaluate primary suppliers. In the verification process, it must be (i) identified where the supply is coming from and the habitat type of this area; (ii) provided for an ongoing review of the client’s primary supply chains; (iii) provided for limited procurement to those suppliers that can demonstrate that they are not contributing to significant conversion of natural and/or critical habitats; and (iv) where possible, action is required that shifts the client’s primary supply chain over time to suppliers that can demonstrate that they are not significantly impacting these areas in an adverse manner.”
The final Good Practice Note, which went into effect in 2014, demands that animals used by agribusiness be given more space (e.g., by decreasing group stocking density and encouraging group housing instead of individual housing), provided with richer environments (e.g., straw for pigs to manipulate and nest boxes for hens), receive bulk feed supplements instead of high-energy feed (to minimize digestive problems), be spared unnecessary pain from invasive husbandry procedures (e.g., by avoiding them or by using low-pain methods and analgesics), be individually monitored, and that genetic selection focuses both on welfare traits and on increasing production (e.g., picking less aggressive or fearful animals). The IFC’s Good Practice Note is thus broadly animal welfare–oriented, and includes a couple of standards that could be considered progressive in international comparison.

If we look at the way IFC has allocated funds—even if purely focused on the periods since it put the Good Practice Note into effect—we see that the organization honors these goals more in the breach than the practice. The IFC played a key role in doubling pig and chicken production in BGK (Russia), doubling the size of a broiler-raising operation in Banvit (Turkey), building up an integrated broiler raising and pig-slaughtering operation in Ponaca (Ecuador), helping a producer in Halim (Korea) become the largest broiler production facility, financing a producer of 650 million eggs and poultry worth 46 million USD per annum in Wadi (Egypt), investing in one of the largest dairy processors in Karachi (Pakistan) to help it source 1.9 billion liters of cow milk, financing the production of 59,000 tons of dairy products per annum in the semi-autonomous Kurdistan Regional Government (KRG) in northern Iraq, and investing 23 million USD in stock feed, parent stock poultry operations, and hatcheries in the Jordan Valley. The IFC does not even try to conceal its involvement in CAFOs. In 2014, it publicly acknowledged its financial support made the Myronivky Hliboproduct (MHP) facility one of “the most efficient poultry producers” and a “leader in the modernization of Ukraine’s agriculture sector.”

The IFC’s allocation of funds makes clear its interest are in increasing production, in the service of which it is ready to violate the FAO’s goal of ensuring world food security, the IFC’s own Performance Standards on Environmental and Social Sustainability (e.g., performance standard 6), and its Good Practice Note on animal welfare. These investments, in essence, mock the World Bank’s declared goal to “[a]void funding large-scale commercial, grain-fed feedlot systems and industrial milk, pork, and poultry production.”

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17 IFC Project No. 29309, Wadi Holdings SAE, approved June 21, 2010.
18 IFC Project No. 38150, Koninklijke Friesland Campina N.V., approved June 28, 2016.
19 IFC Project No. 34376, Al Safi Danone Iraq, approved Nov. 13, 2014.
21 IFC, Draft Good Practice Note 30 (2014).
Why is the IFC comfortable allocating funds in a manner that violates the standards it devised? Ryan provides an explanation for the remarkable divergence between IFC theory and practice:

While clients who supply [...] supermarkets fully understand the issues of animal welfare and have standards and audits imposed upon them, there are many current and future clients who have not reached that awareness. The IFC philosophy is that it is better to engage these clients and make a difference, rather than not engage at all.23

The IFC’s stance, though incoherent, appears to be well-intentioned, as it thinks it must make investments that violate its own standards and goals in order to build bridges with investors who are not yet persuaded to make the lives of animals a little bit more bearable. This is not a strategy animal advocates can support because it amounts to claiming that supporting animal suffering and death will, in the long run, reduce animal suffering and death. On the other hand, the IFC at least brings the topic to the table, which is more than other international investment bodies have done. For example, the Multilateral Investment Guarantee Agency (MIGA), which encourages private investment by providing guarantees against political risks and which is also part of the World Bank Group, does not bind its investments to recognized standards of minimum labor, environmental protection, human rights, or animal welfare. In its commentary to the MIGA Convention, the organization explains: “Measures normally taken by governments to regulate their economic activities such as taxation, environmental and labor legislation as well as normal measures for the maintenance of public safety, are not intended to be covered by this provision unless they discriminate against the holder of the guarantee.”24

That stakeholders find it difficult to use investment goals to protect animals is also clear on the level of domestic investment law. Pursuant to section 7 of the US Endangered Species Act (ESA), the Secretary of the Interior and the Secretary of Commerce must ensure that actions funded by the Environmental Protection Agency do not jeopardize or threaten endangered species.25 In Lujan v. Defenders of Wildlife, the Supreme Court was asked to decide if this duty also applies to projects funded outside US territory.26 A joint statement by the secretaries had initially determined that the ESA applies to animals on foreign territory, but the agencies subsequently reversed their stance, giving rise to the dispute at hand. Defenders of Wildlife sought to reinstate the initial rule, but the Court denied standing to

the plaintiffs, holding that they lacked injury in fact and redressability. The Court, in essence, avoided resolving the debate about whether the ESA has extraterritorial reach. Even if the Court granted standing to Defenders of Wildlife, plaintiffs would next have had to overcome the domestic presumption against extraterritoriality. Scholars argue that this could be done by invoking principle 21 of the 1972 Stockholm Declaration, which determines that states have a responsibility to prevent domestic actions from damaging the environment of other states. This strategy might be successful if it is paired with the argument that the ESA already applies to the reverse case, where foreign projects have an adverse impact on endangered species within the United States.

Though investment law is rarely linked to good performance in the interest of animals, this might change if more experts in investment law recommend investors consider animal welfare in their investment decisions. The Farm Animal Investment Risk & Return (FAIRR) Initiative argues that few investors know how animals are treated in animal agricultural production, and that this ignorance increases risk for investors and wastes opportunities to improve performance. In its 2016 report, FAIRR found that factory farms were vulnerable to at least 28 ESG (environmental, social, and governance) problems, all of which could damage investors’ financial performance and returns. FAIRR thinks that ignoring animal welfare in investment is outdated because “[f]arm animal welfare is one of many ESG issues that responsible investors are beginning to take into account as part of mainstream investment practices.” To educate investors and encourage a race to the top, FAIRR produces case studies as a form of best practice that shows investors how to make sounder investments while maintaining high-quality standards needed to protect animals.

B. EXPORT CREDITS

Export credits are an important form of foreign direct investment and an opportunity for states that provide finance to encourage responsible performance by recipients. Guidelines of international organizations (IOs), which help states identify good performance in those who receive export credits, sometimes touch on animal issues.

The Organization for Economic Co-operation and Development (OECD) has led numerous international negotiations on export credits, which resulted in the Arrangement on Officially Supported Export Credits, dealing with financial terms and conditions, tied
aid, and procedures of export credits. The OECD also published recommendations for officially supported export credits that cover the social and environmental dimension of export credits (known as the Common Approaches). The Common Approaches encourage members to prevent and mitigate adverse environmental and social impacts of future projects, to consider environmental and social risks associated with existing operations, to undertake environmental and social reviews and assessments for projects and operations as part of their due diligence, and to foster transparency, predictability, and responsibility in decision-making. To prove they are observing the principles, members must screen, classify, and review environmental and social impacts, evaluate and monitor projects, exchange and disclose information, and report on their performance. Substantively, members must benchmark the issuance of export credits, at a minimum, against international standards. This brings to application the standards of the World Bank (Environmental, Health and Safety [EHS]) Guidelines), the IFC Performance Standards, and, in matters of animal welfare, the IFC Good Practice Note. As argued above, this note and some of the IFC’s standards can benefit animals located abroad.

Domestic export credit agencies also often refer to these standards when they issue credits. The United Kingdom bases the Export Credits Guarantee Department’s screening on the OECD Common Approaches, the World Bank Safeguard policies, and IFC Performance Standards. Likewise, the policy of the US Ex-Im Bank’s demands that beneficiaries operate by the Common Approaches, the Environmental and Social Due Diligence Procedures and Guidelines (ESPG), and follow rules on environmental reporting and impact assessment. Other countries, like Denmark, require investees to comply with their own animal welfare standards or those of the European Union.

Though the guidelines of export credit agencies look good on paper, they are inconsistently used in practice. In *Friends of the Earth v. Spinelli*, environmental organizations and governmental authorities sued the Overseas Private Investment Corporation and the Ex-Im Bank for failing to screen projects according to the National Environment Policy Act (NEPA) and the Administrative Procedure Act (APA). Friends of the Earth showed that some of the fossil

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34 OECD, *Common Approaches*, art. 4 v (2016).
36 See Chapter 6, §1 A.
fuel projects funded by the agencies emit significant amounts of greenhouse gases and noticeably contribute to climate change—which should have been considered by the agencies before credits were issued. Another case concerned the Sakhalin II project in Russia. In 2008, the World Wildlife Fund (WWF) presented scientific evidence to support their claim that Sakhalin II would increase global warming and threaten endangered Pacific gray whales, salmon fisheries, and migratory birds. Leaton, the WWF’s Senior Policy Adviser, claimed that the Export Credits Guarantee Department, through its financial support, “gave the backing of the UK government to an environmental catastrophe.” The pressure created by the WWF, which partnered with the Corner House, eventually forced funders to drop the project.

These occasional successes notwithstanding, most states’ rules on export credits are still rudimentary; they disincentivize human rights violations and adverse environmental performance abroad, but lack rules that determine how animals be treated. In the future, export credits should only be granted if projects protect—or at least do not negatively impact—the lives and livelihoods of animals situated abroad. Instead of assuming that issuing export credit guidelines that protect the environment will benefit animals, too, funding schemes should directly and unequivocally demand that recipients respect animals abroad. Until these rules are in place, international investment standards on animal welfare, like performance standard 6 and the IFC’s Good Practice Note, must be strictly observed.

C. BILATERAL INVESTMENT TREATIES (BITs)

Bilateral investment treaties (BITs) are agreements concluded between two states on private investment that moves from one state to another. BITs are the most important kind of foreign direct investment; more than 3,000 of these treaties are currently in force worldwide. Like investment guidelines, early-generation BITs established asymmetrical rights and obligations. They conferred on investors a right to enter the host state but did not assign them any duties. Host states, commonly from the majority world, continue to enter these agreements to access the minority world’s investment markets.

Home and host states dissatisfied with lopsided BITs have called for a greater balance between the parties’ rights and obligations—a move the UN Conference on Trade and Development (UNCTAD) supports. Newer BITs take these demands seriously and oblige home states and investors to adhere to, e.g., established human rights. The social side of

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40 Friends of the Earth Inc. et al. v. Mosbacher et al. (also known as v. Watson or as v. Spinelli), 488 F. Supp. 2d 889 (N.D. Cal. 2007) (U.S.).
43 By the end of 2017, 2,946 BITs and 376 international investment agreements were concluded: UNCTAD, World Investment Report 88 (2018).
44 Dolzer & Schreuer 14 (2012); Muchlinski, Corporations in International Law, in MPEPIL 26 (2014).
46 Human rights are typically part of the preamble, listed in a separate clause of BITs, or they are indirectly addressed by referring to state duties: Marc Jacob, International Investment Agreements and
BITs, however, is still in development. Model BITs of Germany (2008), France (2006), the United States (2004), the United Kingdom (2005), China (2003), and India (2003), for example, are all silent on human rights.47

The emerging social side of BITs may also extend to animal issues. Newer BITs address animals indirectly in their preamble by referring to the parties’ desire to protect the environment and contribute to the sustainable use of resources.48 Preambular wording has limited reach, however. It allows favorably interpreting a BIT based on the object and purpose of the treaty, but it does not per se create duties for parties.49 Concern for animals is typically seen only as an exception to obligations under the BIT. For example, US BITs include detailed rules on mutual performance, but in exceptional circumstances allow parties to violate these, if doing so is necessary to protect the environment, human, animal, or plant life and health, or to conserve exhaustible natural resources.50 Just as article XX of the GATT is evidence for the limited role animals play in trade relations, exceptions in BITs prove that animals play only a marginal role in bilateral investment relations.

Even global actors that have a favorable view of animals do not consider the lives of animals important enough to include them in BITs. In the European Commission Minutes Meeting on EU-China Trade and Investment Relations in February 2014, the Royal Society for the Prevention of Cruelty asked about the role of animal welfare in BITs. The Commission explained that “animal welfare is not a part of the Commission’s traditional approach to this kind of negotiations. This element is usually present in FTAs which have much broader scope.”51 The Commission manifestly failed to acknowledge that BITs cover an important stage that is not accounted for in FTAs. Before goods enter production, BITs at least co-determine if production is commended, so BITs could prevent infringing the interests of animals, while FTAs can only respond to violations.

That BITs largely ignore the immense influence of investment on the lives of animals is deplorable and increasingly unjustifiable in light of the steady growth of investments in animal agriculture. Since the early 2000s, acquisition of farmland in majority world countries increased radically. In November 2013, Saad Khalil, director of the Initiative for Saudi Agricultural Investment Abroad, announced that over 35 countries will be targeted for its
agricultural investment. The Saudi Agricultural Development Fund established the Saudi Company for Agricultural Investment and Animal Production (SCAIAP), which exclusively funds the production of animals and animal feed.\(^{52}\) As *The Economist* predicts, we will soon witness new forms and extents of outsourcing in agriculture across the world.\(^{53}\) Given the massive investments from minority world countries in animal production facilities located in the majority world, BITs could have a tremendous impact on the lives of affected animals. As we understand more about how we fail animals, we will need to build on the growing trend of using BITs to enshrine minimum standards and use them to encompass duties toward animals.

### D. FREE TRADE AGREEMENTS (FTAs)

FTAs are primarily concerned with trade relations among states and some of them aim to strengthen and deepen economic cooperation between parties more broadly. Most FTAs are concluded bilaterally or multilaterally, but there is a global trend toward megaregional FTAs like the Transatlantic Trade and Investment Partnership (TTIP), or the Trans-Pacific Partnership (TPP). Regular FTAs still outnumber megaregional FTAs and hence play an important role in international economic cooperation.\(^{54}\)

Compared to BITs, FTAs more readily take the interests of animals into account. Some FTAs have an *information-sharing clause*. The EU-Canada FTA, known as the Comprehensive Economic and Trade Agreement (CETA), allows its parties to exchange information on matters touching animal welfare.\(^{55}\) This exchange is not mandatory, as evidenced by article 21.4 CETA (“the parties may”).\(^{56}\) The language is slightly stronger in the EU-Korea FTA. According to article 5.9 titled “Cooperation on Animal Welfare,” “parties shall […] exchange information, expertise and experiences in the field of animal welfare and adopt a working plan for such activities.”\(^{57}\) Similarly, the EU-Chile FTA lays down states’ mutual duty to inform each other on their progress in developing animal welfare standards.\(^{58}\) And in the EU-Singapore FTA, the parties agreed to exchange information, expertise, and experiences in the field of animal welfare.\(^{59}\)

Some FTAs stipulate that animal welfare is a *common objective* of the parties. Article 89 para. 1 of the FTA between Chile and the European Union identifies animal welfare standards as a common objective of the agreement.\(^{60}\) Similarly, article 1 para. 1 of Annex IV to

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\(^{52}\) *Saudi Arabia to Target Agro-Investments Abroad*, *ARAB NEWS*, Nov. 11, 2013.

\(^{53}\) *Outsourcing’s Third Wave*, *The Economist*, May 21, 2009.


\(^{55}\) Comprehensive Economic and Trade Agreement (CETA), art. 21.4 lit. s, Sept. 21, 2017 [CETA].

\(^{56}\) CETA, art. X.4 para. 19.

\(^{57}\) Council Decision of 16 September 2010 on the Signing, on Behalf of the European Union, and Provisional Application of the Free Trade Agreement between the European Union and its Member States, of the One Part, and the Republic of Korea, of the Other Part, 2011/265/EU, 2011 O.J. (L 127) 6, art. 5.9 para. 2 [EU-Korea FTA].

\(^{58}\) Agreement Establishing an Association between the European Community and its Member States, of the One Part, and the Republic of Chile, of the Other Part, Nov. 18, 2002, art. 12 para. 2 lit. f [EU-Chile Agreement].

\(^{59}\) EU-Singapore Free Trade Agreement, June 29, 2015, art. 5.11 para. 2 [EU-Singapore FTA].

\(^{60}\) EU-Chile Agreement, art. 89 para. 1: “An additional objective of this section is to consider animal welfare standards.”
the US-Uruguay FTA states: “[T]his Agreement aims at reaching a common understanding between the Parties concerning animal welfare standards.” The EU-CARIFORUM Agreement more broadly expresses the parties’ desire to improve their capacity to protect animal health. However, it is still a matter of debate whether animal health encompasses considerations about the well-being of the animal.

Certain FTAs operate as a basis for states to cooperate or collaborate. Chapter Five of the EU-Singapore FTA determines that parties may collaborate on matters of animal welfare that are of mutual interest. And South Korea and the European Union even agreed to “cooperate in the development of animal welfare standards in international fora, in particular with respect to the stunning and slaughter of animals.”

Some of the wording used in these clauses is quite vague, which makes it unlikely a party can be held accountable for failure to comply with them, but this does not render FTAs per se unsuitable to advance the interests of animals. The most notable promise of FTAs is that they may have a lasting influence on how parties regulate animal issues domestically. Subsequent to the adoption of the EU-Chile FTA, Chile passed laws that seek to ensure the welfare of animals before and during slaughter. Chile also started collaborating with Uruguay to establish a Center on Animal Welfare, with Argentina to improve the standards of animal transportation, and with Canada and the United States to engage in exchanges and training on animal welfare matters. The Eurogroup, which studied these developments in detail, summarizes them as follows: “Even if Chile originally considered the inclusion of animal welfare as an EU demand, the bilateral agreement definitively played a role and brought several benefits.”

Based on these and other successes, the European Commission declared that it will continue to include animal welfare in bilateral trade agreements and cooperation forums “to increase the strategic opportunities for developing more concrete cooperation with third countries.”

As the example of the EU-Chile FTA shows, some FTAs had a lasting effect on parties, while others changed little about the status quo. We do not yet know if this success depends solely on treaty language (e.g., the use of “shall” instead of “may”), or whether some parties are simply more dedicated to animal issues than others. We do know, however, that lax commitments in FTAs are not sufficient to bring about real change, so FTA clauses that pay regard to the interests of animals should be complemented by periodic impact assessments and joint councils empowered to take action.

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63 See Chapter 4, §2 C.
64 EU-Singapore FTA, art. 5.2 para. 2.
65 EU-Korea FTA, art. 5.9 para. 2.
66 Chile also plans to collaborate with Costa Rica and Bolivia: EUROGROUP FOR ANIMALS, THE EU-CHILE FREE TRADE AGREEMENT: A BOOST FOR ANIMAL WELFARE 4, 9–10 (2013).
67 Id. at 10.
The International Institute for Sustainable Development’s “Model International Agreement on Investment for Sustainable Development” has not yet begun to take seriously states’ interest in protecting animals through BITs. It is also regrettable that the efforts of bilateral or regional FTAs to work toward better laws for animals will likely be undermined by megaregional FTAs like the TTIP and the TTP. The TPP is an agreement on trade negotiated and signed on February 4, 2016, by Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam, and the United States, covering 40 percent of the global GDP and one-third of the world trade in goods. The TTIP is a draft agreement to regulate the relations of trade and investment between the European Union and the United States that would make up for 50 percent of the global GDP and another third of the world trade flows. The two agreements, which are frequently seen as “companion agreements,” are considered progressive because they each have a distinct chapter on environmental standards. Both of them, however, lack a commitment to protect animals. The TTP, in its final version, only refers to the general exceptions of article XX GATT, and the TTIP, in its draft version by the European Union, does the same.

To this day, neither the TTIP nor the TTP has entered into force. The TTP failed after the Office of the US Trade Representative announced the United States’ withdrawal in January 2017. And the negotiation process over the TTIP was paused in 2016 with no further notice given. It is easy to describe the failure of the parties to conclude megaregional FTAs as a success for animals, namely, as a step away from deregulation, but the mere fact that the most powerful players do not consider animals worth mentioning in negotiations on trade sends a powerful message to the world. Moreover, it is only a question of time until new megaregional treaties will be drafted and animal interests, once again, ignored and downplayed.

69 International Institute for Sustainable Development (IISD), Model International Agreement on Investment for Sustainable Development (IISD, Manitoba 2005).
72 The environmental chapter, however, is criticized for insufficiently protecting the environment: Chris Wold, Empty Promises and Missed Opportunities: An Assessment of the Environmental Chapter of the Trans-Pacific Partnership (2016).
74 European Proposal for the TTIP Text on “National Treatment and Market Access for Goods” (Mar. 21, 2016), section E. The planned TTIP between the United States and the European Union is also expected to lower the level of animal welfare within the European Union, since the TTIP’s main purpose is to reduce nontariff barriers to trade: Lurié & Kalinina 431 (2015); Florent Marcellesi, TTIP: A Threat to Animal Welfare and Rights (Green/EFA Group of the European Parliament, Feb. 24, 2015), available at http://ttip2015.eu/blog-detail/blog/animal%20rights%20TTIP.html (last visited Jan. 10, 2019).
Impact assessments are a popular regulatory tool in environmental law and human rights law that identify and evaluate the risks and benefits of projects and policy proposals. Article 7 of the Council Directive on Mandatory Assessment of the Effects of Certain Public and Private Projects on the Environment (EIA Directive) determines that if a project is likely to impair another state’s environment, the parties shall share information bilaterally, inform the public, and establish a joint body to address the issue in detail. The example makes plain that the primary purpose of impact assessments is to share information, whether with specific interest groups or the public. In an age of corporate governance, impact assessments can be a powerful tool to obtain knowledge about how animals are treated abroad and about whether a state carries the responsibility to regulate those actions. Apart from asking for information, impact assessments do not necessarily demand that decision-makers act in a specific manner. Because of their limited nature, they are not typically considered interventionist, even if they gather and evaluate data across the border.

Environmental law is well known for its high number and diversity of regulatory approaches to impact assessments. Environmental impact assessments have been established by treaties (the Espoo Convention), regional law (the EIA Directive, or EMAS Regulation), domestic law (like the US National Environmental Policy Act [NEPA]), and IOs (for example, by the UN Environmental Program’s [UNEP] Goals and Principles of Environmental Impact Assessment). Environmental impact assessments evaluate norms and projects likely to cause pollution, erosion, loss of biodiversity, deforestation, or desertification, or which have any other significant impact on the environment.

Because agricultural animal production has massive negative effects on the environment, its planned and ongoing activities must undergo environmental screening. According to article 4 para. 1 of the EIA Directive in connection with Annex I para. 17, installations for intensively rearing poultry or pigs with more than 85,000 places for broilers, more than 60,000 places for hens, more than 3,000 places for production pigs, or more than 900 places for sows are subject to mandatory impact assessments. The reports must identify, describe, and assess the direct and indirect effect of these installations on population and human health, biodiversity, the quality of land, soil, water, air, and climate, cultural heritage, and a combination of these factors (article 3 para. 1 EIA Directive). Directive 92/43/EEC, the Habitat Directive, requires assessing impacts of “[a]ny plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon,”

82 Coggins & Head 61 (1993).
either individually or in combination with other plans or projects.”

It further provides that projects may only be carried out if they do not threaten the habitat of wild animals or plants (article 6 para. 3). If they are assessed negatively but member states decide to proceed “for imperative reasons of overriding public interest,” then states must take compensatory measures (article 6 para. 4). Carefully designed and coherently applied rules on environmental impact assessments are likely to give rise to reports that negatively assess animal production industries because of their failure to use resources sustainably, their likelihood of reducing biological diversity, and their considerable polluting effect on air, ground, and water sources.

Some states have declared impact assessments a standard policy in the legislature and the judiciary. The European Union’s Action Plan for Better Regulation provides for a mandatory two-stage impact assessment procedure for all legislative and policy initiatives. Similarly, in the United Kingdom, regulatory impact assessments are now a substantial part of its standard regulatory procedure. Because rules on impact assessments apply to any policy proposal and project, they also extend to animal law, as done in the European Union’s Impact Assessment on the Animal Testing Provision in Regulation (EC) 1223/2009 on Cosmetics of 2013 and the European Union’s Impact Assessment on Options for Animal Welfare Labelling and the Establishment of a European Network of Reference Centers for the Protection and Welfare of Animals of 2009. Both impact assessments define problems (current regulation, societal demands, legal inconsistencies, competition issues, and stakeholder concerns) and objectives, and the options available to address or fulfill them. They must contain a feasibility assessment for the options identified, and predict the social, economic, and environmental impact these will have on stakeholders (e.g., farmers, retailers, consumers, and international parties). These impact assessments are especially valuable because they take into account the interests of animals not only in the area of animal law. Any regulatory proposal or project that compromises or has the potential to compromise the

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84 European Commission, Action Plan “Simplifying and Improving the Regulatory Environment,” COM(2002) 278 final (June 5, 2002): “In principle, all legislative proposals and all other major policy proposals for adoption, i.e., set out in the Commission’s work programme, will be subject to the impact assessment procedure.” (Id. at 7). See further on regulatory impact assessments: Claudio M. Radaelli & Fabrizio De Francesco, Regulatory Impact Assessment, in The Oxford Handbook of Regulation 279, 280 (2010).

85 In 2014, the UK Department for Business, Innovation & Skills issued a report titled “Impact Assessments: Guidance for Government Departments” (DEFRA, London 2014). In 2015, the Better Regulation Executive (BRE) established guidelines for policymakers, including guidance on conducting impact assessments, along with an “Impact Assessment Toolkit.”


interests of animals, such as a construction project for breeding facilities or plans to invest in production facilities, must be assessed for its impact on animals.

Given the diverse effects of regulatory actions, the weight given to animals in impact assessments is likely negligible vis-à-vis other concerns. At the same time, animals play an increasingly important role in public policy, so there are good reasons to argue that discrete impact assessments be conducted with the specific purpose of gathering information about activities that likely impair, thwart, or further animals’ interests—so-called animal impact assessments. Animal impact assessments would produce readily available and accessible information about the many ways that current or proposed regulatory tools and projects compromise animals’ interests. They would integrate multiple stakeholders in a pre-regulatory phase, create multileveled responsibilities, and increase the chances that laws will be observed after they are adopted. Animal impact assessments could further pave the way for future due diligence duties of states and stakeholders owed to animals.\(^{88}\)

Animal impact assessments should be benchmarked against existing recommendations for impact assessments. De Schutter, in his mandate as a Special Rapporteur on the right to food to the UN Secretary-General, proposed Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements, which were approved by the UN General Assembly. De Schutter emphasized that procedures that govern impact assessments should be independent, transparent, and ensure broad participation of affected parties. Impact assessments should only be conducted by experts who must receive funding to ensure thorough reporting and independence in decision-making.\(^{89}\) Animal impact assessments can also look to the UNEP’s Goals and Principles of Environmental Impact Assessment for guidance. Principle 4 requires that reports include, at the minimum, a description of the activity proposed, its potentially adverse effects, practical and appropriate alternatives, likely impacts of alternatives, measures available to mitigate adverse effects, remaining knowledge gaps and uncertainties, and information on whether other states’ interests are likely going to be affected by the activity.\(^{90}\) All of these steps can reasonably be expected to increase knowledge of decision makers and their constituency to ensure soundness and reasonableness of policies adopted, permits granted, projects funded, and of other major public or private actions that have an impact on the lives of animals.

The multitiered approach of environmental, regulatory, and animal impact assessments is a good starting point to devise decision-making rules that take into account the interests of animals, but it is far from certain that this suffices. In legal scholarship, it is debated whether impact assessments truly have an impact on policymaking or whether they are paper tigers that unnecessarily burden agencies. Even seemingly revolutionary laws that established duties for all governmental agencies to perform impact assessments, such as the United States’ NEPA signed into law by former President Nixon in 1970, were gradually limited by the judiciary.\(^{91}\) Lower courts had interpreted NEPA to “involve a balancing process” in which


“environmental costs may outweigh economic and technical benefits,” but in a staggering 17 cases, the US Supreme Court held that NEPA merely requires agencies to amass data and “consider” various alternatives, placing them under no duty to choose the most environmentally sound option. The United States is no outlier in this respect. When regulating impact assessments, most states neither lay down duties to balance competing interests, nor do they require a specific outcome, in the sense that the most reasonable option must be chosen, be it the most environmentally friendly, the one preventing human rights violations, or the one causing the least animal suffering. As a result, these rules, at best, ensure decision-making processes that are informed; at worst, they declare legal activities that have tremendous negative effects on the environment or for affected human and animal communities. To merely demand that decision makers gather information, consider all relevant factors, and “take a hard look” is simply not enough to ensure reasonable decisions are taken, nor is it enough to justify the tremendous financial means required to conduct impact assessments. Regulators should set up very clear rules on how interests must be assessed, weighed, and balanced against one another, and they should place decision makers under a duty to give preference to those options that have the least negative effect or the biggest positive effect on the environment, humans, and animals. Finally, decision makers should be obliged to reject projects likely to have such negative effects.

Given today’s conservative take on impact assessments, this demand may go too far in the absence of a clear commitment by the people to protect animals. But even without broad and unequivocal legislative intent, there is a strong case to be made that decision makers should at least observe minimum standards. To determine minimum standards,

92 See, e.g., Calvert Cliffs’ Coordinating Committee, Inc. v. United States Atomic Energy Commission, 449 F.2d 1109, para. 14 (D.C. Cir. 1971) (U.S.). This substantive reading is also evident in the dissent of Justice Douglas in Scenic Hudson Preservation Conference v. Federal Power Commission, 407 U.S. 926 (1972). The purpose of §102 NEPA, he argued, is “to insure that if a project is approved, an environmentally acceptable alternative will be chosen” (Id.).

93 See, e.g., Strycker’s Bay Neighborhood Council v. Karlen, 444 U.S. 223, 227 (1980) (U.S.), ruling that an agency must not “elevate environmental concerns over other appropriate considerations.” This limited approach is now enshrined, in the Council on Environmental Quality’s Regulations For Implementing the Procedural Provisions of the National Environmental Policy Act, 40 C.F.R. §1502.23 (U.S.). Lazarus thinks that although “the Court’s treatment of NEPA is best understood as evidencing the Court’s hostility to NEPA in particular or to environmentalism more generally,” there is a more nuanced and “more interesting story” that underlies NEPA and the Supreme Court. See further Richard Lazarus, The National Environmental Policy Act in the U.S. Supreme Court: A Reappraisal and a Peek Behind the Curtains, 100 Geo. L.J. 1501, 1511 (2012).


95 Many countries have enshrined their commitment to protect animals in their constitutions or animal welfare acts. See Chapter 9 §2.
the *Guiding Principles* recommend impact assessments in human rights law draw on established human rights indicators.⁹⁶ Animal impact assessments could similarly rely on animal welfare indicators developed and applied in natural sciences that take into account physiological, behavioral, cognitive, and emotion-based factors. Those indicators can be general, species-specific, or specific to the purpose humans use animals for.⁹⁷ A useful starting point to develop animal welfare indicators is the Animal Welfare Indicators (AWIN) project that develops, integrates, and disseminates animal-based welfare indicators with an eye to pain perception and recognition.⁹⁸ Animal welfare indicators are already used to evaluate states’ performance in animal law. The Royal Society for the Prevention of Cruelty, in its report “Five Years Measuring Animal Welfare in the UK 2005–2009,” views the following as animal welfare indicators: the number of relevant government advisory nondepartmental public bodies that include animal welfare specialists; the proportion of schools that incorporate animal welfare into their curriculum; the number of local authorities that have an animal welfare charter; the number of relevant white papers published by the government that include a positive animal welfare component; the number of investigations and convictions under the AWA; the proportion of people interested in improving animal welfare; the number of animals transported live from the home state for slaughter or fattening; production of non-cage eggs in proportion to total eggs produced; the number and proportion of meat chickens reared to higher on-farm welfare standards; and piglet mortality levels between birth and weaning.⁹⁹ These and other factors should be used, *de minimis*, in animal impact assessments.

F. REPORTING

Reporting denotes the mandatory or voluntary act of making information about business activities publicly available. In its early form, reporting was limited to financial and operational data of businesses, but corporations are increasingly asked to also publicize data on their

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societal, political, and environmental performance. The public is often most interested in acquiring information about the activities of multinational enterprises, partly because they are so powerful, partly because they operate internationally. Reporting consequently often crosses borders, but because it is not concerned with regulatory processes, outputs, or their allocation, it is only mildly interventionist.\textsuperscript{100} Obliging a parent company to disclose information about the entire multinational enterprise is generally viewed as legal under international law. Only if the reporting duty violates foreign law—which happens if a foreign state protects the requested information—do conflicts under international law arise.\textsuperscript{101}

International financial reporting standards oblige multinationals to disclose financial data about their global business activities. The International Accounting Standards Board (IASB), an independent, international accounting standard-setting body, has developed rules on comprehensive and transparent financial reporting in its International Financial Reporting Standards (IFRS). Corporations that wish to abide by the IFRS must complete a financial statement that provides information about their assets, liabilities, equity, income and expenses, gains and losses, contributions by and distributions to owners, and cash flows. Because these standards are recognized and applied in over 120 states,\textsuperscript{102} most multinationals are interested in being accredited.

Also domestic rules on financial reporting may reach across borders. In the United States, accounting and reporting standards are governed by the Sarbanes-Oxley Act (SOX).\textsuperscript{103} The range of companies covered by the SOX includes firms listed or registered on any US securities exchange.\textsuperscript{104} The SOX has been criticized for its extraterritorial demands on foreign corporations because it requires remodulation that some argue is incompatible with their home state duties.\textsuperscript{105}

Financial reporting produces important information about how corporations are linked to each other, new investment relations, and financial cooperation among corporations. Investments also indicate a firm’s long-term plans, including its stance toward animal welfare. For instance, it is useful to know if a cosmetic multinational begins to invest in alternative research methods, or that meat-producers like Tyson Foods raise their financial stake in

\textsuperscript{100} Baldwin et al. 119 (2013).
\textsuperscript{101} Foreign sovereign compulsion is discussed in Chapter 10, §2 B.
\textsuperscript{102} The IFRS must be applied to the consolidated financial statements of EU companies whose securities are traded on a regulated EU market: Commission Regulation 1361/2014 Amending Regulation (EC) No. 1126/2008 Adopting Certain International Accounting Standards in Accordance with Regulation (EC) No. 1606/2002 of the Council as Regards International Financial Reporting Standards 3 and 11 and International Accounting Standard 40, 2014 O.J. (L 365) 120. In the United States, the US Securities and Exchange Commission (SEC) adopted the Generally Accepted Accounting Principles (GAAP). The SEC also declared to adopt the IFRS by 2014, which has rendered the IASB all the more powerful: Agatha E. Jeffers et al., The Switch from US GAAP to IFRS, 7 PROCEEDINGS OF THE NORTHEAST BUSINESS & ECONOMICS ASSOCIATION 48–52 (2010).
\textsuperscript{104} Detlev F. Vagts, Extraterritoriality and the Corporate Governance Law, 97 AJIL 289, 290 (2003).
\textsuperscript{105} Hans Caspar von der Crone & Katja Roth, Der Sarbanes-Oxley Act und seine extraterritoriale Bedeutung, 2 AJP 131 (2003).
vegan corporations like Beyond Meat. Ultimately, these investments are also an important indicator to speculate about the public perception of animals and the duties we owe them.

Over the past decades, reporting duties have expanded from the financial to the social and environmental, as part of corporations’ responsibility to society. Reports on nonfinancial performance include data about employees (corporate structure, salary, working conditions, or training), value-added statements (attitude to long-term investment or employee maintenance), and environmental issues (water use, energy use, or contribution to global warming). International guidelines in this area ensure consolidated reporting and reduce regulatory heterogeneity. The Global Reporting Initiative (GRI) developed a Sustainability Reporting Framework designed to establish standard reporting practices in matters that affect sustainability, by using guidelines, sector guidance, and other tools. The term sustainability is broadly interpreted by the GRI to encompass economic, environmental, and social impacts.

The OECD Guidelines for Multinational Enterprises also established rules on (nonfinancial) information disclosure. In the European Union, Directive 2014/95/EU details when and what kind of nonfinancial and diversity information multinational enterprises and other large corporate groups with 500 employees and more need to provide. The topics that shall be covered by companies’ nonfiscal statement are “as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters.”

Corporations can also be bound by domestic law to publicize data about their nonfinancial performance. Since 1995, Denmark’s Green Accounting Law demands its 1,100 largest companies produce environmental reports on the use of resources and waste management.

In France, article 116 of loi n° 2001-420 lays down that corporations listed on the French stock exchange must disclose information “sur la manière dont la société prend en compte les conséquences sociales et environnementales de son activité.” And section 299 para. 1 lit. f of the Australian Corporations Act 2001 demands all corporations detail their performance in meeting environmental regulation.

Most reporting standards, whether issued by IOs or set up by domestic law, are significant for animals, at least indirectly. CAFOs have a duty to report on their environmental performance and must lay bare their emissions and pollutions along with plans to reduce them.


109 OECD Guidelines for MNEs (2011). The guidelines are examined in Chapter 6, §1 I.


111 *Id*. art. 19a para. I.

112 Act Amending the Environmental Protection Act (Green Accounts), Act No. 403, June 14, 1995, art. 1 (Den.).

113 Loi n°2001-420 relative aux nouvelles régulations économiques [La loi NRE] [Law on New Economic Relations], May 15, 2001, art. 116 (Fr.).

114 Corporations Act 2001, Act No. 50, § 299 (Austl.).
Because animal agricultural industries are highly unsustainable, this duty may nudge them, over the long term, to stop rearing animals. But although agricultural industries are in theory covered by reporting duties, their contribution to environmental degradation and pollution regularly eludes sustainability reports. International climate conferences have consistently ignored animal agriculture and this calls into question their commitment to environmental goals. Environmental reporting does therefore not, as a rule, have a measurable positive effect on the lives of animals.

Few reporting initiatives take the interests of animals into account. In its G4 Sector Disclosures on Food Processing (distinct from the GRI Reporting Guidelines), the GRI recommends food-processing companies publicize information about topics related to animals. The G4 Sector Disclosures on Food Processing demand information about the percentage and total number of animals raised and processed, divided by species and breed type, actions taken by the corporation to mitigate any negative impacts on animal welfare, the effects of housing systems on animals, policies and practices on the use of antibiotics and hormones, the total number of incidents or significant noncompliance with laws and regulations, and adherence to voluntary standards related to transportation, handling, and slaughter. In short, the GRI obliges multinational enterprises that operate in the agricultural sector to disclose how many and what kind of animals they breed, raise, or process, how confined these animals are, whether they are given antibiotics or hormones, whether they take animal welfare into account, how animal suffering is reduced, and if their practices comply with the law.

Another initiative designed to improve corporate reporting on farmed animal welfare issues is the Business Benchmark on Farm Animal Welfare (BBFAW), launched by Compassion in World Farming and World Animal Protection. The BBFAW assesses animal welfare management, policies, practices, processes, and performance of investors, companies, nongovernmental organizations (NGOs), and other stakeholders in the animal agricultural industry. A key finding of the BBFAW is that reporting on farmed animal welfare is still in its infancy:

We believe that companies should be encouraged to treat animals in their supply chain with respect and adopt robust processes for managing and reporting on their farm animal welfare performance. We have engaged with food and retail companies over

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115 Although the United Nations urges a global move away from meat, the conferences it organizes show how weak its own commitment to this goal is. At the 2016 Paris Conference of the Parties (COP21), where more than 190 state officials met, meat consumption was never discussed: Laura Wellesley, *Can Eating Less Meat Help Reduce Climate Change?*, BBC News, Nov. 24, 2015. Its meat-heavy menu at the UN Framework Convention on Climate Change conference COP24 in December 2018 contributed an estimated 4,000 metric tons of greenhouse gases to the climate crisis: Stephanie Feldstein, Claire Fitch, & Caroline Wimberly, *Meat-heavy Menu at UN Climate Conference Could Contribute 4,000 Metric Tons of Greenhouse Gases*, CENTER FOR BIOLOGICAL DIVERSITY, Dec. 2, 2018.


117 *Id.* at 27, FP 11.

118 *Id.* at 28, FP 12.

119 *Id.* at 29, FP 13.
many years on a diverse range of subjects and have long recognised farm animal welfare as a key business issue, yet our ability to engage effectively has been limited by poor company disclosure and an absence of investor-relevant tools to assess meaningfully company performance in this area.\textsuperscript{120}

The BBFAW’s rating seems to have a positive effect on companies. The percentage of companies publishing animal welfare policies has increased from 46 percent in 2012 to 79 percent in 2017.\textsuperscript{121} After receiving a negative rating in the BBFAW’s report in 2012, Nestlé committed to improving farmed animal welfare standards in its supply chain, which covers over 7,300 suppliers.\textsuperscript{122} The next year, Nestlé collaborated with World Animal Protection to change its Responsible Sourcing Guideline and its Supplier Code, and set up a Commitment on Farm Animal Welfare.\textsuperscript{123} The Nestlé Commitment on Farm Animal Welfare is a two-page document that recognizes the OIE standards and the Five Freedoms. In its Commitment, Nestlé pledges to ensure compliance with these standards, scale up traceability, focus on species-specific rules (including prohibiting practices like dehorning, tail docking, disbudding and castration without anesthetic and analgesia, veal crates, permanent tethering of cows, and other cruel practices on pigs, chickens, and other farmed animals), establish action plans with suppliers, work with animal welfare organizations, and track its progress through annual reporting.\textsuperscript{124}

These examples aside, animal welfare is not usually considered in initiatives or rules on reporting, and almost never discussed as a separate point. The worldwide disregard for animals in reporting must be criticized because the topics covered by reporting duties or initiatives should not be based on corporate needs and interests; instead, they should respond to issues important to the public.\textsuperscript{125} Even when corporations report on animal welfare by committing to the GRI or developing their own initiatives, “[t]he quality of reporting on farm animal


\textsuperscript{122} Anand Chandrasekhar, Nestlé Pledges Humane Treatment of Farm Animals, Swissinfo, Aug. 22, 2014.

\textsuperscript{123} Nestlé Responsible Sourcing Standard (Nestlé, Vevey 2018). The guide covers all stages of livestock processing and production (breeding, housing, feeding, manipulation of the animal, disease prevention and control, handling and transport, killing and slaughtering): id. at 20; Nestlé Supplier Code 4 (Nestlé, Vevey 2013).

\textsuperscript{124} Nestlé Commitment on Farm Animal Welfare (Nestlé, Vevey 2014).

\textsuperscript{125} The information is needed, because “[t]he lack of attention paid to farm animal welfare in sustainability and annual reports would be less of a problem if the information were readily obtainable elsewhere. In practice, this is not the case.” (Rory Sullivan & Nicky Amos, Farm Animal Welfare Consistently Ignored in Sustainability Reports, The Guardian, Nov. 5, 2015).
welfare tends to be limited, with most companies favouring a qualitative approach typically describing processes or programmes, rather than reporting on tangible performance measures and outcomes." Given society’s growing concern about how we treat animals, these practices must change. Mandating disclosure does have the potential to positively affect the lives of animals worldwide, whether through public “naming and shaming,” or by making it clear that corporations must be held accountable for how they treat animals.

G. CORPORATE SOCIAL RESPONSIBILITY (CSR)

Management, assurance, and reporting standards designed to help companies become more “socially responsible” have proliferated in the past decade. Corporate social responsibility (CSR) is now firmly entrenched in most of the leading companies’ strategies. CSR denotes the responsibility corporations have to society, including the responsibility to meet objectives that produce long-term benefits, use business power responsibly, integrate the demands of society, and improve society through ethically proper conduct. Involving corporations in drafting certain rules, or having them create their own rules, is of special interest in the extraterritoriality debate. It pays deference to the fact that large corporations are, “amidst the many legal loopholes, free to act as they please, without responsibility towards society, yet, at the same time, quasi-social institutions.” Accepting this kind of “regulation” as a variant of or an addition to traditional lawmaking takes advantage of the fact that multinational enterprises are able to respond transnationally to transnational problems. CSR is thus particularly suited to addressing topics that exceed the territorial reach of states, and topics neglected under traditional “command and control” structures.

Because CSR is meant to respond to the needs of the public, companies cannot unilaterally determine in which areas they must act in a socially responsible manner. In the past years, we have been witnessing a thriving interest of the public in matters relating to animals. According to the Faunalytics’ Animal Tracker, 7 in 10 US adults have a higher opinion of the animal protection movement than any other social movement except workers’ rights. More

126 Id.
127 Bevan et al. state: “One-hundred-and-thirty-two of the leading FTSE 250 companies reported on their performance in at least one area of CSR in 2002/03—an increase of more than 26% on the previous year” (Stephen Bevan et al., Achieving High Performance: CSR at the Heart of Business 2, 8 (2004)). Meyer et al. demonstrate the incredible increase in CSR initiatives that began in the early 1990s and continued until 2015. Before the 1990s such initiatives were rare: John W. Meyer et al., Legitimating the Transnational Corporation in a Stateless World Society, in Corporate Social Responsibility in a Globalizing World 27, 47 (Kiyoteru Tsutsui & Alwyn Lim eds., 2015). Also on the “spectacular expansion” of CSR: Paula A. Argenti, Corporate Social Responsibility 19 (2016); Alwyn Lim & Kiyoteru Tsutsui, The Social Regulation of the Economy in the Global Context, in Corporate Social Responsibility in a Globalizing World 1, 1 (2015); Zerk, Multinationals and Corporate Social Responsibility 107 (2008).
than 3 in 4 people believe that protecting animals in a variety of situations is “very” or “some-
what” important. Gallup found that almost a third of Americans (32 percent) believe an-
imals should be accorded the same rights as people; 62 percent say animals deserve some
protection but can still be used to benefit humans. The 2016 Eurobarometer poll shows
94 percent of EU citizens believe it is important to protect the welfare of farmed animals,
and 82 percent believe that the welfare of farmed animals should be better protected than it
is now. Technomic and Context Marketing obtained similar results. As societies come
to care more about animals, corporations will have to address and respond to these demands.

There are many ways to design CSR policies. CSR can be corporate-based, IO-based, or a mix
of law and CSR. Corporate-based CSR denotes companies’ voluntary commitment to change
how they affect animals. Corporations that produce or distribute products that contain animal
parts can voluntarily label their products, engage in less cruel forms of animal exploitation, or de-
cline to use animals for human profit altogether. Many health- and beauty-oriented corporations
are giving up animal testing, and some have stopped using animal ingredients. Clothing
manufacturers and designers are moving toward faux leather, faux fur, and other cruelty-free
alternatives. Food suppliers and restaurants are pledging to quit confining hens in battery cages
and pigs in gestation crates, to stop using calves for veal, or are no longer force-feeding geese for
foie gras. With a view on the food industry in the United States, Middleton observes:

Recently, the country’s largest grocery chain, Kroger, called on its suppliers to accel-
erate their movement away from gestation crates for pigs. McDonald’s also recently
announced a timetable to phase out all pork produced with gestation crates. Wendy’s,

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10, 2019).

131 Rebecca Rifkin, In U.S., More Say Animals Should Have Same Rights as People, GALLUP POLL, May 18, 2015,

132 44 percent of EU citizens said the welfare of farmed animals should “certainly” be better protected (compared
to 35 percent in 2006), while 38 percent agreed that this should “probably” happen (compared to 42 percent
in 2006). Combined, these two categories increased from 77 percent to 82 percent over 10 years: EUROPEAN
COMMISSION, SPECIAL EUROBAROMETER 442 REPORT: ATTITUDES OF EUROPEANS TOWARDS
ANIMAL WELFARE 5, 12 (2016).

133 Technomic found that consumers increasingly prefer vegetarian options for animal welfare reasons: Technomic,
Consumer Trend Reports, available at https://www.technomic.com/Reports_and_Newsletters/Consumer_
Trend_Reports/ (last visited Jan. 10, 2019). Context Marketing found that 77 percent of females and 64 per-
cent of males believe that humane standards ought to apply to the care of farmed animals: CONTEXT
MARKETING, ETHICAL FOOD: A RESEARCH REPORT ON THE ETHICAL CLAIMS THAT MATTER MOST
TO FOOD SHOPPERS AND HOW ETHICAL CONCERNS INFLUENCE FOOD PURCHASES 7 (Mar. 2010),
comprehensive overview of the latest studies on consumer behavior in matters of animal welfare: Animal

134 See Reynard Loki, HELPING ANIMALS THROUGH CSR: EXCLUSIVE INTERVIEW WITH ANIMAL LEGAL DEFENSE FUND,
JUSTMEANS, Feb. 25, 2011.
Denny’s, Sonic, and Safeway have made similar commitments. And Burger King took its commitment one step further, pledging to also switch to exclusively cage-free eggs.\textsuperscript{135}

Though this is a welcome development, most corporations have yet to respond to citizens’ concerns about animals. The Royal Society for the Prevention of Cruelty’s report, “Five Years Measuring Animal Welfare in the UK 2005–2009,” examined FTSE 100’s animal welfare policy performance in the United Kingdom. Only 20 of them had a corporate strategy that referenced animal welfare, and most of them were introduced in the past five years.\textsuperscript{136}

Even if most corporations adopted a CSR strategy that references animals, CSR is unlikely to fill governance gaps because it lacks monitoring, control, and democratic legitimacy. As Bevan et al. warn, “[d]espite considerable research conducted over the past five years into the benefits of corporate social responsibility […] it remains a fact that many business leaders still only pay lip service to CSR, or are merely reacting to peer pressure by introducing it into their organizations.”\textsuperscript{137}

Involving IOs may reduce the risk of unaccountable CSR. One of the largest and most prominent CSR initiatives is the UN Global Compact (GC), a pact of UN agencies, NGOs, civil society, and corporate representatives that encourages businesses worldwide to adopt sustainable and socially responsible policies and to report on their performance.\textsuperscript{138} The GC is not a regulatory instrument, but a voluntary program that helps to catalyze actions in support of broader UN goals. Ten principles lie at the heart of the GC, covering human rights, labor standards, environmental protection, and anticorruption.\textsuperscript{139} Animal welfare links indirectly to the environmental precautionary principle (principle 7), responsibility for the environment (principle 8), and the use of environmental-friendly technologies (principle 9). If those principles are taken seriously, GC-listed corporations should end and divest from animal agricultural production. This, however, is unlikely. The GC has been strongly criticized for bluewashing the public image of corporations because only a few of the 50,000 multinationals listed in the GC adhere to the 10 principles.\textsuperscript{140} On a closer look, the GC seems to keep its entry rules lax to attract business and only gradually introduces stricter rules, which include annual letters of progress, raising the standard of participation, and delisting firms that do not adhere to its principles.\textsuperscript{141}

\begin{thebibliography}{99}
\bibitem{137} Baldwin et al. 2, 137 ff. (2013). On top of that, we lack comparative data: Bevan et al. 6 (2004).
\bibitem{138} The UN Global Compact was launched in 2000 and is now headed by the Global Compact Office. The UN Global Compact is a network of over 13,000 companies and nonbusinesses: UN Global Compact, \textit{Our Participants}, available at https://www.unglobalcompact.org/what-is-gc/participants/search?utf8=&search%5Bfields%5D=&search%5Bper_page%5D=10&search%5Bsort_field%5D=sector&search%5Bsort_direction%5D=asc (last visited Jan. 10, 2019).
\bibitem{139} UN Global Compact, \textit{The Ten Principles of the UN Global Compact}, available at https://www.unglobalcompact.org/what-is-gc/mission/principles (last visited Jan. 10, 2019).
\bibitem{140} Khan Rahmatullah, \textit{Global Compact}, in MPEPIL 22–4 (Rüdiger Wolfrum ed., online ed. 2011).
\bibitem{141} By 2019, the GC had delisted 11,522 companies: UN Global Compact, \textit{Delisted Participants}, available at https://www.unglobalcompact.org/participation/report/cop/create-and-submit/expelled (last

The International Organization for Standardization (ISO) is another IO that nudges corporations to commit to CSR and improve their performance. In 2010, the ISO introduced new guidelines, the ISO 26000, that lay down standards for CSR. The guidelines prompt corporations to pay attention to animals by

- respecting the welfare of animals, when affecting their lives and existence, including by providing decent conditions for keeping, breeding, producing, transporting and using animals (4.4);
- providing consumers with information about products and services, including on aspects related to animal welfare (including, where appropriate, use of animal testing) (6.7.5.2);
- adopting sustainable agricultural, fishing, and forestry practices including aspects related to animal welfare, for example, as defined in leading standards and certification schemes (6.5.6.2); and
- considering that wild animals and their habitats are part of our natural ecosystems and should therefore be valued and protected and their welfare taken into account (6.5.6.2).

Interesting to note, the ISO 26000’s definition of sustainable consumption emphasizes that “[t]he concept of sustainable consumption also encompasses a concern for animal welfare, respecting the physical integrity of animals and avoiding cruelty” (6.7.5.1). Though these commitments are not particularly progressive, they are a step in the right direction by recognizing animal welfare issues as a standard CSR concern. If a corporation voluntarily abides by the standard, it can carry the ISO 26000 certification and is recognized for protecting animal welfare as part of its CSR.

Another way to make sure corporations are not merely paying lip service to animal welfare through CSR is to create a “smart mix” of corporate and governmental actions. Involvement of the government in CSR may include mandatory approval of CSR strategies by the parliament, parliamentary or departmental oversight, regulatory vetoes, judicial review, procedures for public enforcement, participation rights for the public, or reporting duties. In the last decade, we have observed a trend among states to supplement CSR with such measures. In 2009, Denmark passed legislation that obliges its largest companies to include information on CSR in their annual reports. The United Kingdom’s National...
Consumer Council included a checklist of “credible self-regulatory schemes” in its 2000 report on models of self-regulation. On the list were strong external consultation and involvement, complaint mechanisms, sanctions for nonobservance, monitoring, and accountability through annual reports.\textsuperscript{146} The European Union’s CSR Strategy includes “a smart mix of voluntary policy measures and, where necessary, complementary regulation, for example, to promote transparency, create market incentives for responsible business conduct, and ensure corporate accountability.”\textsuperscript{147} And in the area of human rights, there is a growing expectation that nonadherence to CSR strategies must entail corporate liability.\textsuperscript{148} In line with these achievements, animal advocates must campaign for more than corporate-based CSR and pressure governments to hold corporations socially responsible for their actions vis-à-vis animals.

\textbf{H. Codes of Conduct}

Codes of conduct are a written set of rules and principles that focus on certain desirable behaviors of addressees.\textsuperscript{149} Codes can be broad in scope, but most deal with specific challenges or operations of specific industries; these are sometimes termed “best practices.” There are best practices for the use of animals in toxicological research,\textsuperscript{150} animal transport in research,\textsuperscript{151} use of analgesics in research animals,\textsuperscript{152} animal welfare certification schemes,\textsuperscript{153} good farming practices,\textsuperscript{154} good dairy farming practice,\textsuperscript{155} animal husbandry more

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\textsuperscript{146} National Consumer Council (NCC), Models of Self-Regulation: An Overview of Models in Business and the Professions 51 (NCC, Technopark 2000).


\textsuperscript{148} Schweizerisches Kompetenzzentrum für Menschenrechte (SKMR) [Swiss Center for Competence in Human Rights], Umsetzung der Menschenrechte in der Schweiz, Eine Bestandesaufnahme im Bereich Menschenrechte und Wirtschaft, SKMR/CSDH L6, 25 ff. (SKMR, Berne 2013).

\textsuperscript{149} Jürgen Friedrich, Codes of Conduct, in MPEPIL 1 (Rüdiger Wolfrum ed., online ed. 2010).

\textsuperscript{150} Stokes' definition of best practice seems to encompass the 3Rs: “Best practice approaches seek to enhance animal well-being, minimize or avoid pain and distress, and use fewer animals.” (William S. Stokes, Best Practices for the Use of Animals in Toxicological Research and Testing, 1245 Ann. N.Y. Acad. Sci. 17 (2011)).


\textsuperscript{152} John C. Schofield, Analgesic Best Practice for the Use of Animals in Research and Teaching: An Interpretative International Literature Review (UN FAO 2002).

\textsuperscript{153} David Main et al., Best Practice Framework for Animal Welfare Certification Schemes, 37 Trends Food Sci. & Techn. 117 (2014).


\textsuperscript{155} UN FAO and International Dairy Federation, Guide to Good Dairy Farming Practice (FAO, Rome 2011).
Extended Jurisdiction through Foreign Policy, Soft Law, and Self-Regulation

Generally, the welfare of animals during transport, and many more. Although not subject to procedural requirements and not legally binding, the codes can exert considerable pressure on corporations to observe certain minimum standards in states where no laws regulate their actions vis-à-vis animals.

Codes of conduct and best practices are published by a variety of stakeholders. In animal law, governments frequently issue codes of conduct and best practices. Section 14 para. 1 of the UK AWA determines that national authorities issue and revise codes of practice to flesh out its AWA. The UK Department for Environment, Food and Rural Affairs has made use of this competence and issued codes on the treatment of meat chickens, laying hens, pigs, sheep and goats, cows, horses, ponies, dogs, cats, and game birds. Canada’s National Farm Animal Care Council established scientific review procedures to issue codes of practice for dairy cows, horses, farmed deer, mink, and other core themes. Most codes of conduct and best practices issued by governments are recommendations and do not impose legal duties on farming industries. New Zealand is an exception; its codes on minimum standards for animal care and management are binding for people in charge of animals.

Codes of conduct and best practices are also developed by IOs. The World Association of Zoos and Aquariums (WAZA) adopted the “Code of Ethics and Animal Welfare” in
2003 to lay down minimum expectations for the keeping of animals in zoological parks and aquariums.\textsuperscript{164} The UN FAO issued a “Guide to Good Farming Practices for Animal Production Safety” together with the OIE,\textsuperscript{165} and a “Guide to Good Dairy Farming Practice” with the International Dairy Federation.\textsuperscript{166} As the authorship reveals, many of these codes are issued by bodies with vested interests, so it is unrealistic to expect these codes to seriously address and respond to animals’ interests.

Corporations also issue codes of conduct. The European Parliament seems sympathetic to this strategy in the context of animal law. In its resolution to establish a European code of conduct, the Parliament states it “[b]elieves that under the voluntary codes of conduct European companies should comply with EU environmental, animal welfare and health standards.”\textsuperscript{167} Codes of conduct can ensure better social performance of corporations abroad, including their performance vis-à-vis animals. Novartis, for example, uses its codes of conduct to “export” established animal protection standards. According to its general code of conduct, Novartis is committed to the 3Rs (refinement, reduction, and replacement of animals used in research) wherever it operates.\textsuperscript{168} It also has a discrete code of conduct, the Animal Welfare Policy, which details how animals must be treated. The policy applies to all Novartis divisions, units, institutions, and any contracted third party engaged in animal studies and procedures, and must “be implemented in countries with less or equally stringent laws and industry codes as the US.”\textsuperscript{169} Although it is not difficult to comply with US animal laws since they are very weak, the core idea that uniform standards should be used for all units of a multinational is valuable. The policy also has its own minimum level rule: “In some countries, local laws and regulations may be more stringent than the principles set out in this Policy. Where this is the case, the more stringent rules apply.”\textsuperscript{170}

In sum, codes of conduct have the potential to promote higher standards on the treatment of animals in states even when there are no or weak animal laws. But if codes of conduct remain low-level and industry-friendly, they are simply another tool to market the exploitation of animals.\textsuperscript{171}

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\textsuperscript{166} UN FAO and International Dairy Federation, Guide to Good Dairy Farming Practice (FAO, Rome 2011). These standards only refer to the Five Freedoms (freedom from thirst, hunger, and malnutrition, freedom from discomfort, freedom from pain, injury, and disease, freedom from fear, and freedom to engage in relatively normal patterns of animal behavior) (id. at 8).


\textsuperscript{168} Novartis, Code of Conduct 3 (Novartis International, Basel 2018).


\textsuperscript{170} Id.

I. OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

Under the auspices of the OECD, governments meet to discuss and respond to the multiple challenges globalization creates for business, social welfare, and the environment. In 2011, the OECD felt a need to address the transnational problems created by and for multinationals and issued the Guidelines for Multinational Enterprises, a component of the 1976 Declaration on International Investment and Multinational Enterprises. The guidelines are voluntary, but they indicate the extent to which governments expect corporations to adhere to certain minimum social and environmental standards when they operate abroad, and hence qualify as soft law.

The guidelines apply only to those states that have accepted them, which includes members of the OECD and adhering states. They apply extraterritorially, however, because they cover all activities of these states’ multinational enterprises, regardless of whether enterprises operate locally or globally. Para. 3 of the part “Concepts and Principles” declares:

Since the operations of multinational enterprises extend throughout the world, international co-operation in this field should extend to all countries. Governments adhering to the Guidelines encourage the enterprises operating on their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.

The guidelines apply in particular to enterprise groups, including their foreign subsidiaries. They also cover activities of financial institutes, so an institution that invests in foreign projects must introduce a risk-based system to administer its investments. As held in POSCO, the system must consider the investees’ operational context (countries, regions, or high-risk operating environments like conflict zones), and operations, products, or services that pose particular risks (e.g., the investees’ previous human rights or environmental performance). These tweaks considerably extend the OECD’s jurisdiction to the territory of states that are not signatories to it and give the guidelines broad extraterritorial application.

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172 OECD Guidelines for MNEs (2011).
175 OECD Guidelines for MNEs, Commentary on General Policies 22, para. 9 (2011).
176 The Norwegian National Contact Point for the OECD Guidelines for Multinational Enterprises, Final Statement in the Complaint from Lok Shakti Abhiyan, Korean Transnational Corporations Watch, Fair and Green Global Alliance and Forum for Environment v. POSCO (South Korea), ABP/APG (Netherlands and NBIM (Norway)), May 27, 2013, at 30.
The guidelines consist of eleven distinct chapters. The “General Policies” apply to all multinational enterprises, including those that operate with animals. They expect all enterprises to base their actions on corporate governance principles, either by supporting and applying existing principles or developing their own (para. II.A.6). The principles call on the board of the parent corporation to provide strategic guidance for the enterprise, effective monitoring, and to ensure the enterprise’s integrity in accounting and financial reporting. Enterprises shall also “develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate” (para. II.A.7). Due diligence maxims shall be employed in risk management systems to identify, prevent, and mitigate actual and potential adverse impacts (para. II.A.10), whether they are caused or contributed to by the enterprise, or are linked to their operations, products, or services by a business relationship. Here, adverse impacts should be interpreted to cover animal cruelty and suffering because they are an important social concern, and, hence, a corporate risk.

The third chapter of the guidelines covers disclosure of information by enterprises, including multinational enterprises that deal with or otherwise affect animals. Pursuant to para. III.1, enterprises must ensure the public is informed about their activities, structure, financial situation, performance, ownership, and governance in an accurate and timely fashion. This encompasses information about the enterprise’s financial and operating results, its objectives, major share ownership and voting rights, structure of a group of enterprises and intragroup relations, control enhancing mechanisms, board members, foreseeable risk factors, content of corporate governance codes or policies, and the implementation process (para. III.2).

Chapter six lays down guidelines on environmental issues, notably on environmental protection, public health and safety, and sustainable development. Where animals are an integral part of the environment or where their use leads to environmental pollution, these guidelines apply. Chapter six incorporates fundamental principles of the Rio Declaration and the Aarhus Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters. The principles obligate corporations to establish and maintain environmental management systems that deliver transparent information, set specific goals, and are subject to periodic review (para. 1). They underline that the public needs to be informed about the topics addressed in the chapter, and that stakeholders promote public discussions (para. 2). Multinational enterprises should conduct impact assessments (paras. 3, 4, and 5), seek to improve their environmental performance, and promote customer awareness about environmental implications (para. 6). They must

178 OECD Guidelines for MNEs, Commentary on General Policies 22, para. 8 (2011).
179 Adverse impacts also include those of supply chains. See OECD Guidelines for MNEs, Commentary on General Policies 24, para. 17 (2011): “Relationships in the supply chain take a variety of forms including, for example, franchising, licensing or subcontracting. Entities in the supply chain are often multinational enterprises themselves and, by virtue of this fact, those operating in or from the countries adhering to the Declaration are covered by the Guidelines.”
180 OECD Guidelines for MNEs, Commentary on Disclosure 29, paras. 30 and 31 (2011).
provide adequate education and training to personnel in their employ (para. 7). Moreover, corporations are encouraged to participate in initiatives and partnerships to develop meaningful environmental public policies (para. 8).

The OECD guidelines are an important achievement in international governance, by tying together principles governing multinationals and core achievements in environmental and human rights law. The guidelines were not set up to bring about progress for animals and are accordingly limited in their use for them. However, the principles provide a useful basis for thinking about developing a separate chapter on the treatment of animals. A chapter dealing exclusively with animal issues might encourage multinational enterprises to develop animal welfare management systems, provide public information, and conduct animal impact assessments. It might also establish a duty of multinational enterprises to raise their level of animal protection, adequately educate and train personnel, and contribute to animal welfare policies through cooperative frameworks.

J. Extended Extraterritorial Jurisdiction

In the Extraterritoriality Framework

Investment rules and export credit guidelines that promote the interests of animals abroad rely on particular projects to which they link a home state’s jurisdictional authority. According to the extraterritoriality framework, they purport to regulate the lives of animals abroad (extraterritorial content regulation). If a credit or investment is issued on domestic territory, the anchor point is intraterritorial and non-animal-related (type γ₁ regulation). In contrast, BITs and FTAs are based on the mutual consent of states that submitted themselves to a common form of authority. They cannot be categorized in the extraterritoriality framework because no foreign law is applied. Impact assessments have either a territorial or an extraterritorial anchor point (investors, a funded project, national regulatory proposals, etc.), but do not per se regulate content; they only assess activities. At most, they can produce extraterritorial ancillary repercussions.

Reporting duties are linked to a specific corporation, like a parent corporation (non-animal-related intraterritorial anchor point), but they may expect entire enterprises to disclose information. The content they regulate is extraterritorial and animal-related, which makes this a type γ₁ regulation. CSR, codes of conduct, best practices, and the OECD Guidelines for Multinationals all link their principles to a national firm that operates abroad, or to a parent of a multinational enterprise. They have a non-animal-related intraterritorial anchor point and regulate animal-related content extraterritorially (type γ₁ regulation).

The scope of extraterritoriality varies for each tool of extended jurisdiction. Mutually agreed upon forms of jurisdiction like BITs and FTAs are not limited in jurisdictional scope because states are free to enter into agreements that limit their prescriptive jurisdiction. In contrast, investment rules and export credits are limited to a case at hand and can only demand that animal laws be observed abroad if actions and omissions are reasonably related to the invested, insured, or accredited project (by linking to investees, employees of the project, or subcontractors). Impact assessments, reporting, CSR, codes of conduct, best practices, and the OECD Guidelines are either less interventionist or constitute a voluntary submission to law, so they are not in principle limited in their jurisdictional scope.
§2 Interim Conclusion

Besides indirect extraterritorial jurisdiction (trade rules) and direct extraterritorial jurisdiction (permissive principles approach), there are other, more subtle ways for states to influence the lives of animals abroad. These include foreign policy rules, soft law, and self-regulation, which constitute forms of extended extraterritorial jurisdiction and are a subset of tools that states can use to ensure better treatment of animals at home or abroad. Drawing on achievements in human rights and environmental law, I examined if investment law, export credit rules, bilateral investment treaties, FTAs, impact assessments, reporting duties, CSR, codes of conduct, and best practices can be systematically employed to positively affect the lives of animals abroad.

Although national, international, and IO-based investment rules increasingly demand investees adhere to established social performance standards, they do not consider the treatment of animals an integral part thereof. An exception is the IFC’s performance standard 6, which lays down expectations for grantees with respect to sustainability, pollution, and biological diversity. These objectives, strictly seen, compel the IFC to refuse any financial support for agricultural production systems because these systems are grossly unsustainable, a driving factor of environmental degradation, and chiefly responsible for the ongoing loss of biodiversity. Another guiding standard is the IFC’s Good Practice Note, which seeks to improve the welfare of farmed animals in livestock operations. Together, the standards seem to suggest the IFC is a progressive and forward-looking IO that anticipates and responds to public concerns about animals. But its investment practices defy its goals and are evidence that the IFC considers the lives of animals only marginally important. States could fill this gap by putting in place investment rules that link funds for foreign projects to high animal welfare performance, as argued by plaintiffs in Lujan v. Defenders.182 In the future, as the investment consulting initiative FAIRR argues, domestic and international investments should only go to projects that ensure animal welfare and lives are protected abroad. This would benefit animals affected by animal agricultural industries and greatly reduce ESG risks for investors.

Like investments, export credits can be linked to established animal protection standards. The OECD’s Common Approaches and domestic export credit rules focus on environmental and social performance that is indirectly conducive to the welfare of animals. Efforts of NGOs to halt the Sakhalin II project in Russia, for instance, show that concerns about the loss of a species can benefit individual animals, at least certain ones. By and large, export credit rules still ignore animals and provide no opportunity to reflect progressively on the future of agricultural production.

Traditional BITs take account of animals in their preamble or in exceptions that justify violating the treaty. The just treatment of animals, however, is not considered a prerequisite to responsible bilateral investment. Even states dedicated to protecting animals consider BITs unsuited to address these concerns. If BITs obliged parties to observe progressive animal

182 In Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992) (U.S.), this argument was based on the ESA.
laws, they would be a formidable tool to prevent future violations of animal interests and could readily be tied to other social concerns like human rights or environmental protection.

In contrast to BITs, well-developed FTAs more readily take the interests of animals into account by establishing duties to exchange information, identifying animal welfare as a common objective of the parties, or creating different fora for collaboration and cooperation. The Eurogroup for Animals conducted research on the EU-Chile FTA that showed the FTA led to new, stricter laws in Chile, and to various collaboration centers and training exchanges between Chile and third countries. FTAs can thus manifestly raise the level of animal law *inter partes* and abroad. Megaregional FTAs like the TTP and the TTIP currently thwart these efforts, but they, too, would benefit from giving effect to citizens’ growing concerns about the just treatment of animals.

Impact assessments help states evaluate the risks and benefits of their laws, policy proposals, and planned projects for animals at home and abroad. In some jurisdictions, like the United Kingdom and the European Union, impact assessments are mandatory in all fields of law, hence, also in animal law. Impact assessments focused on environmental performance do not have a direct positive effect on animals, but they should at least lead to negative environmental ratings for industrial animal agriculture. The European Union’s EIA Directive, for example, demands all CAFOs with more than 9,000 places for sows to conduct impact assessments. To take into account the many interests of animals negatively affected by human action, states should do separate assessments of projects, so-called animal impact assessment. Doing separate animal impact assessments allows states to access readily available information, increase awareness of the impact of laws and projects on the lives of animals, prevent suffering at a pre-regulatory phase, and show proof of due diligence. For animal impact assessments to be effective, states must use established procedural and substantive rules on impact assessments as a benchmark.

Corporations operating abroad are under a duty to make information about their business activities publicly available. These financial reporting duties stretch beyond state borders and allow shareholders and the public to gain knowledge about corporate links, financial cooperation, past transactions, and planned investment, all of which help to determine a corporation’s current and future stance toward animals. Given the young history of nonfinancial reporting, it is encouraging to see animals play a role in it, too. The GRI’s G4 Sector Disclosures on Food Processing, for example, oblige corporations to disclose the number of animals raised and processed, the kinds of housing systems, the use of antibiotics and hormones, and incidents of noncompliance with laws and regulations. Concern for animals is still largely absent in reporting, which prompted the BBFAW to launch an initiative that evaluates corporate reporting performance. Since its inception in 2012, the BBFAW has had a demonstrable positive effect by nudging corporations to report on how their businesses impact animals abroad and to determine how they seek to reduce suffering inflicted on animals.

Extended extraterritorial jurisdiction in animal law may also be exercised through corporate, IO, or state-based CSR. In response to public pressure, more and more corporations are pledging to put an end to gestation crates, battery caging, the manufacturing of fur, foie gras, veal meat, and other cruel practices. The newly developed ISO 26000 standards help corporations prove their sincerity by certifying them for their CSR performance. To ensure that CSR is not an empty gesture, governments must oblige corporations to report on their
practices, and hold them accountable for their activities, creating a “smart mix” of corporate and governmental action.\footnote{European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Renewed EU Strategy 2011–2014 for Corporate Social Responsibility, COM(2011) 681 final, Oct. 25, 2011, at 7.}

Codes of conduct and best practices are also useful tools of extended extraterritorial jurisdiction. They are issued by governments, IOs, or corporations and cover diverse fields like farming, slaughter, research, and zoo management. Some governments’ codes of conduct are binding (e.g., those issued by the New Zealand Farm Animal Care Council), but most are still voluntary. Codes of conduct could be an excellent means to ensure that corporations comply with animal laws when they operate abroad because these codes apply to all operations of a multinational. Their greatest weakness is that they are issued by bodies that have vested interests, which risks perpetuating the deplorable treatment of animals.

Finally, through the OECD Guidelines for Multinational Enterprises, states can positively affect the lives of animals abroad. The guidelines’ chapter on general policies lays down corporate governance principles, parental monitoring and guidance, management liability, self-regulatory practices, and due diligence standards to prevent adverse impacts abroad. The guidelines offer principles on information sharing and the protection of the environment, which are binding for industries that use animals. The guidelines extend to all activities of a multinational enterprise whose home state is an OECD member or an adhering state. In response to the growing public demand for the proper treatment of animals, the OECD should consider establishing a discrete chapter setting out the obligations of multinationals toward animals.

Means of extended extraterritorial jurisdiction considerably help states strengthen and support their efforts to directly and indirectly protect animals abroad. By using various tools of foreign policy, soft law, and self-regulation, states can reach beyond traditional command-and-control structures and tap the expertise of various non-state actors, including powerful international organizations, multinational enterprises, investors, and NGOs. This, ultimately, enables states to meet the challenges of globalization with vigor and helps the global protection of animals to develop into a common, multi-stakeholder effort.