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BUENA VISTA: SOCIAL CORPORATE RESPONSIBILITY PROVISIONS IN REGIONAL TRADE AGREEMENTS

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Manuscript date: March 2021

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BUENA VISTA SOCIAL CORPORATE RESPONSIBILITY PROVISIONS IN REGIONAL TRADE AGREEMENTS

José-Antonio Monteiro*

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ABSTRACT: Corporate social responsibility (CSR) has become an integral part of many companies' business strategy. A detailed analysis of 579 RTAs, including 305 agreements currently in force and notified to the WTO (as of December 2020), reveals that a limited but increasing number of RTAs, namely 65 agreements, refer explicitly to CSR. These CSR-related provisions are particularly heterogeneous in terms of location in the RTA, language, scope and commitments. An increasing number of RTAs incorporate an article dedicated to CSR in different chapters, including on investment, labour or environment. Most CSR-related provisions are formulated in best endeavour language. These provisions promote the voluntary adoption and respect of CSR, including internationally recognized CSR principles standards and guidelines. Building on provisions included in some bilateral investment treaties (BITs), only a couple of recent RTAs have expanded the scope of CSR-related provisions by requiring investors to make their best efforts to comply with some of the principles established under the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises.

KEYWORDS: Regional Trade Agreements, Corporate social responsibility, Labour, Environment, Inclusiveness.

JEL CLASSIFICATIONS: F13, F15

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1 INTRODUCTION

As sustainable development has become an important agenda for many economies, the role of the private sector in contributing to sustainable development has gained increasing attention. The concept of Corporate social responsibility (CSR) is based on the idea that companies are not only responsible for the economic impact of their activities and business relationships, but also the social and environmental impacts of their corporate activities.

Over the years, many companies have voluntarily adopted CSR-related codes, guidelines or initiatives to manage their activities and responsibilities with respect to a wider group of stakeholders than just capital shareholders. Although CSR has been discussed for more than three decades, there is no internationally accepted definition nor consensus on its scope. Besides labour and environmental protection, some CSR-related codes, guidelines or initiatives address other issues, including human rights, gender equality and corruption.

Different motives can lead companies to consider developing and implementing CSR-related strategies, including reflecting their manager or shareholder's personal altruistic preferences (Bénabou and Tirole, 2010); improving profits (Kitzmueller and Shimshack, 2012); enhancing their reputation and capturing consumers' willingness to pay for ethical attributes (Besley and Ghatak, 2007); and reducing the threat of activist and consumer boycotts (Vogel, 2006). While CSR is not limited to large companies, a great deal of attention has been paid to CSR-related practices of Transnational Companies (TNCs), including in their host countries. Firms engaged in trade, whether as exporters or importers, have also been found to pursue more CSR-related activities, in particular when their trading partner is a developed economy (Newman et al., 2018). While CSR was initially developed as a voluntary business approach, an increasing number of governments require the adoption and implementation of CSR-related regulations, including the disclosure of extensive information about firms' social and environmental plans and performance.

Although some papers have analysed how CSR is addressed in selected regional trade agreements (RTAs) (UNEP, 2011; Waleson, 2015; Peels et al., 2016; and Romanin Jacur, 2018), the literature does not provide a comprehensive quantitative analysis of the evolution of CSR-related provisions in RTAs. This paper fills this gap by conducting the first quantitative and network analysis of all explicit CSR-related provisions found in RTAs.

A detailed analysis of 579 RTAs, including 305 agreements currently in force and notified to the WTO (as of December 2020), reveals that a limited but increasing number of agreements, namely 65 RTAs, include at least one provision mentioning explicitly CSR. In addition to the increasing number of RTAs with CSR-related provisions, the number of detailed CSR-related provisions included in RTAs has increased in the last five years.

Although most CSR-related provisions are not very detailed, they remain particularly heterogeneous. They differ considerably not only in terms of structure and location in the RTA, but also in terms of language, scope, and commitments. A large number of CSR-related provisions are only found in a single or couple of RTAs. An increasing number of RTAs incorporate a dedicated article on CSR often in the chapters on investment, labour, environment, sustainable development, or cooperation. Most CSR-related provisions are formulated in hortatory or advisory language. Provisions promoting the voluntary adoption and respect of CSR, including internationally recognized CSR principles standards and guidelines, are the most common type of CSR-related provisions found in RTAs.

The remainder of the paper is structured as follows. Section 2 presents the methodology used to identify and map CSR-related provisions in RTAs. Section 3 provides an overview of the evolution and trends of CSR-related provisions RTA. The structure, location and scope of CSR-related provisions in RTA is presented in section 4. Section 5 discusses the main types of CSR-related provisions found in RTAs. Finally, Section 6 concludes.

2 MAPPING METHODOLOGY

Although there is no internationally agreed definition of CSR, there is often an implicit agreement that CSR enables firms to integrate, among other things, environmental and social dimensions in their business operations and interactions with their stakeholders. Following the approach adopted

in Monteiro (2016, 2018, 2021), unless specified otherwise, CSR-related provisions are defined as any provisions mentioning explicitly "corporate social responsibility". The following keywords have been used to identify CSR-related provisions: corporate social responsibility; CSR; fair; ethical; good corporate governance; responsible corporate conduct; and (corporate) stewardship.[1] The identification of explicit CSR-related provisions follows a bottom-up approach, where each provision identified in a given RTA is compared in terms of structure, location, language and scope to the other provisions found in other RTAs.

CSR-related provisions can take different forms. The term CSR can be mentioned in the RTA's preamble or in an article covering various issues, including CSR. Similarly, a chapter covering various issues can include a specific article dedicated to CSR. Next to the main text of the RTA, CSR-related provisions can also be found in annexes or side documents negotiated in parallel to the RTA, such as joint statements and cooperation agreements.

The mapping of provisions addressing explicitly CSR covers 579 RTAs.[2] The main text of the RTAs, but also side documents, such as protocols, annexes, communication letters and other documents associated with the RTAs at the time of their negotiation and signature have been reviewed.[3] Out of the 579 RTAs analysed, 305 agreements are currently in force and have been notified to the WTO between 1957 and 2020.[4] 199 other RTAs have been notified to the WTO but are no longer in force. Besides notified RTAs, the analysis covers some RTAs that have entered into force but have not been notified, such as the RTA between the European Union and Kosovo. Similarly, the analysis includes newly signed RTAs that have not yet been ratified, such as the Regional Comprehensive Economic Partnership (RCEP). Unless specified otherwise, accessions to an existing RTA are excluded from the analysis. Conversely, amended and modernised version of existing RTAs are included and analysed separately, such as the amended Canada-Chile RTA.

Although expressing CSR-related qualitative information into comparable quantitative information is challenging, different criteria can be used to classify CSR-related provisions. Provisions in RTAs can be analysed through their structure (e.g. specific article), location in the agreement (e.g. main text or side agreement), language (e.g. hortatory or mandatory), and enforceability (through the RTA's dispute settlement). The combination of these criteria makes it possible to carry out an exhaustive bottom-up analysis of the different types of CSR-related provisions and determine their number and depth in each RTA.

3 OVERVIEW AND TRENDS OF CSR-RELATED PROVISIONS

The inclusion of provisions referring explicitly to CSR is not a recent phenomenon, although other provisions related to sustainable development and inclusiveness have been incorporated long before (Monteiro, 2016, 2018). The very first CSR-related provision is found in an article entitled "Principles of Corporate Stewardship" in the chapter on environment of the 2003 RTA between Singapore and the United States. The provision recommends that each party encourages enterprises operating within their respective territory or jurisdiction to voluntarily incorporate sound environment-related principles of corporate stewardship in their internal policies. A similar provision is found in the 2003 RTA negotiated by the United States with Chile, which also includes the first ever cooperation provision on environment-related CSR. A couple of years later, the first labour-related provision on CSR is found in the 2006 RTA between Chinese Taipei and Nicaragua. Building on the provision promoting environment-related CSR, the provision calls on the parties to encourage enterprises operating within their respective territory or jurisdiction to voluntarily incorporate sound labour-related principles of corporate stewardship in their internal policies. The first cooperation provision mentioning explicitly CSR is found in the 2006 RTA between Peru and the United States, which lists the dissemination of information and promotion of CSR as a potential cooperation activity. A couple of years later, the first article on CSR addressing, among others, labour, environment, human rights, community relations and anti-corruption was included in the chapter on investment of the 2009 RTA between Canada and Peru. As suggested by these fives RTAs, and confirmed in greater detail below, CSR-related provisions in RTAs are located in different chapters and address various issues.

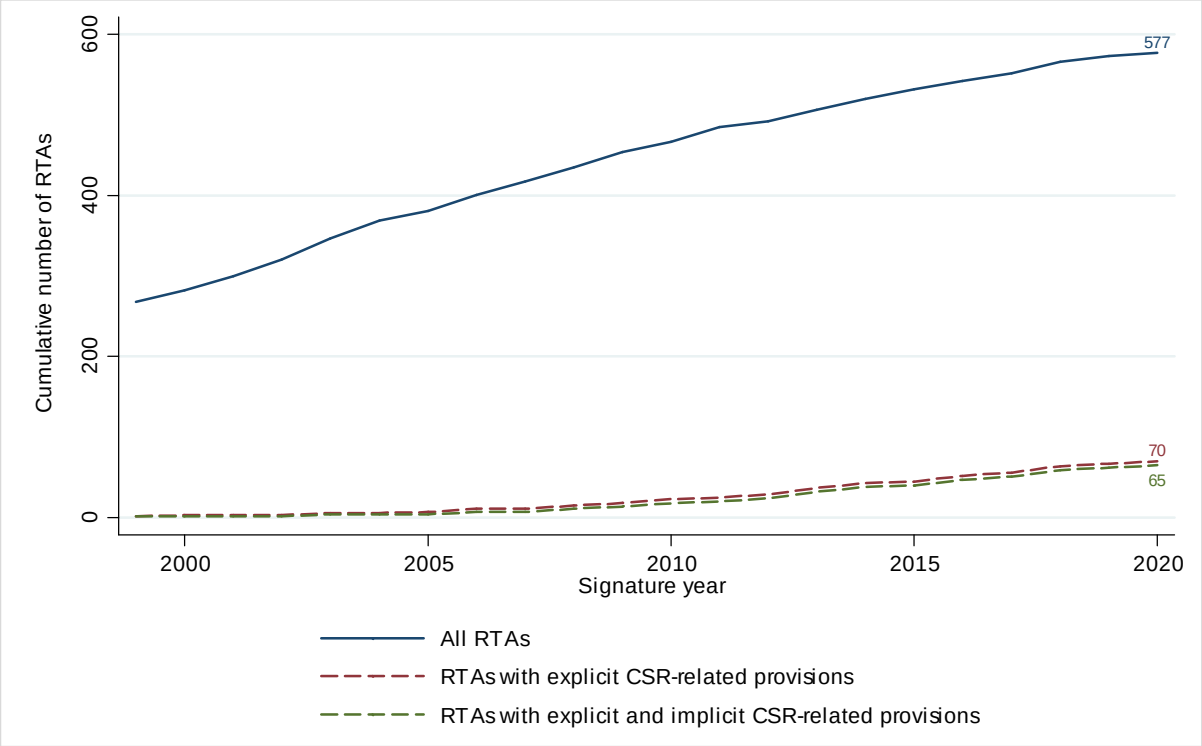
[1] The French and Spanish translations of these keywords have also been used.
[2] Covered non-notified RTAs are listed in Table A1 in the Annex.
[3] The schedules of tariff commitments are excluded from the analysis.
[4] The figure of 305 notified and in force RTAs excludes notified enlargements of existing RTAs (see WTO's Regional Trade Agreements database (http://rtais.wto.org)).

3.1 Evolution of CSR-related provisions

Over the last twenty years, the number of RTAs with explicit CSR-related provisions has increased slowly but relatively steadily, as highlighted in Figure 1. As of December 2020, 65 RTAs representing 11% of all agreements analysed, include at least one provision explicitly referring to CSR. Of these 65 agreements, 49 (75%) were negotiated between developed and developing countries (North-South RTAs), 13 (20%) between developed countries (North-North RTAs) and 3 (5%) between developing countries (South-South RTAs).[5] In total, 51 RTAs with CSR-related provisions have been notified to the WTO and are currently in force. 14 other RTAs with CSR-related provisions have neither entered into force nor been notified to the WTO.

In addition to explicit provisions on CSR, several agreements include implicit provisions on CSR by referring more generally to good corporate governance (GCG). GCG is often referred to as a mechanism to ensure corporations take into account the interests of a wide range of constituencies, as well as of the communities within which they operate, and to ensure their boards are accountable to both the company and its shareholders (OECD, 1999). Some of the key principles of GCG include accountability, transparency, board oversight, and respect for the shareholders' rights and role of key stakeholders. While CGC is broader than CSR, it is often considered as a prerequisite to CSR (Buchholtz et al., 2008).

Figure 1: The number of RTAs with CSR-related provisions has increased steadily



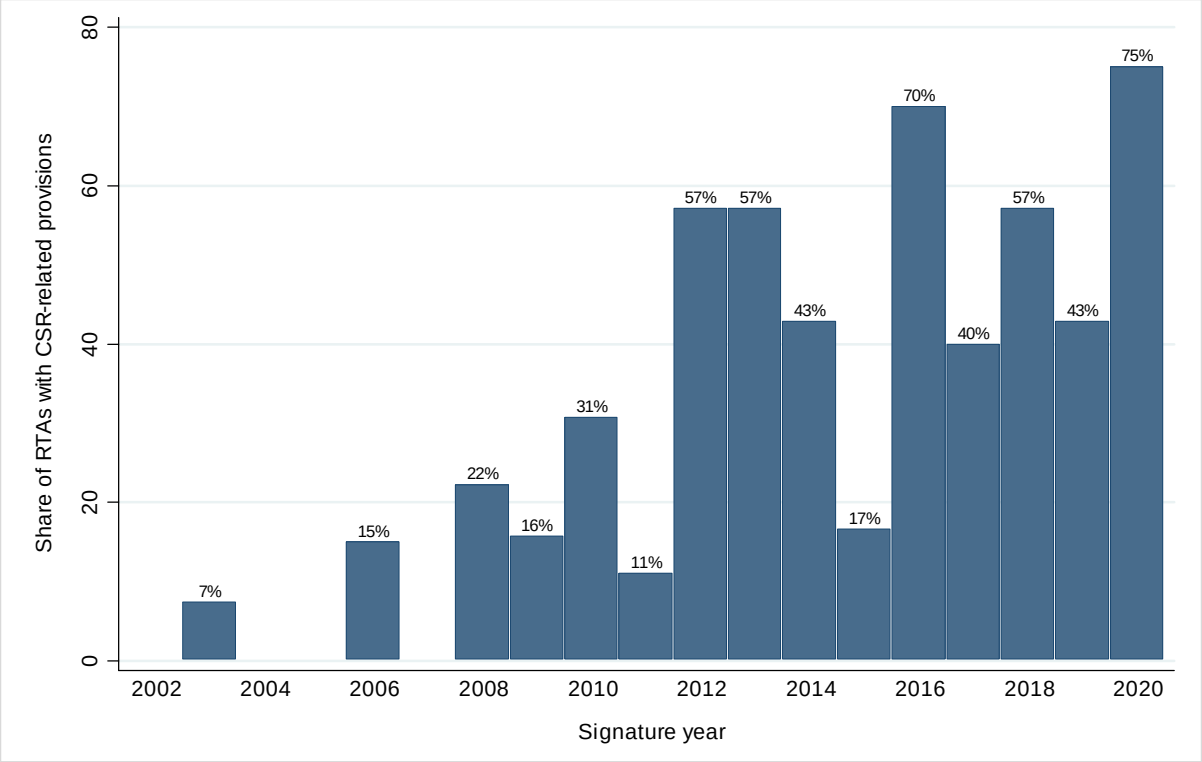
Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.
Note: Implicit CSR-related provisions refer to provisions on good corporate governance without any explicit reference to CSR.

In addition to the increasing number of RTAs with CSR-related provisions, and as depicted in Figure 2, the share of RTAs incorporating CSR-related provisions has been trending upward to the point where CSR-related provisions are included in more than half of all the RTAs signed in the last five years (2016-2020). Besides the upward trend in the number of RTAs with CSR-related provisions, the evolution of the number of specific CSR-related provisions included in those RTAs can be further characterized by two waves.[6]

[5] Unless otherwise noted, high income countries are defined as developed countries, while middle- and low-income countries are defined as developing countries according to the WBG's country classification.

[6] The evolution of RTAs with explicit and implicit CSR-related provisions is depicted in Figure A1.

Figure 2: A growing share of RTAs include CSR-related provisions



Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.

Prior to 2008, only a few RTAs included explicit CSR-related provisions. Similarly, only a couple of RTAs incorporated implicit CSR-related provisions. The RTA between New Zealand and Singapore, signed in 2001, was the first agreement to recognise in its preamble the need for good corporate governance and a predictable, transparent and consistent business environment. Between 2000 and 2008, the number of specific CSRs-related provisions included in a given RTA remained limited. One of the few exceptions was the RTA between Canada and Peru, signed in 2009, and incorporating several CSR-related provisions in the preamble, chapter on investment and side agreements on environment and labour. In particular, the CSR-related provisions in the chapter on investment, commits the parties to remind firms operating within their respective territory or jurisdiction of the importance of incorporating CSR standards on as labour, environment, human rights, community relations and anti-corruption in their internal policies.

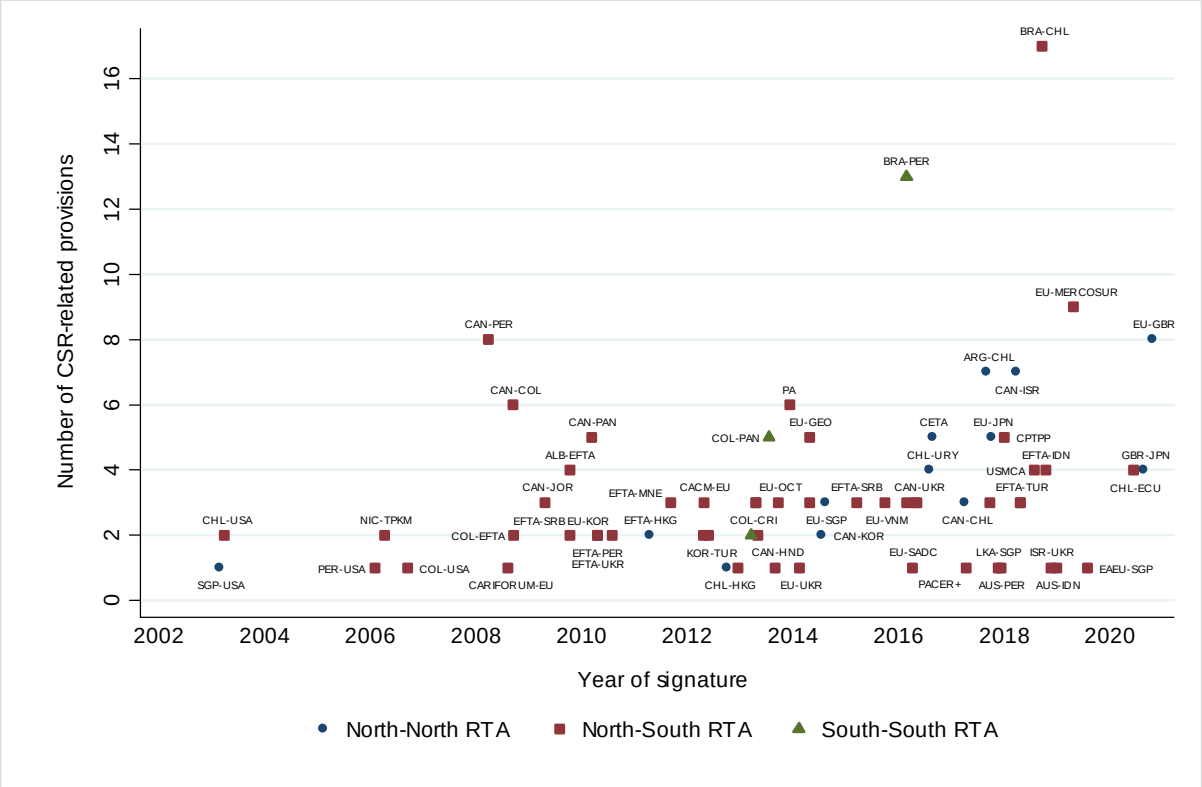
Between 2008 and 2015, the number of RTAs with CSR-related provisions increased significantly. However, the average number of specific CSR-related provisions in those RTAs during that period remained limited.[7] One of the few exceptions was the Additional Protocol to the Framework Agreement of the Pacific Alliance, negotiated by Chile, Colombia, Mexico and Peru, with a relatively detailed article on CSR in the chapter on investment. The article commit the parties to encourage companies operating in their territory or jurisdiction to voluntarily incorporate internationally recognised standards of CSR, including those related to human rights, labour rights, environment, fight against corruption, consumer interests, science and technology, competition and taxation. In addition, the parties also released a joint declaration calling for evaluating the possibility to create a group on mining development, social responsibility and sustainability to share, among others, experience on CSR.

Since 2016, the number of RTAs with CSR-related provisions and the average number of CSR-related provisions in those agreements have increased significantly. As highlighted in Figure 3, the most detailed CSR-related provisions are found in the RTAs to which Brazil is a party with Chile and Peru. Most of these provisions replicate or build on CSR-related provisions negotiated by Brazil in its bilateral investment treaties (BITs) with Angola, Chile, Colombia, Mozambique, Malawi, and Mexico.

[7] The evolution of the annual average number of CSR-related provisions in RTAs is depicted in Figure A2 in the Annex.

These new types of CSR-related provisions require investors and their investment to make their best efforts to comply with several voluntary principles and standards for a responsible business conduct and consistent with the laws adopted by the host party receiving the investment. Some of these provisions refer to the principles established under the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. The OECD Guidelines for Multinational Enterprises are government-backed non-binding principles and standards for responsible business conduct to encourage sustainable development. One of the principles explicitly laid out is refraining from seeking or accepting exemptions relating to environment, health, security, work or financial incentives that are not established in the legislation of the host party. Another principle is refraining from imposing discriminatory or disciplinary action against the employees who submit grave reports to the board or, whenever appropriate, to the competent public authorities, about practices that violate the law or violate the standards of corporate governance that the company is subject to. Other relatively detailed CSR-related provisions are found in recent RTAs negotiated by the European Union with the Southern Common Market (MERCOSUR) and the United Kingdom.

Figure 3: The number of CSR-related provisions in RTAs has increased in recent years

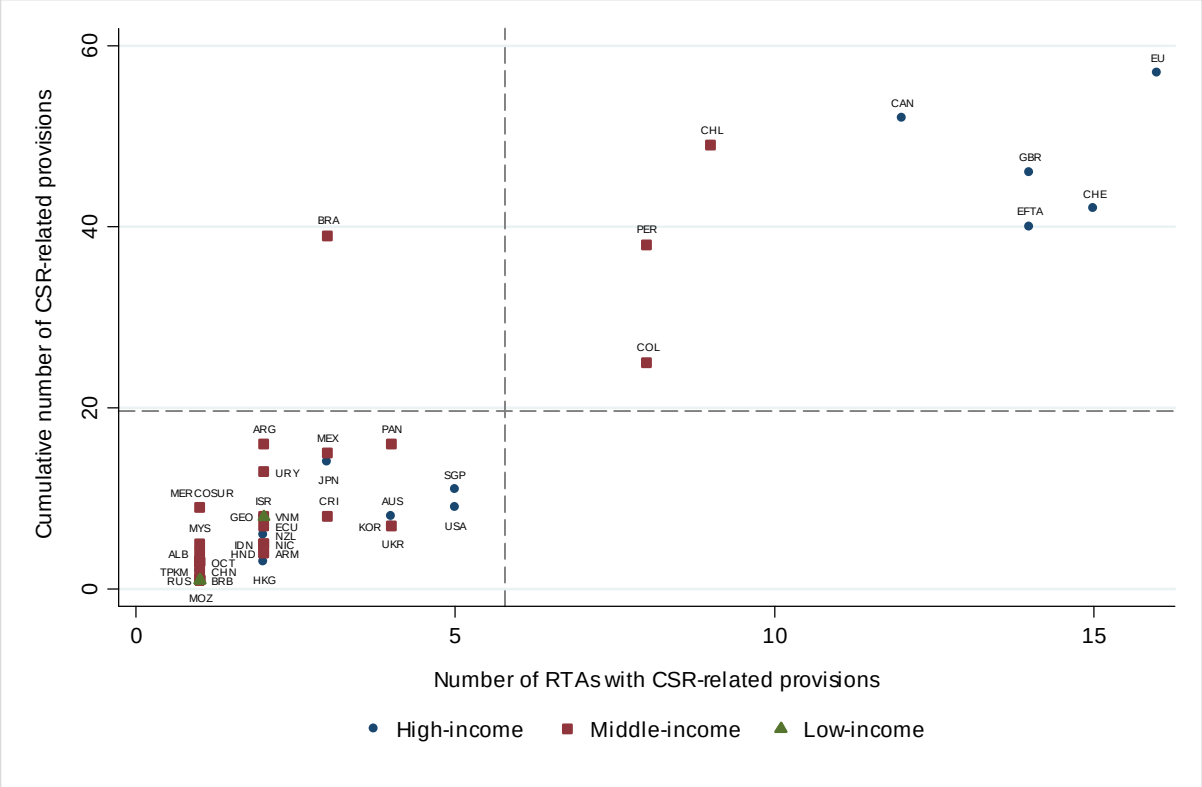


Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.
Note: Original and amended RTAs are analysed separately. The definition of high-, middle- and low-income countries are based on the WBG's country classification at the time of signature.

Although the number of RTAs with CSR-related provisions continues to slowly increase, the choice to include detailed CSR-related provisions remains limited to RTAs negotiated by a few high-income and some middle-, mostly upper middle-, income economies. The European Union, Canada Chile, the European Free Trade Association (EFTA) states, including Switzerland, and the United Kingdom remain the main proponents of including CSR-related provisions in RTAs, as depicted in Figure 4.[8] Other countries that tend to incorporate relatively detailed provisions, at least in some of their recent agreements, include Brazil, Colombia and Peru. Most low-income economies have not negotiated any RTA with detailed CSR-related provisions in recent years.

[8] The relationship between the average number of CSR-related provisions in RTAs and the number of RTAs with such provisions is depicted in Figure A3 in the Annex.

Figure 4: RTAs with detailed CSR-related provisions are mostly negotiated by some high- and upper middle-income economies



Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.
Note: The definition of high-, middle- and low-income countries are based on the WBG's country classification at the time of signature. The horizontal and vertical dashed lines represent the average cumulative number of CSR-related provisions and the number of RTAs with CSR-related provisions, respectively.

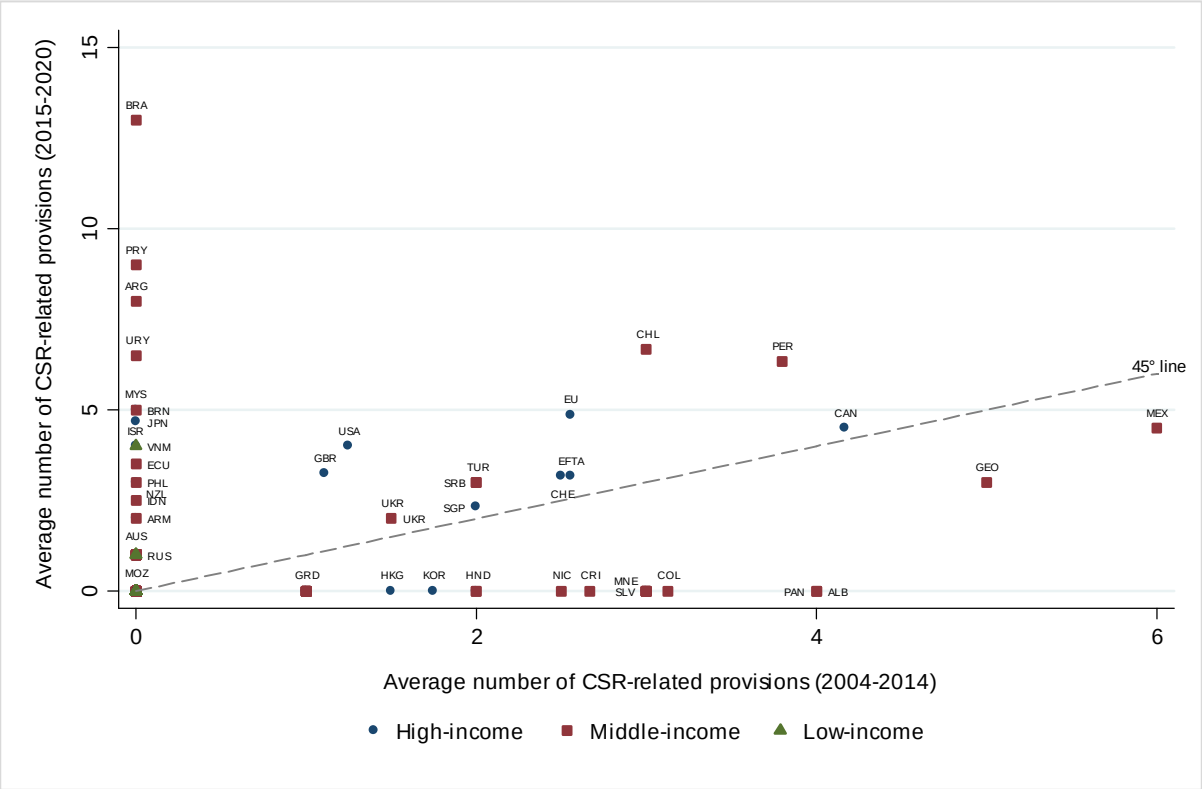
3.2 Dynamic nature of CSR-related provisions

As suggested above, a country's decision to include CSR-related provisions in RTAs may change over time. As highlighted in Figure 5, the average number of CSR-related provisions included in RTAs negotiated in the last six years (2015-2020) is larger for some economies having already included CSR-related provisions in their RTAs negotiated before 2015. In particular, Chile, the European Union, Peru and the United States have increased the average number of CSR-related provisions in their respective agreements. A few other economies, that signed RTAs without CSR-related provisions before 2015, such as Argentina, Brazil, Ecuador, Israel and Japan, have negotiated a relatively high average number of CSR-related provisions in their respective RTAs.[9]

The decision to include CSR-related provisions in RTAs not only changes over time but depends also on the trading partners that take part in the negotiation of the agreement. While many countries continue to not include any CSR-related provisions, some other economies continue to negotiate a relatively limited number of CSR-related provisions in their RTAs. A few other countries, such as Argentina and Brazil have opted to include more comprehensive CSR-related provisions in some of their most recent agreements. Conversely, other countries, that have in the past incorporated several CSR-related provisions in some of their RTAs, have later decided either to limit the number of CSR-related provisions or to no longer include any CSR-related provisions. As a result, the relationship between the number of signed RTAs with CSR-related provisions and the average number of CSR-related provisions is non-linear.[10]

[9] A chronological map representing the average number of CSR-related provisions for each economy over the 2003-2020 period is depicted in Figure A4 in the Annex.
[10] The dynamic relationship between the number of RTAs and the average number of CSR-related provisions is depicted in Figure A5 in the Annex.

Figure 5: Most high-income economies have increased the average number of CSR-related provisions in their respective RTAs

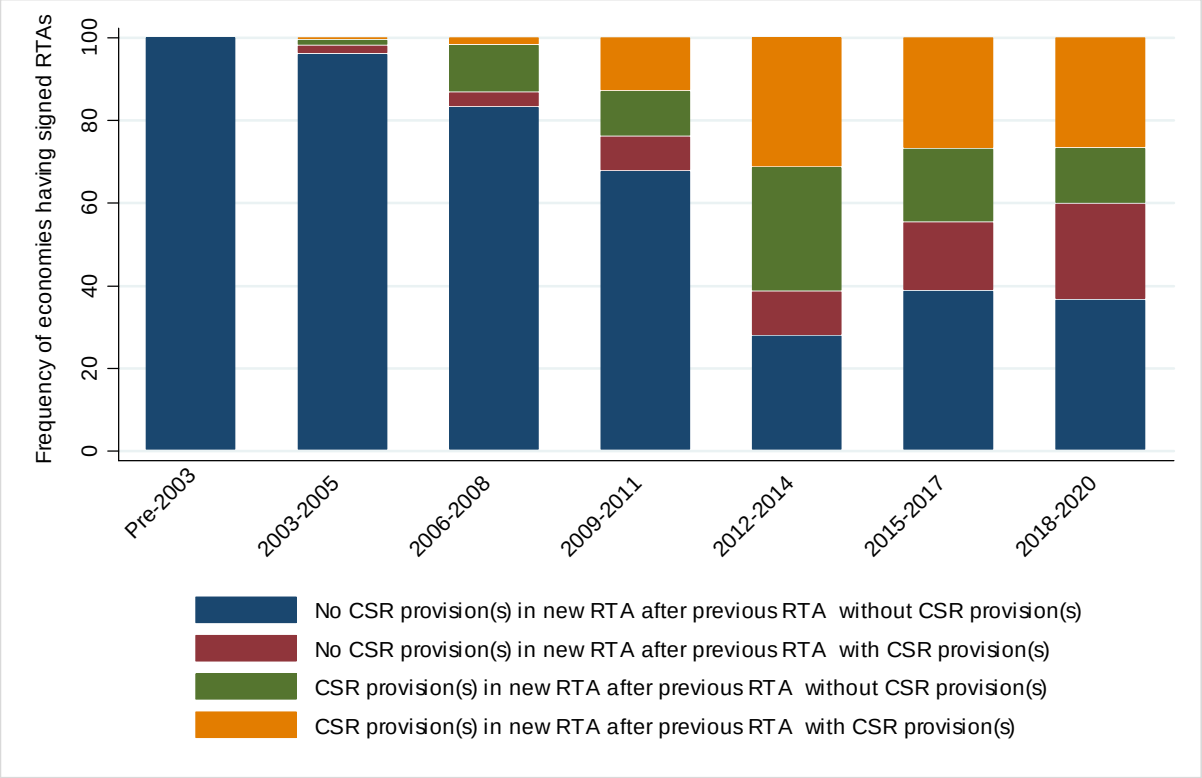


Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.
Note: The definition of high-, middle- and low-income countries are based on the WBG's country classification at the time of signature.

As shown in Figure 6, almost 60% of the economies, that negotiated RTAs over the 2015-2020 period, have not included any CSR-related provisions in their agreements. Conversely, 26% of the economies that negotiated RTAs during the 2015-2020 period, continue to negotiate CSR-related provisions in their new agreements. In addition, 16% of the economies that negotiated RTAs during the same period chose to include CSR-related provisions in their new agreement after not having done so in their previous agreement. While some of these economies, such as the EFTA states and Singapore, continue to negotiate a relatively limited number of CSR-related provisions in their RTAs, a few other countries, such as Canada, Chile, the European Union, and Peru, have included more detailed CSR-related provisions in some of their most recent agreements.

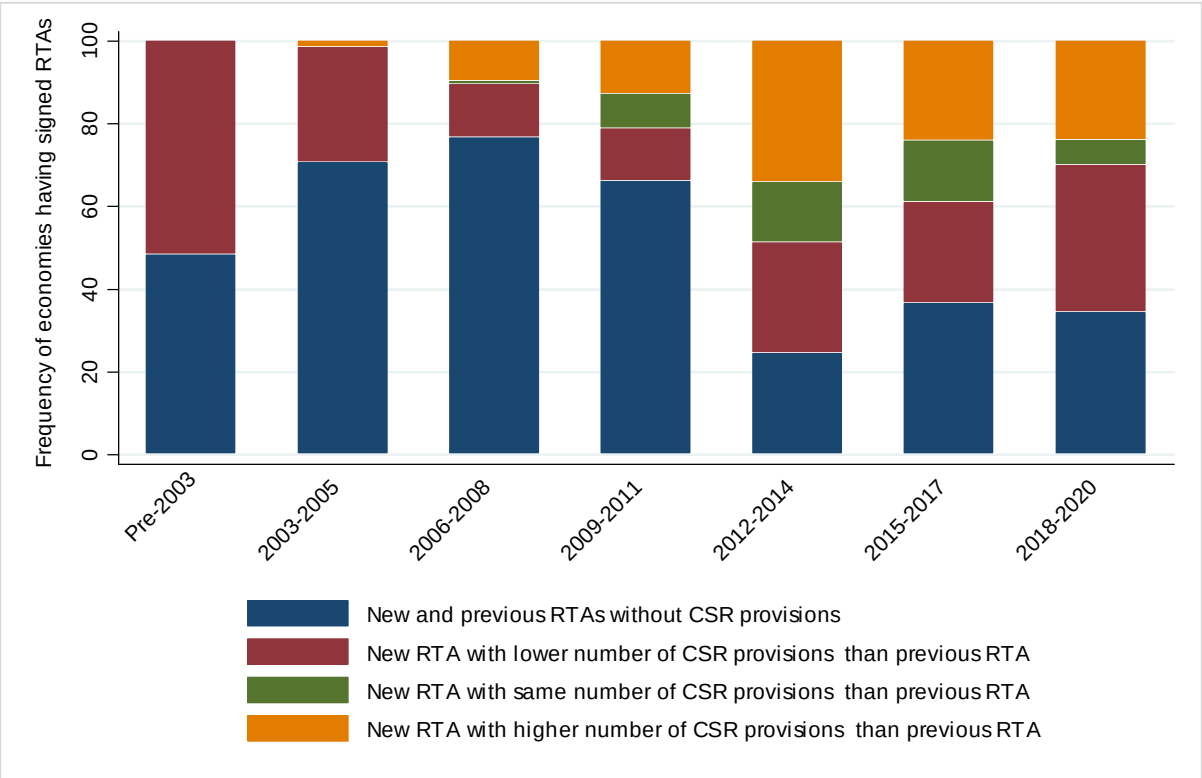
Indeed, as highlighted in Figure 7, 32% of the economies that signed RTAs during the 2015-2020 period have incorporated either the same or a higher number of types of CSR-related provisions in their respective new agreements compared to their immediate previous agreements. Conversely, 31% other economies have reduced the number of CSR-related provisions in their new agreements. In addition, 20% of the economies having negotiated RTAs over the same period decided not to include any CSR-related provisions in their new agreement after having included some CSR-related provisions in their previous agreement. This is the case of some Asian, Latin American and African countries, including Costa Rica, the Republic of Korea, Mexico, and South Africa.

Figure 6: Most economies do not follow a specific approach for including CSR-related provisions in their RTAs



Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.

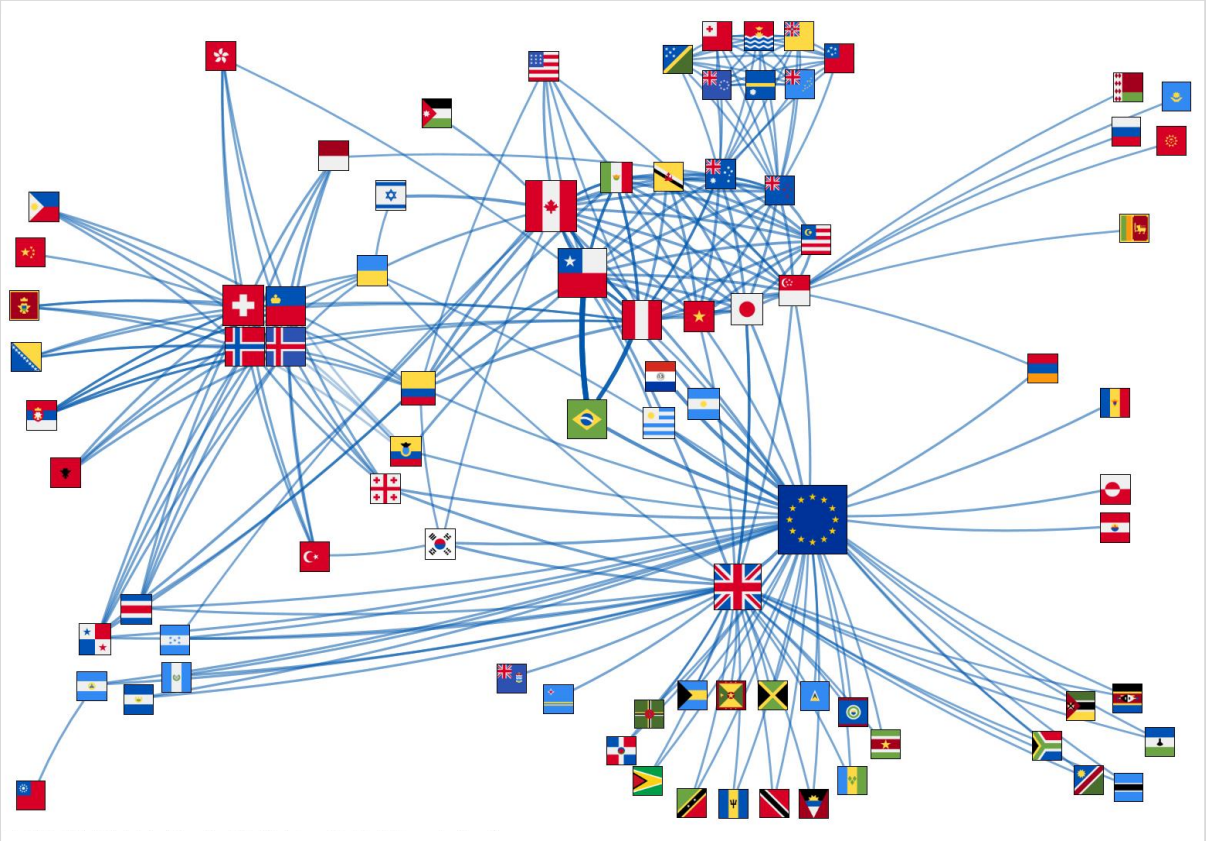
Figure 7: Only a limited number of economies include a higher number of CSR-related provisions in their RTAs



Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.

Given the dynamic nature of the decision to include CSR-related provisions, the universe of RTAs with CSR-related provisions is continuously expanding and spanning multiple clusters, as shown in Figure 8. The main clusters are represented by the EFTA states, the European Union and the United Kingdom. Other smaller clusters include the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), in particular Canada, Chile, Peru and Singapore. As explained above, Brazil has become another cluster after having negotiated the most detailed CSR-related provisions in some of its most recent RTAs. Conversely, several other countries, such as India, Morocco, Pakistan, Thailand and United Arab Emirates, have not included any CSR-related provisions in their respective RTAs.

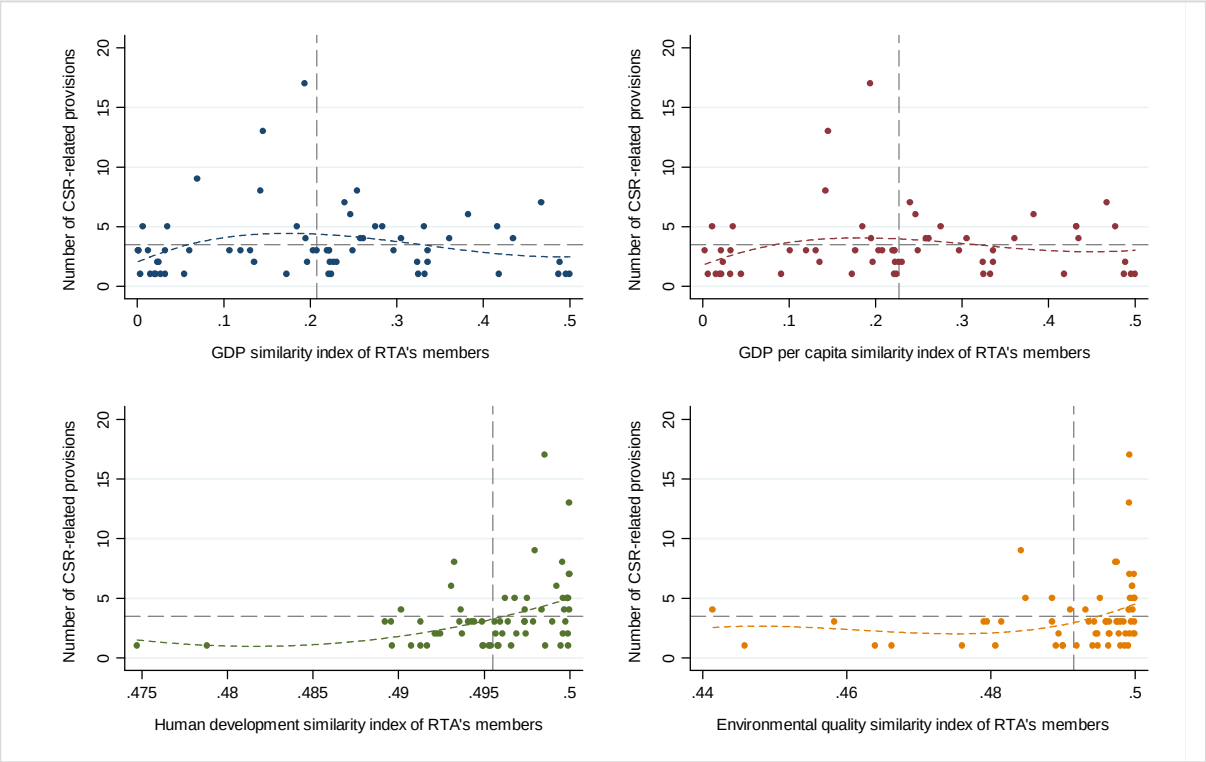
Figure 8: The universe of RTAs with CSR-related provisions continues to slowly expand



Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.
Note: The size of each node represents the cumulative number of CSR-related provisions by economy. The width of each edge measures the number of CSR-related provisions in the respective RTA. For the United Kingdom, only new RTAs and rolled-over EU RTAs are considered.

As explained above, the decision to include CSR-related provisions depends on the countries that take part in the negotiations. As a result, the relationship between the number of CSR-related provisions and the development level of the parties to the RTA is highly non-linear, as depicted in Figure 9. In particular, the number of CSR-related provisions tends to be relatively higher in RTAs negotiated by parties experiencing different but not too distant levels of economic size (expressed in GDP) and development (expressed in GDP per capita). However, many other RTAs follow different patterns, highlighting important idiosyncratic features. Parties to some RTAs with extremely large or extremely small differences in economic size and development have negotiated a limited number of CSR-related provisions. In addition, CSR-related provisions tend to be much more comprehensive in RTAs negotiated by countries experiencing a relatively high level of human development in terms of life expectancy, education and per capita income, measured by the Human Development Index. The number of CSR-related provisions tends also to be greater when the parties to the RTA experiencing relatively similar levels of environmental quality, measured by the Environmental Performance Index (EPI).

Figure 9:The relationship between CSR-related provisions and development level remains highly non-linear



Sources: Author's calculations based on the mapping of CSR-related provisions in RTAs and data taken from the World Development Indicators (2020); UN Human Development Report (2020) and Yale University's Environmental Quality Index.
Note: The similarity index between countries *i* and *j* is defined as $1-[X_i/(X_j+X_j)]^2-[X_j/(X_i+X_j)]^2$ and ranges from 0 (dissimilar) to 0.5 (similar). The Human Development Index (HDI) ranks countries' performance on life expectancy, education, and per capita income. Similarly, the environmental performance index (EPI) ranks countries' performance on protection of human health and protection of ecosystems, ranging from 0 (worst) to 100 (best).

4 HETEROGENEITY OF CSR-RELATED PROVISIONS

Like many other types of provisions related to inclusiveness included in RTAs, such as small and medium-sized enterprises and gender, most CSR-related provisions in RTAs are highly heterogenous. The heterogeneity of CSR-related provisions in RTAs takes different forms, from (1) their structure and location within the agreement to (2) their language and scope.

4.1 Structure and location of CSR-related provisions

The heterogeneity characterising most CSR-related provisions in RTAs is reflected in their structure and location within the agreements, as reported in Table 1. CSR-related provisions can be found in the preamble, in non-specific article on CSR or in specific article on CSR. Some CSR-related provisions are also found in annexes as well as side documents. The choice of the structure of CSR-related provisions varies among some RTAs, even among agreements negotiated by the same economy. The inclusion of CSR-related provisions with different structures is, however, not mutually exclusive, as depicted in Figure 10.

For several RTAs, namely 19 agreements, the first reference to CSR is found in the preamble.[11] The preamble of a RTA can provide insights on the parties' intention as well as the objectives that led to the signature of the agreement. The CSR-related issues covered in the preamble differ between some RTAs, ranging from labour and environmental issues to sustainable development. For instance, the preamble to CPTPP reaffirms the importance of promoting CSR, cultural identity and diversity, environmental protection and conservation, gender equality, indigenous rights, labour rights, inclusive trade, sustainable development, and traditional knowledge.

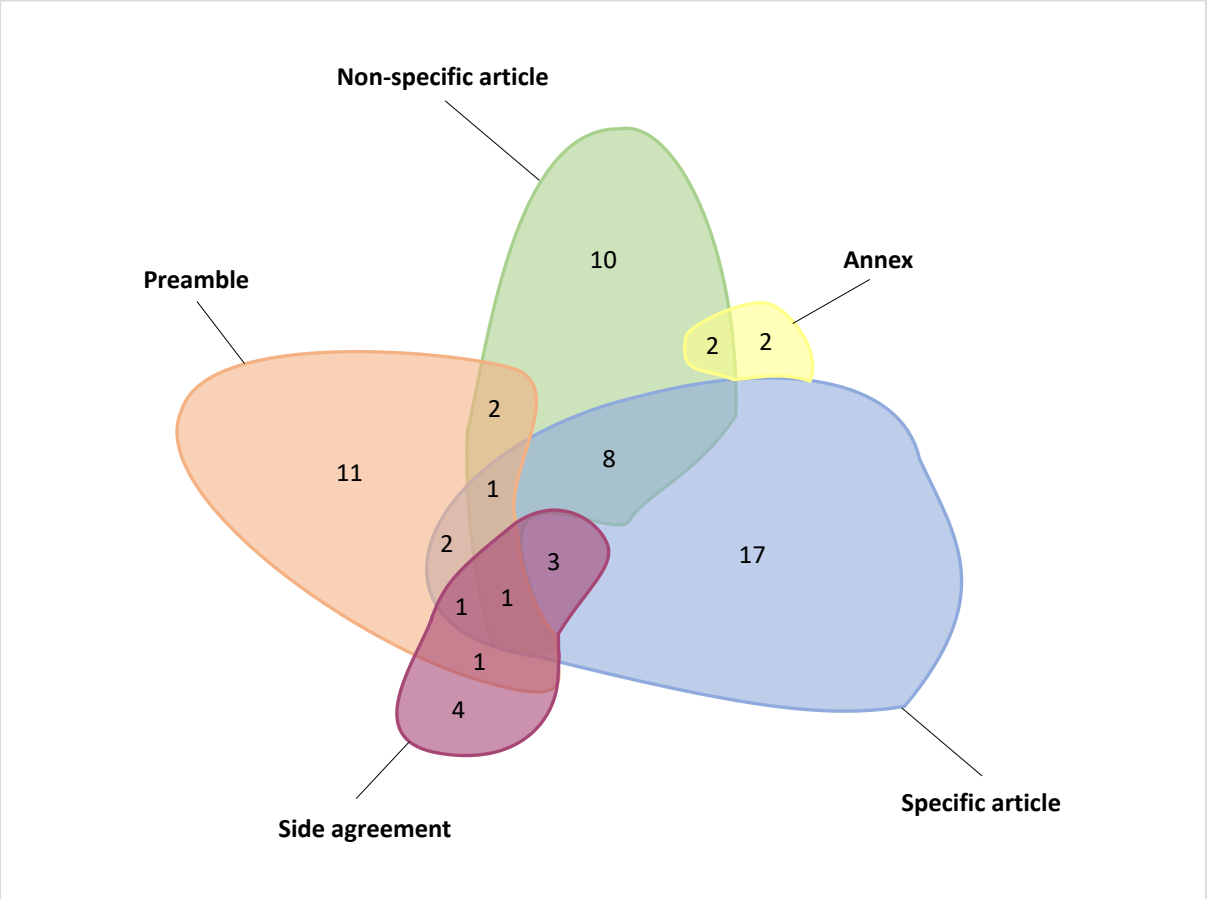
[11] CSR-related provisions are also found in the preamble of some environmental and labour cooperation agreements.

Table 1: Main structures of CSR-related provisions

Structure of CSR-related provisions	Number of RTAs
1. Main text of the RTA:	**61**
- Preamble	19
- Non-specific article(s) on CSR	24
- Specific article on CSR	33
- Annex(es)	4
2. Side document(s) to the RTA:	**10**
- Joint statement(s)	4
- Environmental cooperation agreement	5
- Labour cooperation agreement	5

Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.

Figure 10: The structure of CSR-related provisions in RTAs is heterogenous



Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.
Note: Proportions not respected.

Several RTAs, namely 24 agreements, incorporate at least one non-specific article on CSR. Theses non-specific articles address an issue or a broad range of issues and specify CSR as a particular case.[12] For instance, several RTAs to which the European Union is a party, include an article on trade and investment favouring sustainable development in the chapter on sustainable development committing the parties, among others, to promote CSR, including through exchange of information and best practices.

[12] Non-specific articles on CSR are also found in some environmental and labour cooperation agreements.

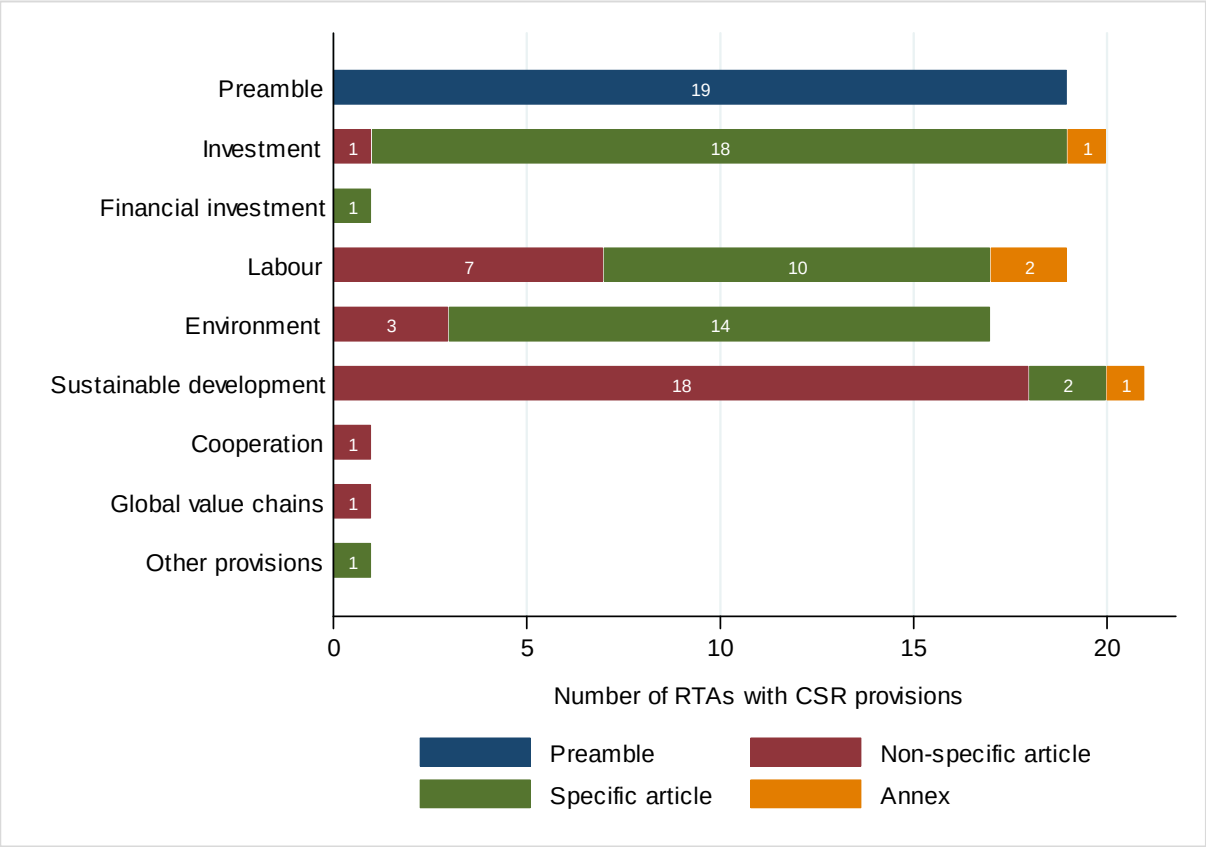
Specific articles on CSR, found in 33 RTAs, are the most common form of CSR-related provisions.[13] These specific articles on CSR are found in different chapters, such as cooperation; environment; investment, labour; and sustainable development. For instance, CPTPP includes a specific article on CSR in the chapters on investment, labour, and environment.

CSR-related provisions are also found in the annex to a couple of chapters. For instance, the annex to the chapter on labour of a couple of RTAs to which the United States is a party include a provision listing the dissemination of information and promotion of best labour practices, including CSR, as potential cooperation activity.

Besides the main text of the RTA and its annexes, a few CSR-related provisions are also found in cooperation agreements negotiated in parallel to RTAs. For instance, the preamble of the labour cooperation agreement negotiated between Canada and Honduras recognises the importance of encouraging voluntary practices by CSR within the parties' territories or jurisdictions, to ensure coherence between labour and economic objectives. A similar provision, recognising the importance of encouraging voluntary practices of CSR to advance coherence between environmental and economic objective, is found in the preamble of the environmental cooperation agreement negotiated by Canada with Panama.

As highlighted above, CSR-related provisions not only take different structures, but can also be found in different places of the RTAs. As shown in Figure 11, provisions mentioning explicitly CSR are mainly located in the chapters on sustainable development, labour, environment and investment. Most specific articles on CSR are included in the chapter on investment and environment. Conversely, most non-specific articles on CSR are found in the chapter on sustainable development.[14]

Figure 11: CSR-related provisions are found throughout the main text of RTAs



Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.
Note: This figure only considers CSR-related provisions found in the preamble and main text of RTAs. For analytical purposes, the title of certain chapters has been harmonised.

[13] Specific articles on CSR are also found in a couple of environmental cooperation agreements.
[14] The RTAs to which the European Union and, to a less extent, the EFTA states are a party tend to merge the chapters environment and labour into a single chapter on sustainable development.

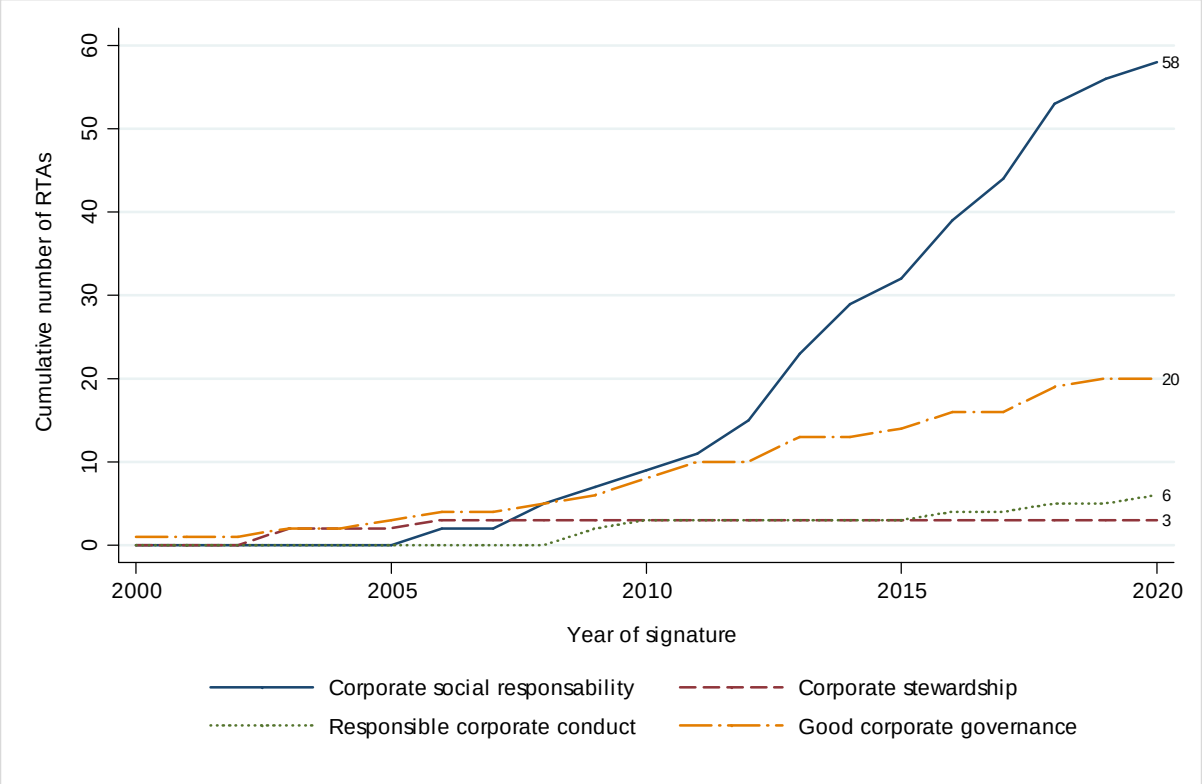
A few CSR-related provisions are found in other chapters. For instance, the RTA between Canada and the European Union includes a provision in the chapter on "bilateral dialogues and cooperation" listing the promotion of activities supporting CSR as a relevant issue of mutual interest covered by the bilateral dialogue on raw materials. Similarly, the RTA between Brazil and Chile includes a provision in the chapter on "global value chains" calling for the parties to take CSR into account in cooperation activities. The amended RTA between Canada and Israel includes also a detailed specific article on CSR in a chapter entitled "other provisions".

4.2 Scope and types of CSR-related provisions

Like other types of provisions included in RTAs, CSR-related provisions are heterogeneous. The scope and language of CSR-related provisions vary between RTAs, even in some agreements negotiated by the same economy. Two RTAs can incorporate a provision referring to CSR but take a different structure (e.g. non-specific article or specific article), be found in a different part of the RTA (e.g. chapter on labour or cooperation) or be formulated differently (e.g. hortatory or firmer language).

The mapping exercise reveals that more than 130 different CSR-related provisions, many of which are specific to a single or couple of agreements, have been included in RTAs over the years. This large number of CSR-related provisions is partly explained by the terminology used to define CSR. Although most CSR-related provisions refer explicitly to CSR, a few provisions refer to corporate stewardship or responsible corporate conduct, as shown in Figure 12. As explained above, the first CSR-related provisions, found in the RTAs negotiated by the United States with Singapore and Chile, refer to "corporate stewardship". This term was later replaced by CSR in most other RTAs, with the exception of a few agreements that use the term "responsible corporate conduct". In fact, the evolution of the CSR-related terminology is also reflected in the amendment process of certain existing RTAs. For instance, the CSR-related provisions found in the preamble of the RTA between the EFTA states and Serbia, signed in 2010, refers to the significance of responsible corporate conduct, while the 2015 amended agreement acknowledges the importance of GCG and CSR for sustainable development.

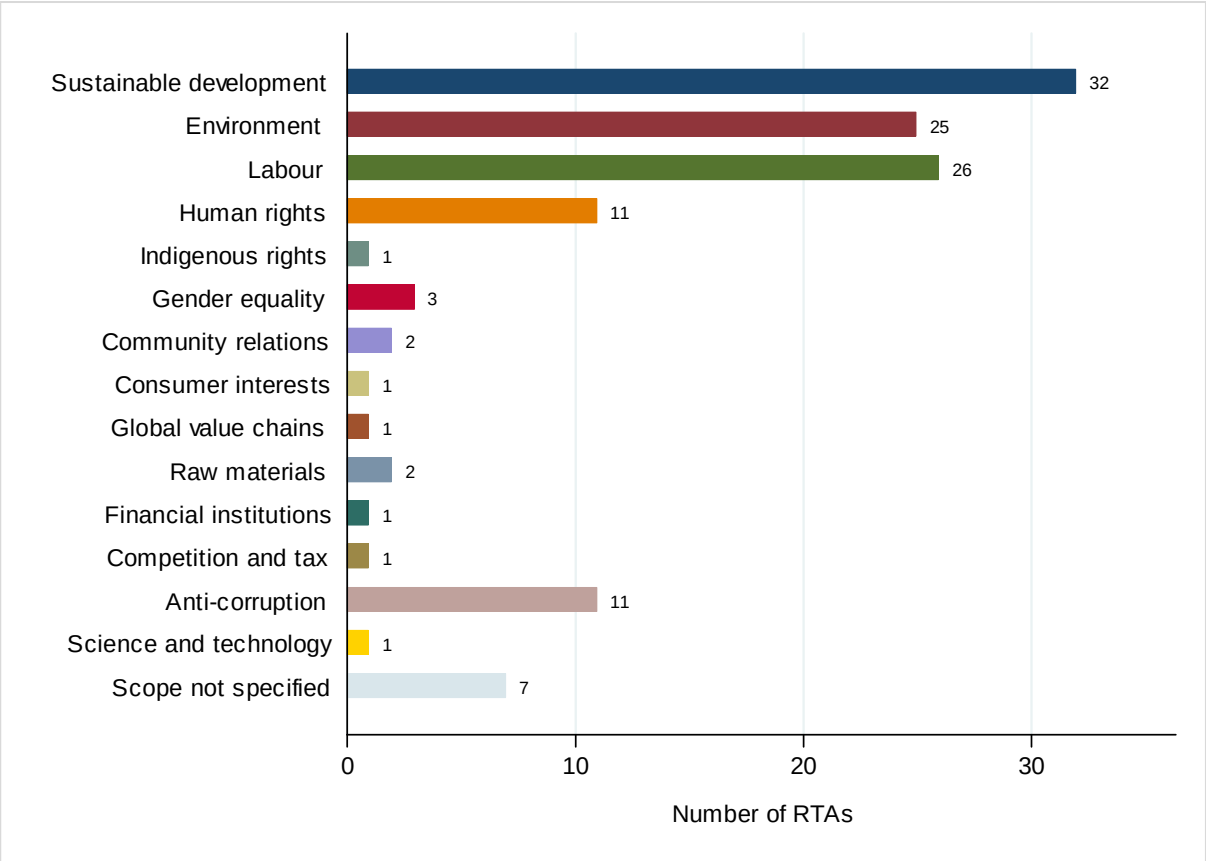
Figure 12: Different CSR-related terminology have been included in RTAs



Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.

Besides differences in terminology, most of the heterogeneity characterising CSR-related provisions stems from the language used as well as the issues covered. As highlighted in Figure 13, while many provisions refer to the general sustainable development dimension of CSR, many others cover explicitly the labour or environmental dimension of CSR. Other aspects of CSR explicitly covered in a limited number of RTAs include human rights and anti-corruption. Several other issues, such as gender equality, community relations, indigenous rights and consumer interests, are only explicitly addressed in a single or couple of recent RTAs. Similarly, a couple of RTAs include provisions on sector-specific CSR, including global value chains, raw materials, such as mining, and financial institutions. Conversely, a few agreements include provisions that refer to CSR in general without specifying its scope.

Figure 13: RTAs cover different dimensions of CSR



Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.

Despite their high heterogeneity, CSR-related provisions can be broadly grouped into 7 main types of provisions related to CSR issues, as reported in Table 2. These provisions range from recognising the importance of CSR and specifying CSR-related objectives to promoting the adoption of CSR, including through cooperation activities, and calling for the compliance of specific CSR principles.

A relatively common type of provisions, mostly found in the preamble, recognise the importance of CSR and, in some agreements, the importance of promoting or encouraging voluntary practices by CSR. A related provision, but worded differently, recognises the opportunity for enterprises to implement policies for sustainable development.

Table 2: Main types of CSR-related provisions

Types of CSR-related provisions	Number of RTAs	First year
1. Importance	**31**	**2006**
- Importance of CSR	16	2008
- Importance of (promoting) CSR	14	2006
- Opportunity to implement sustainable development policies	1	2006
2. Objectives	**19**	**2008**
- Encouragement to observe CSR	18	2008
- Promotion of international CSR standards	3	2009
- Pursuit of best practices	4	2008
3. Promotion	**39**	**2003**
- Promotion of (international) CSR (standards)	35	2003
- Dissemination and use of international CSR standards	2	2019
- Reference to international CSR standards	14	2014
- Supportive policy framework	2	2019
- Promotion of fair and ethical trade schemes	4	2010
4. Compliance	**5**	**2016**
- Reaffirmation of commitment to international CSR standards	2	2017
- Compliance with CSR standards	2	2016
- CSR criterion for investment authorisation	1	2017
5. Cooperation	**31**	**2003**
6. Consultations	**1**	**2018**
7. Dispute settlement coverage	**2**	**2016**

Source: Author's elaboration based on the mapping of CSR-related provisions in RTAs.
Note: The column "First year" reports the year in which the first RTA incorporated a given type of CSR-related provisions.

A few other provisions, also mostly found in the preamble, specify or reaffirm the parties' objectives or intentions regarding CSR. Several RTAs reaffirm the parties' aim to encourage enterprises, operating within their territory or jurisdiction, to respect internationally recognised standards, principles and guidelines in CSR. A couple of agreements explicitly refer to encouraging the respect of CSR standards and principles on a voluntary basis. A couple of agreements further reaffirm the parties' support to efforts for the promotion of relevant international CSR-related standards. Similarly, a few RTAs mention the parties' resolution to encourage enterprises to pursue best practices of CSR.

The most common type of CSR-related provisions, found in 39 RTAs, establish recommendations or commitments to promote CSR. Some RTAs recommend the parties to encourage enterprises within their territories or jurisdictions to voluntary incorporate best practices of CSR or sound principles of corporate stewardship in their internal policies. In some agreements, the provision refers specifically to the promotion of CSR related to the environment, labour or sustainable development. Similarly, some provisions refer explicitly to the promotion of internationally recognised standards, guidelines and principles of CSR endorsed or supported by one or both parties. This provision and several others provide a (non-exhaustive) list of international standards, guidelines and principles of CSR, including the OECD Guidelines for Multinational Enterprises and the UN Global Compact. A related provision commits the parties to support the dissemination and use of relevant international instruments on CSR. In the context of encouraging CSR, a new type of provisions further requires the parties to provide supportive policy frameworks that encourage the uptake of relevant practices by businesses. Another type of provisions promoting CSR requires the parties to strive to facilitate trade in products that contribute to sustainable development, including fair and ethical trade schemes, such as products respecting CSR and accountability principles.

Some more recent provisions go beyond recommendation. A new type of provisions, found in a couple of recent RTAs, reaffirms the parties' commitment with internationally recognised standards, guidelines and principles of CSR approved or supported by the parties. A more specific type of provisions, also found in a couple of other recent RTAs, require investors and investments to make their best efforts to comply with voluntary principles and standards of responsible corporate conduct and consistent with the host country's investment policy. Another recent provision, found in the annex to the chapter on investment, specifies, as reservation for non-conforming measures, that the installation of certain retail establishments and shopping centres are subject to an authorisation scheme based, among others, on the quality of employment and CSR.

As explained above, although no RTA provides a definition of CSR, different provisions define the scope of CSR by covering specific dimension of CSR. Similarly, several provisions define the scope of CSR by referring to CSR-related standards, principles and guidelines considered by the parties as internationally recognised instruments. As highlighted in Figure 14, various provisions in RTAs refer to six different international CSR-related instruments. The OECD Guidelines for Multinational Enterprises is the most listed international instrument in RTAs. The OECD Guidelines for Multinational Enterprises are non-binding principles and standards for responsible business conduct to encourage sustainable development. The UN Global Compact is another CSR-related instrument referred to in an increasing number of RTAs. The UN Global Compact is a voluntary and non-binding initiative to encourage companies to adopt sustainable and socially responsible policies and to report on their implementation. The remaining instruments are listed in a few, mostly recent, RTAs. The International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) provides guidance to enterprises on social policy and inclusive, responsible and sustainable workplace practices based on international labour standards. The UN Guiding Principles on Business and Human Rights, endorsed by the UN Human Rights Council, are a set of guidelines for governments and companies to prevent and address the risk of human rights abuses committed in business activities. The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas provides practical recommendations for companies to conduct due diligence along the value chain of raw materials and identify risks in order to prevent their activities from indirectly supporting conflicts or contributing to human rights abuses. The International Standard Organisation (ISO) 26000 Guidance on Social Responsibility provides guidance to organisations on assessing and addressing their impacts on their mission, operations, stakeholders, including customers, employees, communities, and the environment.

Another relatively common type of provisions identifies CSR as a (possible) cooperation area. Some of these cooperation provisions aim at promoting CSR, including in some cases internationally recognised CSR principles and instruments. Several cooperation provisions cover a specific dimension of CSR, including the environment, labour and mining or refer to specific international CSR standards, guidelines and principles. While some cooperation provisions do not specify the form of cooperation, some other provisions mention specific arrangements, including information exchange, best practices exchange, technical assistance, and outreach.

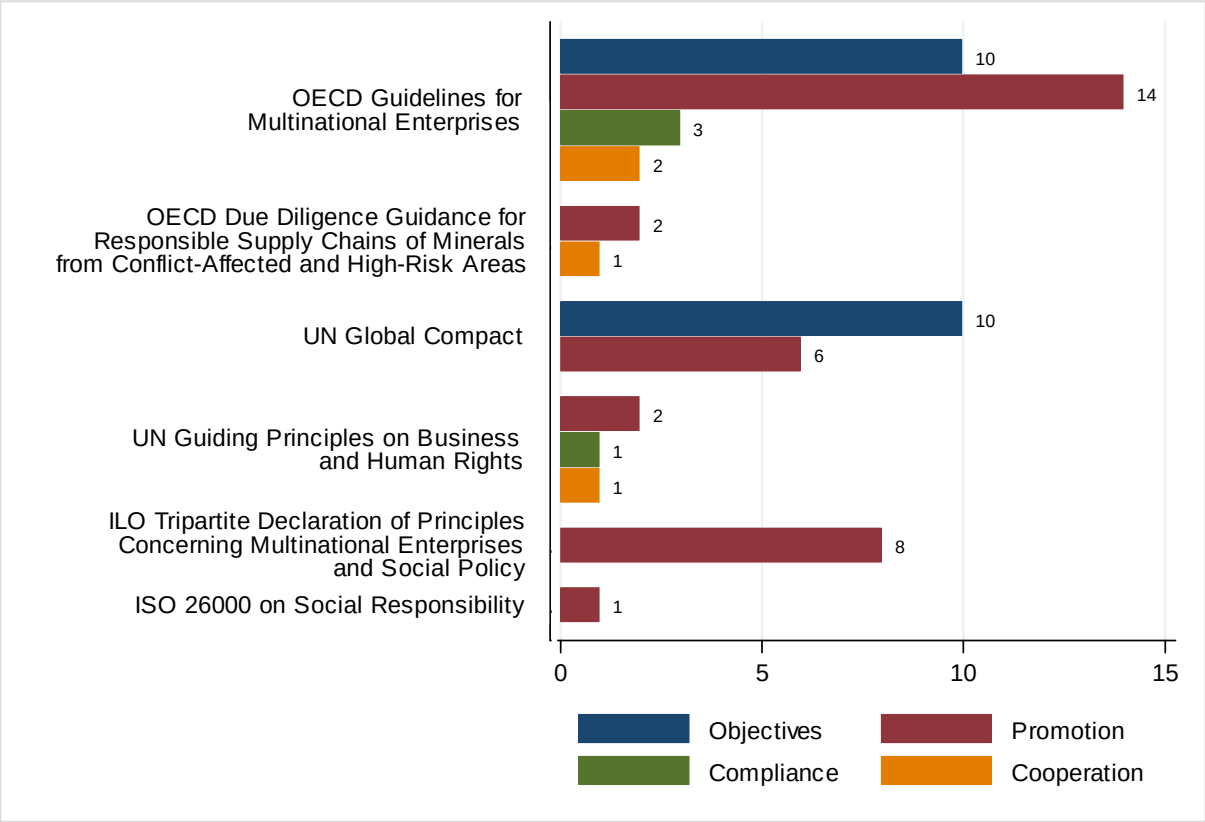
Building on provisions on environment, labour or more recently gender, a more recent type of CSR-related provision, found so far in only one RTA, commits the parties to make all possible efforts, through dialogue, consultations and cooperation to resolve any matter arising relating to the article on CSR. A related type of provisions, found in a couple of RTAs, explicitly excludes the article on CSR from the scope of the dispute settlement procedure established under the RTA.[15]

As noted above, CSR-related provisions in RTAs have evolved over the years, including in agreements negotiated by the same country. Part of the heterogeneity of CSR-related provisions stems from the fact that many CSR-related provisions add clarification, modify some existing provisions found in previous agreements or establish new commitments. The number of new types of CSR-related provisions continues to increase.[16] Out of the 65 RTAs with CSR-related provisions, 43 agreements include at least one new type of provisions on CSR in terms of language and scope.

[15] Some RTAs also include provisions specifying whether the chapter, in which CSR-related provisions can be found, is covered or not by the RTA's dispute settlement procedures.

[16] The evolution of the cumulative number of new types of CSR-related provisions in RTAs is depicted in Figure A6 in the Annex.

Figure 14: Provisions on CSR-related international instruments remain heterogenous



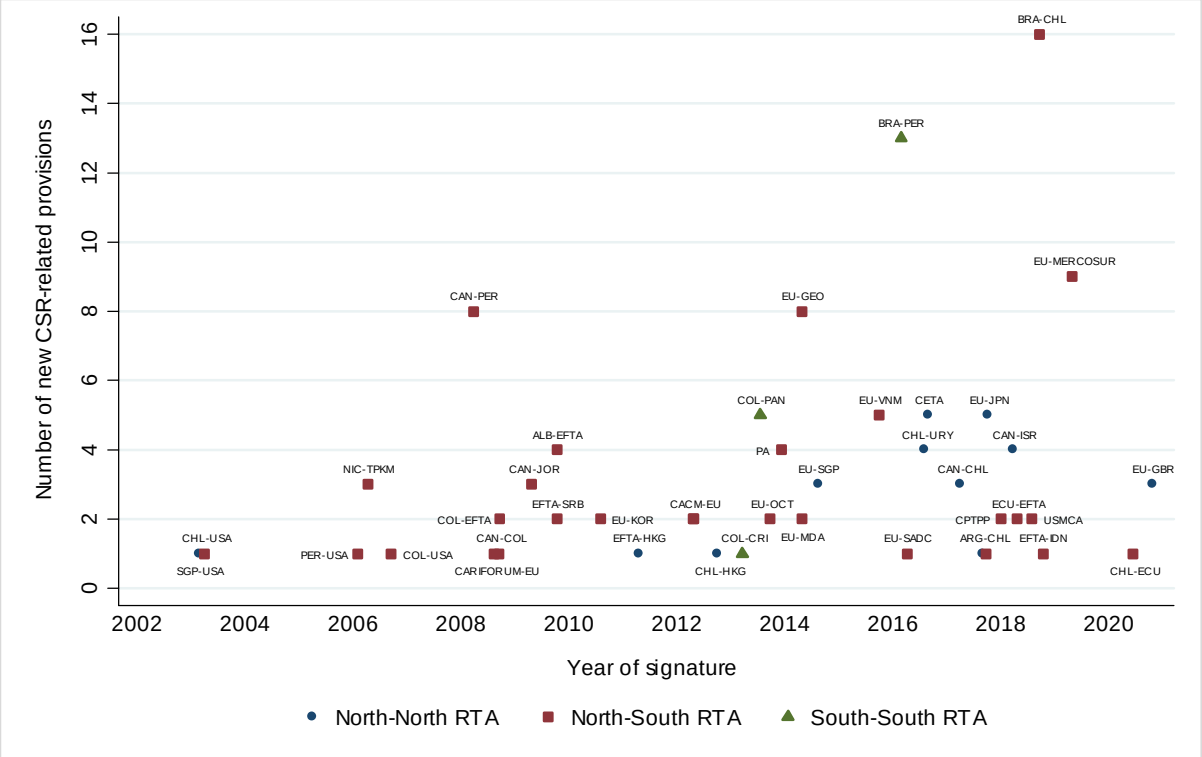
Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.
Note: Although not reported here, a few RTAs include provisions referring to the OECD Principles of Corporate Governance.

The signature of RTAs with a relatively high number of new CSR-related provisions is, however, a relatively recent phenomenon, as shown in Figure 15. The RTA between Brazil and Chile is, to date, the agreement with the highest number of new CSR-related provisions. As explained above, this agreement includes several new types of CSR-related provisions that replicate or build on CSR-related provisions negotiated by Brazil in its recent BITs. These new types of provisions list, in detail, eleven principles established under the OECD Guidelines for Multinational Enterprises that investors are required to make their best efforts to comply with. The listed principles cover various issues, including sustainable development, human rights, environment, labour, local community, and good corporate practices. Other agreements with a high number of new types of CSR-related provisions include the RTA between Brazil and Peru and the RTA between the European Union and MERCOSUR. The European Union, Brazil, Canada, Chile and Peru have incorporated the highest number of new CSR-related provisions in their RTAs.[17]

While reviewing new types of CSR-related provisions provides insight on the increasing heterogeneity of most CSR-related provisions, a more comprehensive and synthetic approach to quantitatively measuring the heterogeneity of CSR-related provisions in RTAs can be carried out by computing the Jaccard index, which compares and determines for each possible pair of RTAs the number of type(s) of CSR-related provisions in common. The closer the index is to one (zero), the more (less) both RTAs include the same type(s) of CSR-related provisions. Even though the level of similarity of CSR-related provisions between RTAs is higher for some pairs of RTAs, it is much lower for most pairs of RTAs, as highlighted in Figure 16. More than 92 per cent of all pairs of RTAs share very few, if any at all, similar CSR-related provisions. While some RTAs share up to five common CSR-related provisions, a majority of pairs of RTAs with CSR-related provisions share only one CSR-related provision.[18]

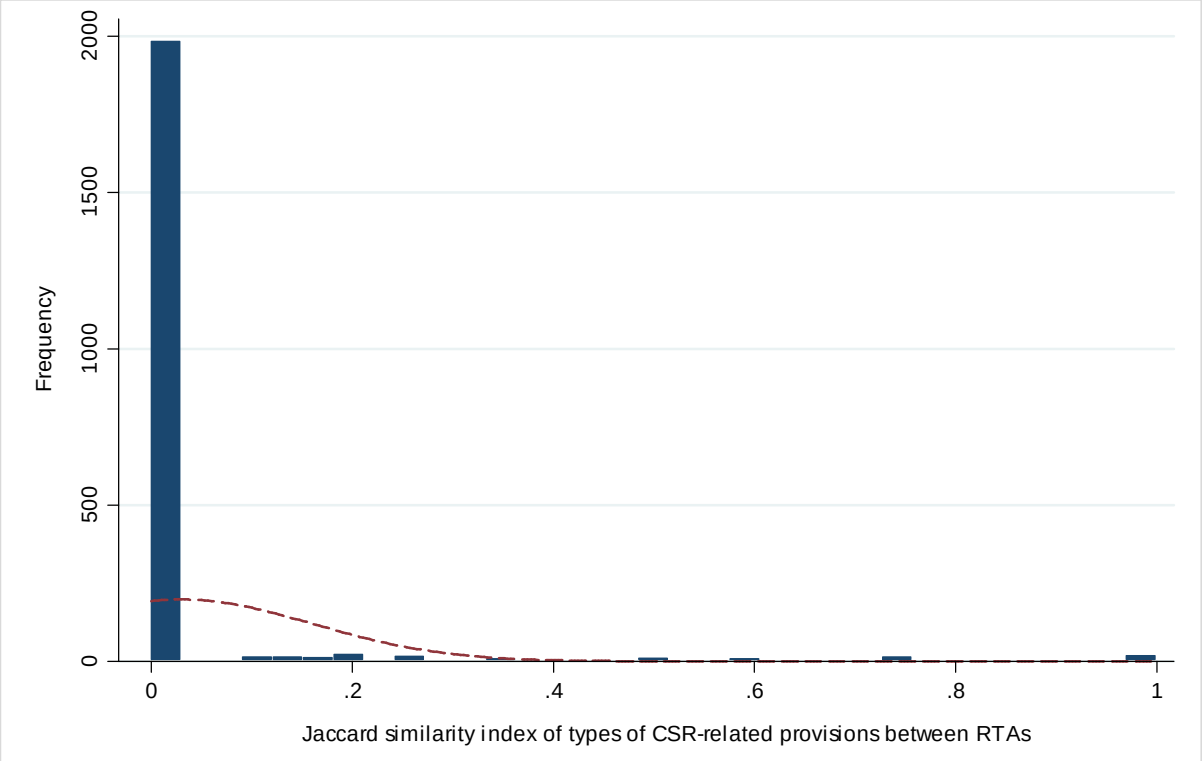
[17] The relationship between the number of new types of CSR-related provisions and number of RTAs with CSR-related provisions is shown in Figure A7 in the Annex.
[18] The evolution of the similarity index of CSR-related provisions in RTAs is depicted in Figure A8 in the Annex.

Figure 15: The number of new types of CSR-related provisions continues to increase



Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.
Note: The definition of new type of provisions is based on language differences. A provision addressing an issue already covered by another type of provisions but with a different scope is considered as a new type of provisions. "North" is defined as high-income countries, whereas "South" is defined as middle- and low-income countries according to the WBG's country classification.

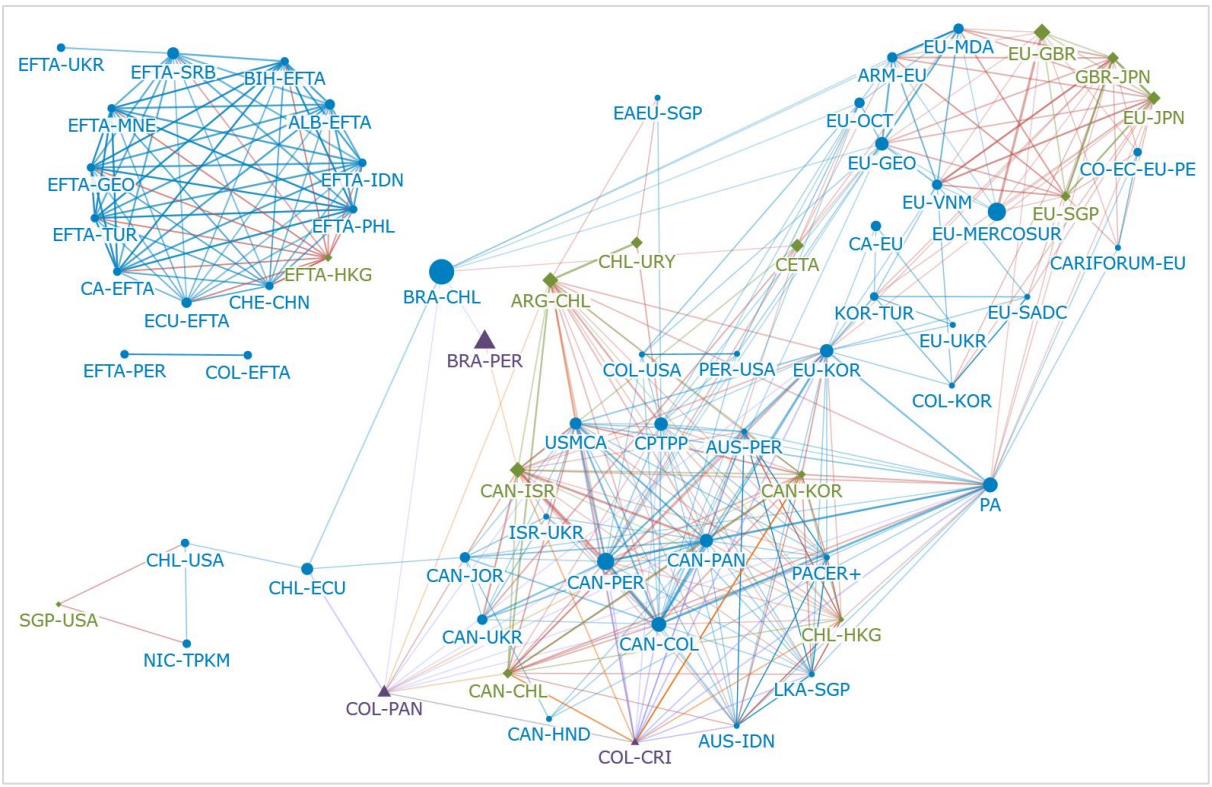
Figure 16: Most RTAs share few to no CSR-related provisions in common



Source: Authors' calculations.
Note: Histogram of the Jaccard index of 2,145 pairs of RTAs. The closer the Jaccard index is to one (zero), the more (less) both RTAs include the same type(s) of CSR-related provisions.

Despite the important heterogeneity in terms of language that characterizes most CSR-related provisions, all RTAs with CSR-related provisions share at least one of them with another RTA. The universe of all RTAs with CSR-related provisions is represented in Figure 17, where each diamond, circle, and triangle symbols represents, respectively, a North-North, North-South, and South-South RTA, where the size of the symbol (vertex) represents the number of CSR-related provisions, while the width and opacity of the edges connecting the RTAs reflect, respectively, the number of common CSR-related provisions and their level of similarity, measured by the Jaccard index. In other words, the larger and opaquer the edge connecting two RTAs, the larger number of similar CSR-related provisions in those two RTAs.

Figure 17: CSR-related provisions remain highly heterogenous between most RTAs



Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.
Note: The size of the shape associated with each RTA represents the number of CSR-related provisions. "North" is defined as high-income countries, whereas "South" is defined as middle- and low-income countries according to the WBG's country classification. The width of each edge measures the number of similar types of CSR-related provisions between two RTAs, while the opacity of each edge captures the level of similarity (measured by the Jaccard index) between two RTAs.

Overall, the average number of common types of CSR-related provisions between RTAs is relatively low, with just two common types of CSR-related provisions.[19] As discussed above, the two most common types of CSR-related provisions relate to the promotion of CSR and cooperation. Only three RTA pairs share the highest number of common types of CSR-related provisions, namely 5 types of provisions. These RTA pairs are the RTAs negotiated by Canada with Colombia and Peru; the RTAs negotiated by Canada with Israel and Peru; and the RTAs negotiated by the European Union with MERCOSUR and the United Kingdom. The number of common types of CSR-related provisions has, however, decreased relatively in the last five years. This relative decrease is mainly due, as explained above, to the increasing number of new types of CSR-related provisions included in RTAs, such as the RTAs to which Brazil is a party with Chile and Peru, and the RTA between the European Union and MERCOSUR. More generally, North-North RTAs tend to share more common types of CSR-related provisions with each other than with North-South and South-South RTAs. Similarly, North-South RTAs tend to share more similar CSR-related provisions with each other than South-South RTAs, suggesting that the converge of the types of CSR-related provisions included in RTAs remains very limited.

[19] The average number of common types of CSR-related provisions is equal to 1.7.

5 MAIN TYPES OF CSR-RELATED PROVISIONS

As discussed above, CSR-related provisions in RTAs are particularly heterogeneous in terms of structure, language and scope, often specific to a couple of RTAs. Most of the main types of CSR-related provisions discussed above tend to mask the large heterogeneity characterising many CSR-related provisions. The next sub-sections review, in more detail, each of the main types of CSR-related provisions found in RTAs.

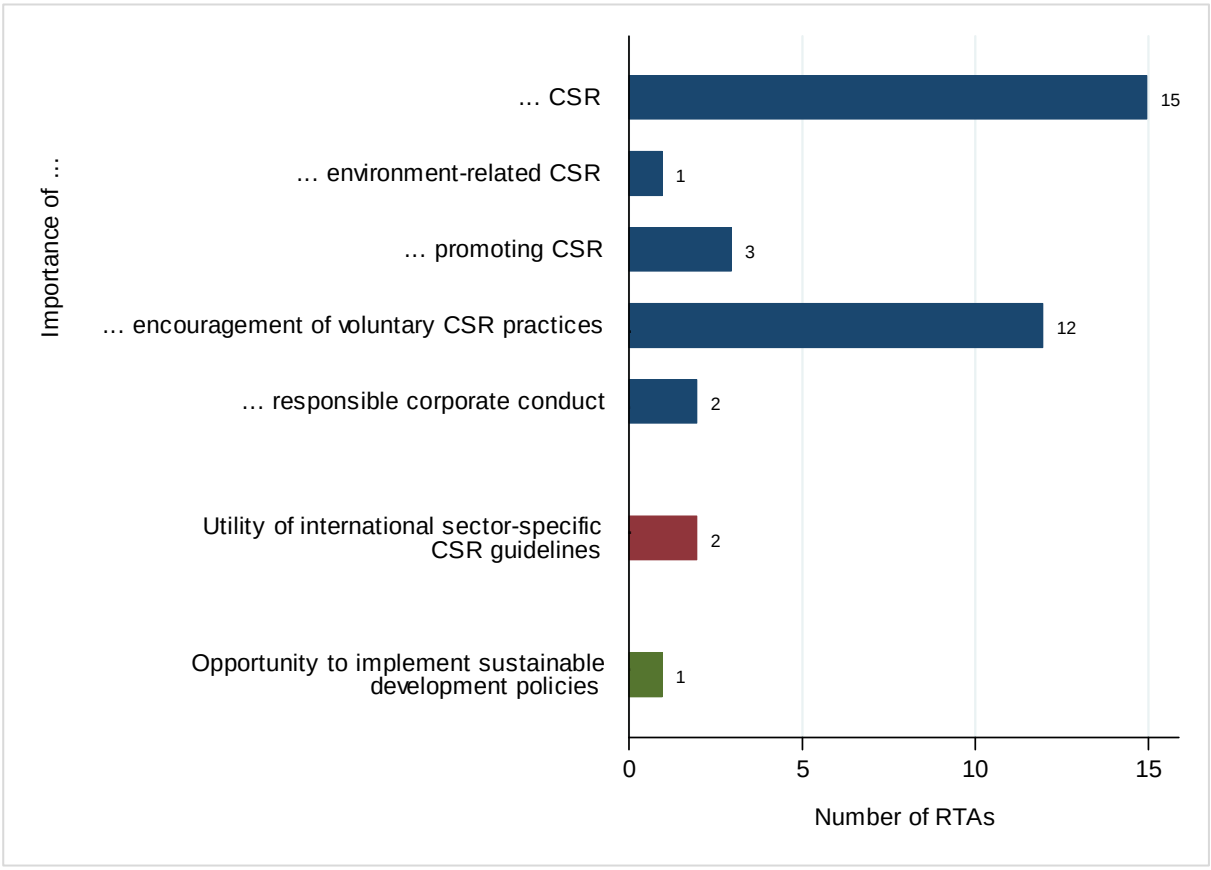
5.1 Importance

A limited but increasing number of RTAs including provisions, mostly found in the preamble, recognising the importance of CSR, as shown in Figure 18. These provisions are mostly found in RTAs negotiated by Canada and the EFTA states, and more recently the European Union.

For instance, the preamble of the RTA between the EFTA states and the Philippines acknowledges the importance of CSR for sustainable development. More recently, the RTA between the European Union and the United Kingdom recognises, in the chapter on "other instruments for trade and sustainable development", the importance of responsible management of supply chains through responsible business conduct and CSR practices and the role of trade in pursuing this objective.

A related but more specific provision, found in several RTAs, refer to the importance of promoting CSR. For instance, the preamble to CPTPP specifies the parties' resolution to reaffirm the importance of promoting CSR. Similarly, the Additional Protocol to the Framework Agreement of the Pacific Alliance recognises the importance of encouraging enterprises operating within the territory or subject to the jurisdiction to apply sustainable policy and CSR policies.

Figure 18: Provisions on importance of CSR are found in an increasing number of RTAs



Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.

While these provisions refer to CSR in general, the RTA between Colombia and Panama is the only agreement to explicitly recognise the importance of CSR related to the environment as a contribution to sustainable development. Similarly, a few agreements, including a couple of labour cooperation agreements to which Canada is a party, explicitly refer to the labour dimension of CSR by recognising the importance of encouraging voluntary practices by CSR within the parties' territories or jurisdictions to ensure coherence between labour and economic objectives.

Although some provisions do not make any explicit reference to the environmental or labour dimension of CSR, their location in the agreement may implicitly define the scope of CSR covered. For instance, the RTA between Canada, Mexico and the United States (USMCA) recognises, in the chapter on environment, the importance of promoting CSR and responsible business conduct. Similarly, the RTA between Chinese Taipei and Nicaragua recognises, in both chapters on environment and labour, the opportunity for enterprises to implement policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives.

While most provisions on the importance of CSR do not refer to internationally recognised CSR principles and instruments, the RTAs negotiated by the European Union with MERCOSUR and the United Kingdom are the only agreements to include provisions referring explicitly to the importance of international recognised CSR.[20] In particular, the RTA between the European Union and MERCOSUR recognises the importance of responsible management of supply chains through responsible business conduct and CSR practices based on internationally agreed guidance. This agreement and the agreement with the United Kingdom further explicitly recognise the utility of international sector-specific guidelines in the area of CSR and responsible business conduct.

5.2 Objectives

A couple of provisions, also mostly found in the preamble, specify or reaffirm the parties' objectives or intentions regarding CSR, as highlighted in Figure 19. These provisions are mostly found in RTAs negotiated by Canada and the EFTA states.

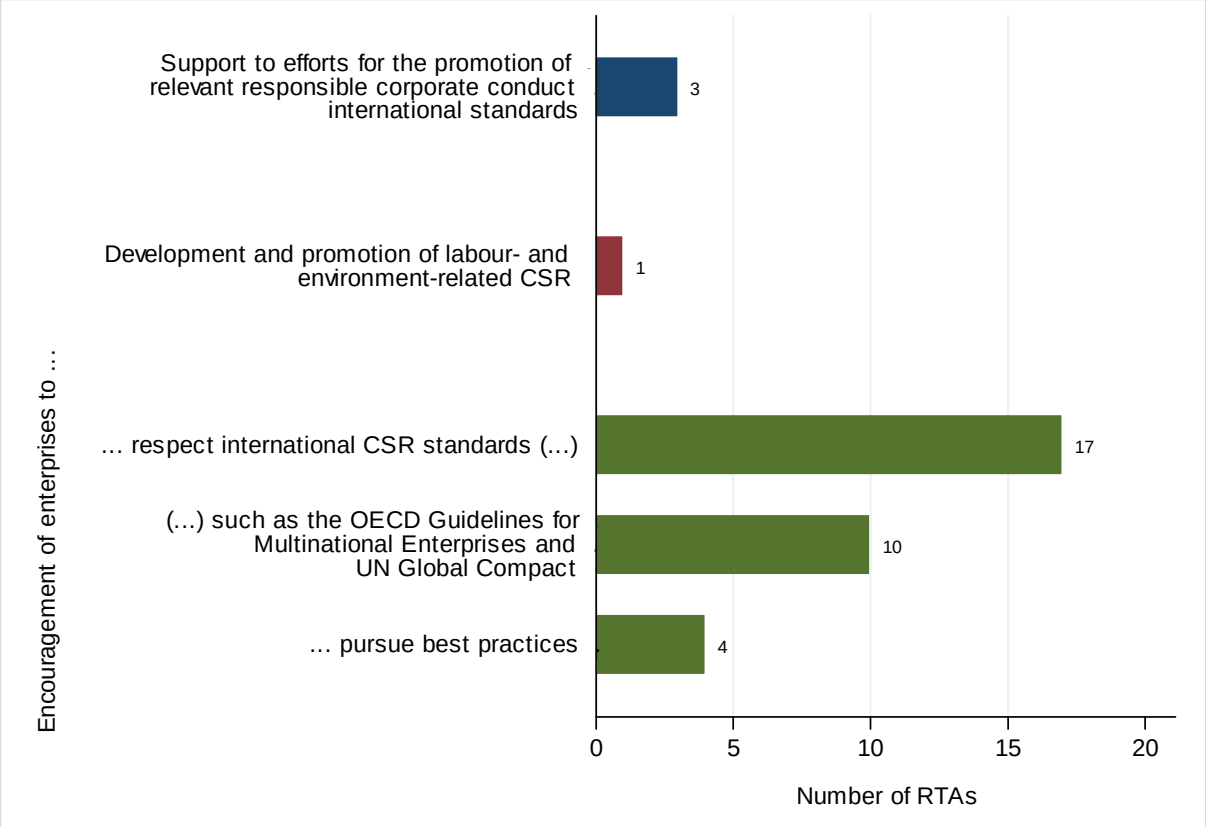
For instance, the RTAs to which the EFTA states are a party with Albania, Serbia and Ukraine affirm, in their respective preamble, the parties' support to efforts for the promotion of international standards relevant to responsible corporate conduct. A more specific provision, found in the RTA between Colombia and Panama, specifies that the objective of the chapter on environment is to contribute to the development and promotion of voluntary practices, including corporate responsibility practices in socio-environmental matters in order to promote environmental protection in the parties' respective territories.

A relatively more common affirms the parties' aim to encourage enterprises to observe internationally recognised guidelines and principles in good corporate governance and CSR established by international organisations. A similar provision, but worded differently, found in a few agreements, including the amended RTA between Canada and Israel, stipulates the parties' resolution to encourage enterprises operating within the parties' territory or subject to the parties' jurisdiction to respect internationally recognised CSR standards. In many RTAs, including the RTA between the EFTA states and Turkey, the provision on the parties' objective to encourage enterprises to observe internationally recognised CSR guidelines and principle specify (non-exhaustive) examples of international organisations and standards, such as the OECD Guidelines for Multinational Enterprises, the OECD Principles of Corporate Governance, and the UN Global Compact. In a couple of RTAs only one of these international instruments is listed. For instance, the preamble of the RTA between the EFTA states and Ecuador affirms the parties' aim to encourage enterprises to encourage enterprises to observe and adhere to internationally recognised guidelines and principles in CSR, such as the UN Global Compact.

The provision stipulating the parties' objective to encourage enterprises to observe internationally recognised CSR standards is sometimes complemented by another provision specifying the parties' resolution to encourage enterprises operating within the parties' territory or jurisdiction to pursue best practices. A couple of agreements, including the RTA between the European Union and Canada refers specifically to the pursuit of best practices of responsible business conduct.

[20] As discussed below, other provisions refer to internationally recognised CSR principles, standards, and guidelines.

Figure 19: Most provisions on CSR-related objectives are found in a few RTAs



Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.

5.3 Promotion

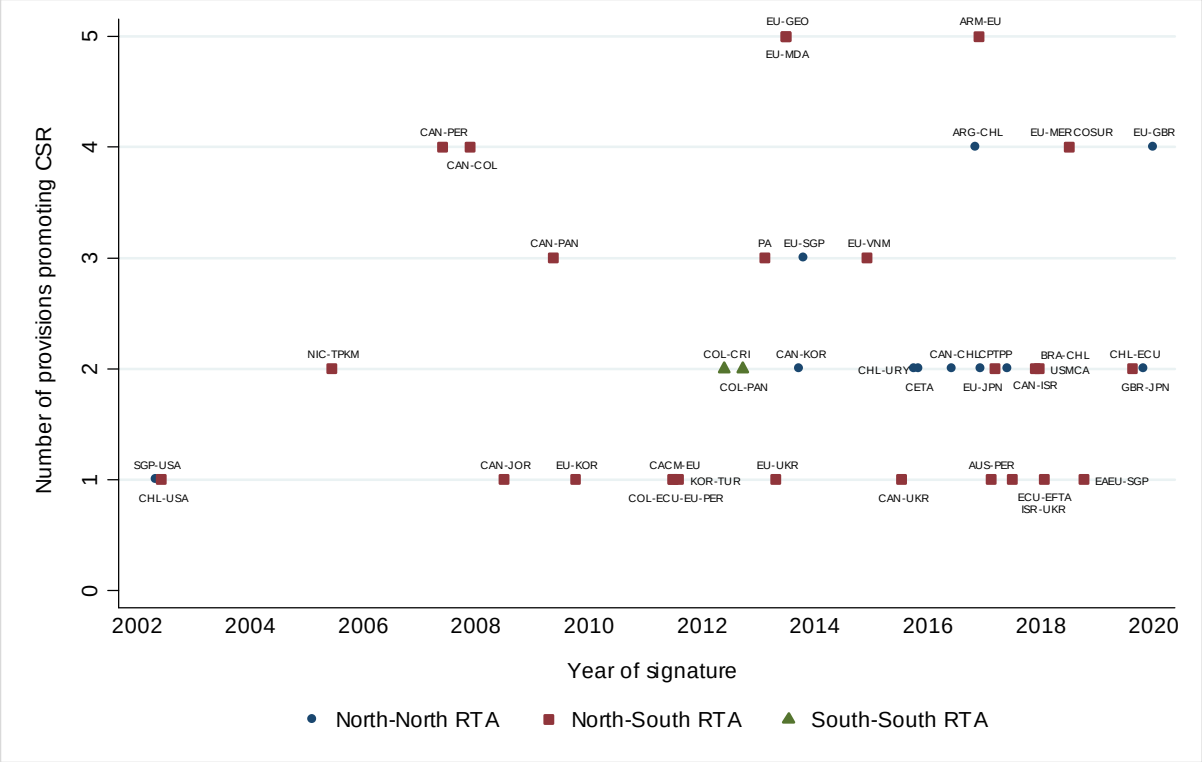
An increasing number of RTAs include provisions recommending or committing the parties to promote CSR, making them the most common type of CSR-related provisions found in RTAs. As highlighted in Figure 20, the number of provisions related to the promotion of CSR has increased in the last 10 years. The most detailed provisions promoting CSR are found in the RTAs negotiated by the European Union, Canada, Chile, Colombia and more recently the United Kingdom.

The language of these provisions promoting CSR is particularly heterogenous.[21] This is in part due to the fact that some agreements use different terminology and incorporate provisions promoting CSR in different chapters. The first type of provisions on CSR, found in the RTA between Singapore and the Unites States, stipulates that each party should encourage enterprises operating within its territory or jurisdiction to voluntarily incorporate sound principles of corporate stewardship in their internal policies, such as those principles or agreements that have been endorsed by both parties. Relatively similar provisions are found in the RTAs between Chile and the United States and between Chinese Taipei and Nicaragua. These three RTAs are the only one to refer to the promotion of corporate stewardship. Other provisions on the promotion of CSR refer specifically to CSR.

Besides a different terminology, other related provisions on the promotion of CSR are typically formulated in slightly firmer terms. A relatively common provision, found in several agreements, including the RTA between Armenia and the European Union, specifies the parties' agreement to promote CSR. The RTA between the European Union and Viet Nam includes a similar provision but further specifies that the parties, in accordance with their domestic policies, agree to promote CSR, provided that CSR-related measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the parties or a disguised restriction on trade. Only a few recent agreements, including the RTA between the European Union and Japan, incorporate a more specific provision requiring the parties to encourage CSR and responsible business conduct.

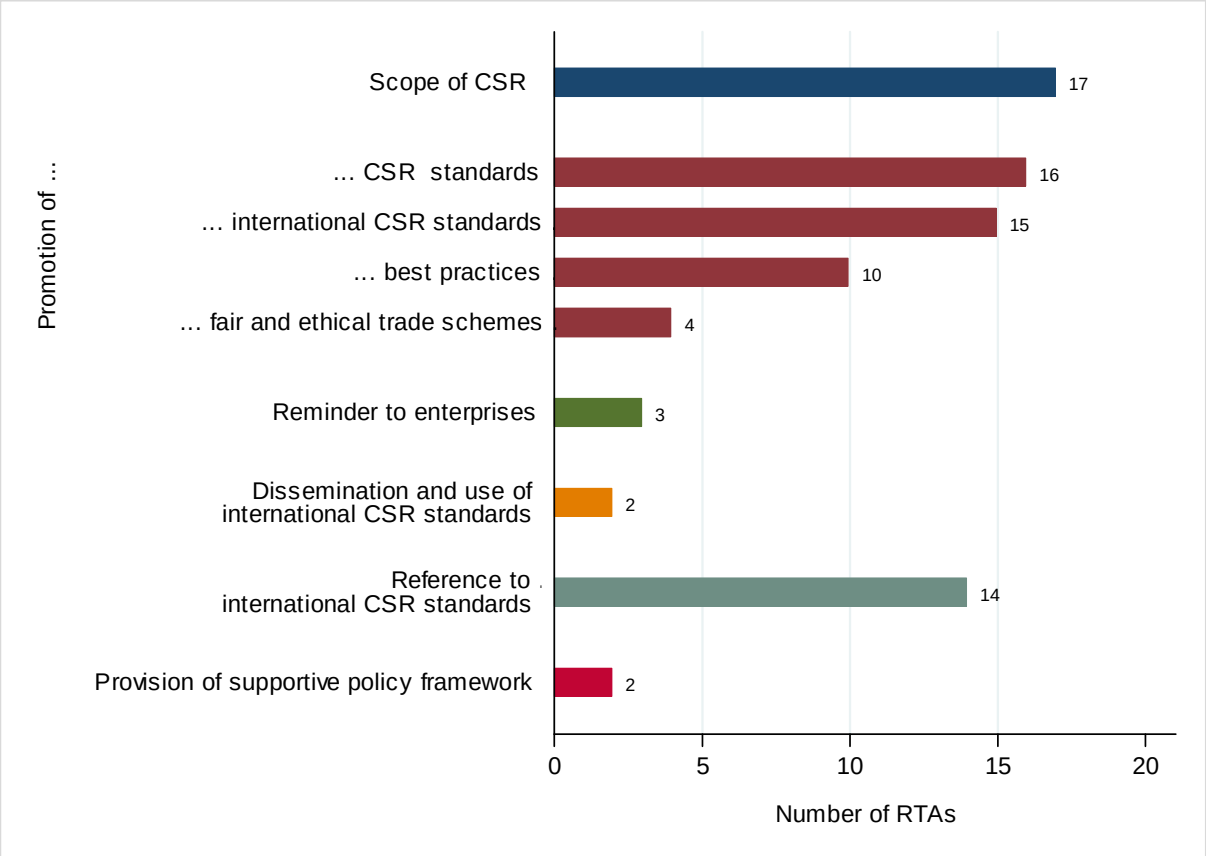
[21] As discussed in Section 5.1, several RTAs include provisions recognizing the importance of promoting CSR and the importance of encouraging enterprises operating to apply CSR policies.

Figure 20: Provisions promoting CSR have expanded in recent years



Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.

Figure 21: Provisions promoting CSR remain highly heterogenous



Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.

A few provisions refer specifically to best practices related to CSR. The RTA between Canada and Jordan specifies that the parties should encourage voluntary best practices of CSR by enterprises within their territories or jurisdictions. Several other agreements, including the RTA between Canada and Ukraine, go further and require each party to encourage voluntary best practices of CSR by enterprises established in its territory or subject to its jurisdiction.

A related but relatively more common type of provisions promoting CSR, found in an increasing number of RTAs, refers to internationally recognized CSR principles and guidelines. A couple of agreements, including the RTA between Canada and Colombia, stipulates that the parties should encourage enterprises operating within their respective territory or jurisdiction to voluntarily incorporate internationally recognized standards of CSR in their internal policies, such as statements of principle that have been endorsed or are supported by the parties. The scope of this type of provisions differ in some agreements, such as the RTA between the European Union and Viet Nam, by specifying the scope of the provision to relevant internationally accepted and agreed instruments endorsed or supported by the party in question. A similar, but worded in firmer language, provision is found in a couple of agreements, such as the RTA between Colombia and Costa Rica, requiring each party to encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies internationally recognised CSR standards, guidelines and principles endorsed or supported by that party.

The provision recommending the parties to encourage enterprises to voluntarily incorporate internationally recognized CSR standards, is complemented in a few agreements, including the RTA between Canada and Peru, by another provision committing the parties to remind those enterprises operating in their respective territories or jurisdiction of the importance of incorporating such CSR standards in their internal policies. Similarly, a couple of agreements, including the RTA between the European Union and the United Kingdom, require the parties to support the dissemination and use of relevant international instruments. This agreement and the RTA between the European Union and MERCOSUR further require the parties to promote joint work in international sector-specific guidelines in the area of CSR or responsible business conduct. Both RTAs also require the parties to provide supportive policy frameworks that encourage the uptake of relevant practices by businesses. Both agreements refer, however, to different "relevant practices". The RTA between the European Union and the United Kingdom refers to CSR and responsible business conduct, while the RTA between the European Union and MERCOSUR refers to the dissemination and use of relevant international instruments endorsed or supported by the party.

Several provisions promoting internationally recognized CSR standards refer to specific international instruments. Several RTAs to which the European Union is a party specify that in the context of promoting CSR practices, the parties refer to the relevant internationally recognised principles and guidelines, such as the OECD Guidelines for Multinational Enterprises. This type of provisions sometimes mention other international instruments, including the United Nations Global Compact, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and more recently the ISO 26000 Guidance on Social Responsibility.[22]

While no provision promoting CSR provides a definition of CSR, different provisions define the scope of CSR by covering specific dimensions of CSR. A couple of agreements, including the RTA between Canada and Honduras, specify that the statements of principle endorsed or supported by the parties, address issues, such as labour, environment, human rights, community relations and anti-corruption. Other issues, including gender equality, consumer interest, science and technology, and competition and tax, are listed in a few other RTAs. Some other provisions refer explicitly to one specific dimension of CSR. Several agreements, including the RTA between Canada and Colombia, require the parties to encourage voluntary best practices of CSR by enterprises within their territories or jurisdictions, to strengthen coherence between economic and environment objectives. A similar provision related to labour is found in a few agreements. For instance, CPTPP requires each party to endeavour to encourage enterprises to voluntarily adopt CSR initiatives on labour issues that have been endorsed or are supported by that party.

[22] See Section 3.2.

While most provisions promoting CSR refer to the adoption of best practices, principles, standards and guidelines by enterprises, another type of provisions promoting CSR, found in a few agreements, including the RTA between the European Union and the Republic of Korea, requires the parties to strive to facilitate and promote trade in goods that contribute to sustainable development, including goods that are subject of schemes, such as fair and ethical trade schemes, and those respecting CSR and accountability principles. Several other provisions promoting trade in goods contribute to sustainable development but without referring explicitly to CSR and accountability, are found in a limited but increasing number of RTAs (Monteiro, 2016).

5.4 Compliance

The inclusion of provisions on compliance with internationally recognized CSR principles is relatively new. Only five RTAs include provisions on compliance. The most detailed provisions on compliance are found in the RTAs to which Brazil is a party with Chile and Peru, as highlighted in Figure 22. Provisions related to the promotion of CSR are also found in the RTAs negotiated by Chile with Argentina and Canada, and the RTA between the European Union and Japan.

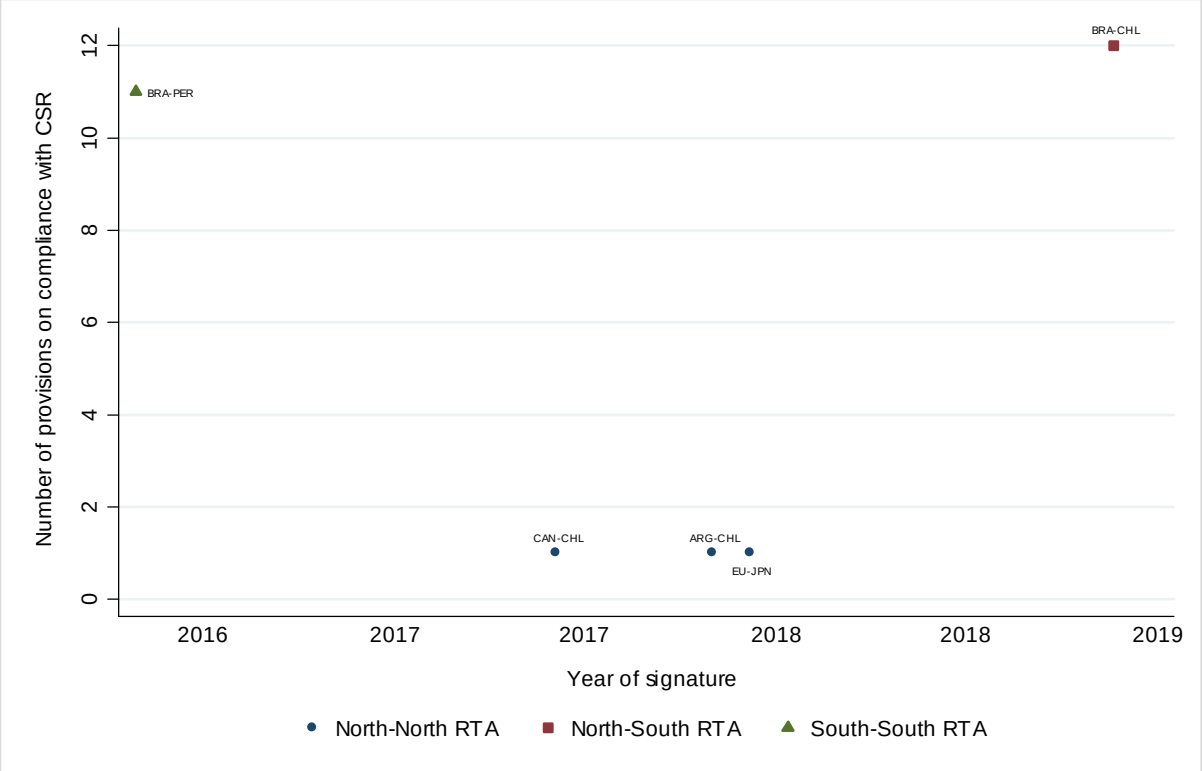
Both RTAs to which Chile is a party with Argentina and Canada reaffirm, in the chapter on investment, the parties' commitment with internationally recognized standards, guidelines and principles of CSR approved or supported by the parties, including the OECD Guidelines for Multinational Enterprises. Similarly, the RTA between Brazil and Chile requires the parties to promote the implementation of the UN Guiding Principles on Business and Human Rights.

The most comprehensive provisions, found in the RTAs to which Brazil is a party with Chile and Peru, require investors and investments to make their best efforts to comply with the OECD Guidelines for Multinational Enterprises. Although the RTA between Brazil and Peru lists the same CSR principles as the RTA between Brazil and Chile, it does not refer explicitly to the OECD Guidelines for Multinational Enterprises. Instead, the RTA between Brazil and Peru refers to voluntary principles and standards for a responsible business conduct and consistent with the laws adopted by the host state receiving the investment. These provisions build on CSR-related provisions negotiated by Brazil in its bilateral investment treaties (BITs) with Angola, Chile, Colombia, Mozambique, Malawi, and Mexico.

In particular, these new types of provisions replicate eleven general policy principles established under the OECD Guidelines for Multinational Enterprises. Investors are requested to make their best efforts to (1) contribute to the economic, social and environmental progress, aiming at achieving sustainable development; (2) respect the internationally recognized human rights of those involved in the enterprises' activities; (3) encourage local capacity building through close cooperation with the local community; (4) encourage the creation of human capital, especially by creating employment opportunities and offering professional training to workers; (5) refrain from seeking or accepting exemptions that are not established in the legal or regulatory framework relating to human rights, environment, health, security, work, tax system, financial incentives, or other issues; (6) support and advocate for good corporate governance principles, and develop and apply good practices of corporate governance; (7) develop and implement effective self-regulatory practices and management systems that foster a relationship of mutual trust between the enterprises and the societies in which their operations are conducted; (8) promote the knowledge of and the adherence to the corporate policy by workers, through appropriate dissemination of this policy, including programmes for professional training; (9) refrain from discriminatory or disciplinary action against employees who submit grave reports to the board or, whenever appropriate, to the competent public authorities, about practices that violate the law or corporate policy; (10) encourage, whenever possible, business associates, including service providers and outsources, to apply the principles of business conduct consistent with the principles provided for in this article; and (11) refrain from any undue interference in local political activities.

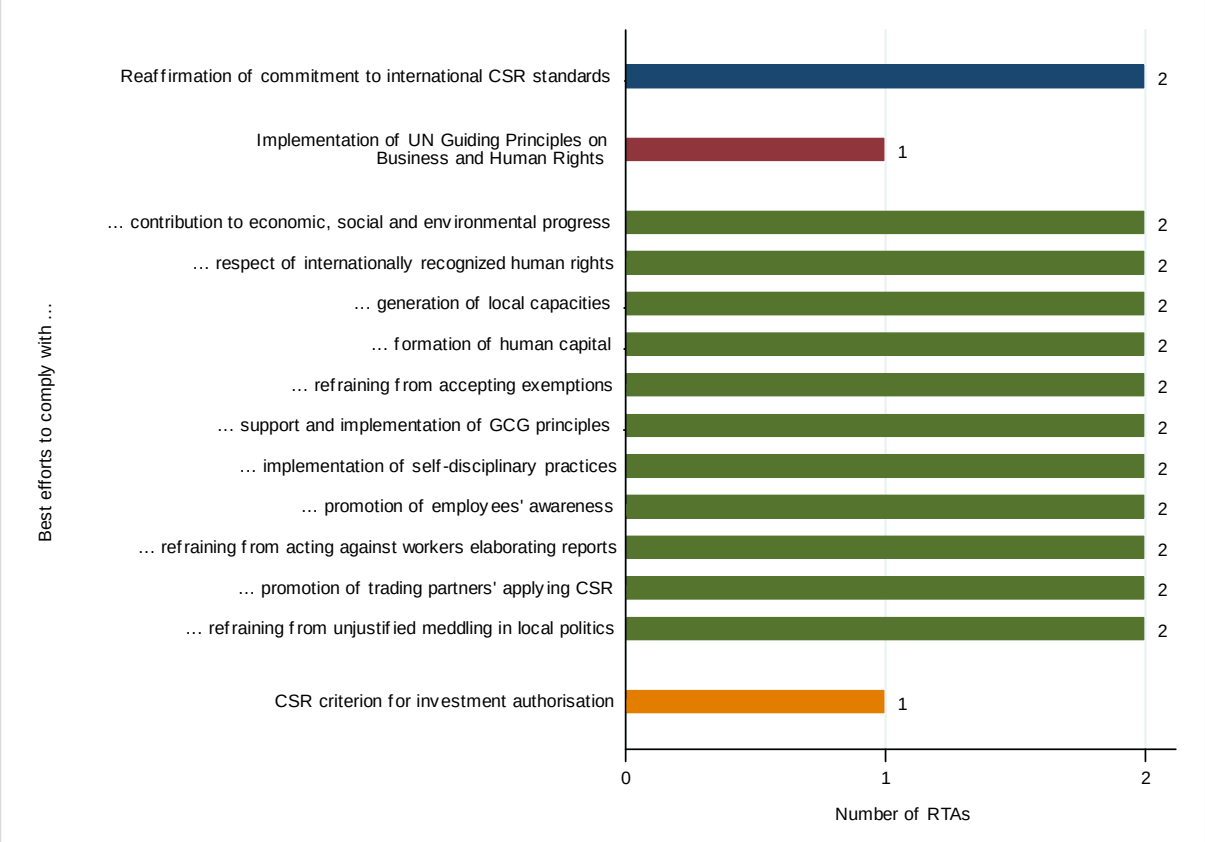
Another recent provision related to compliance is found in the annex to the chapter on investment of the RTA between the European Union and Japan. Under Portugal's reservation for non-conforming measures related to market access, the installation of certain retail establishments and shopping centres are subject to an authorisation scheme based on various criteria, including the quality of employment and CSR.

Figure 22: Provisions on compliance with CSR principles are relatively recent



Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.

Figure 23: Provisions on compliance with CSR are found in a limited number of RTAs

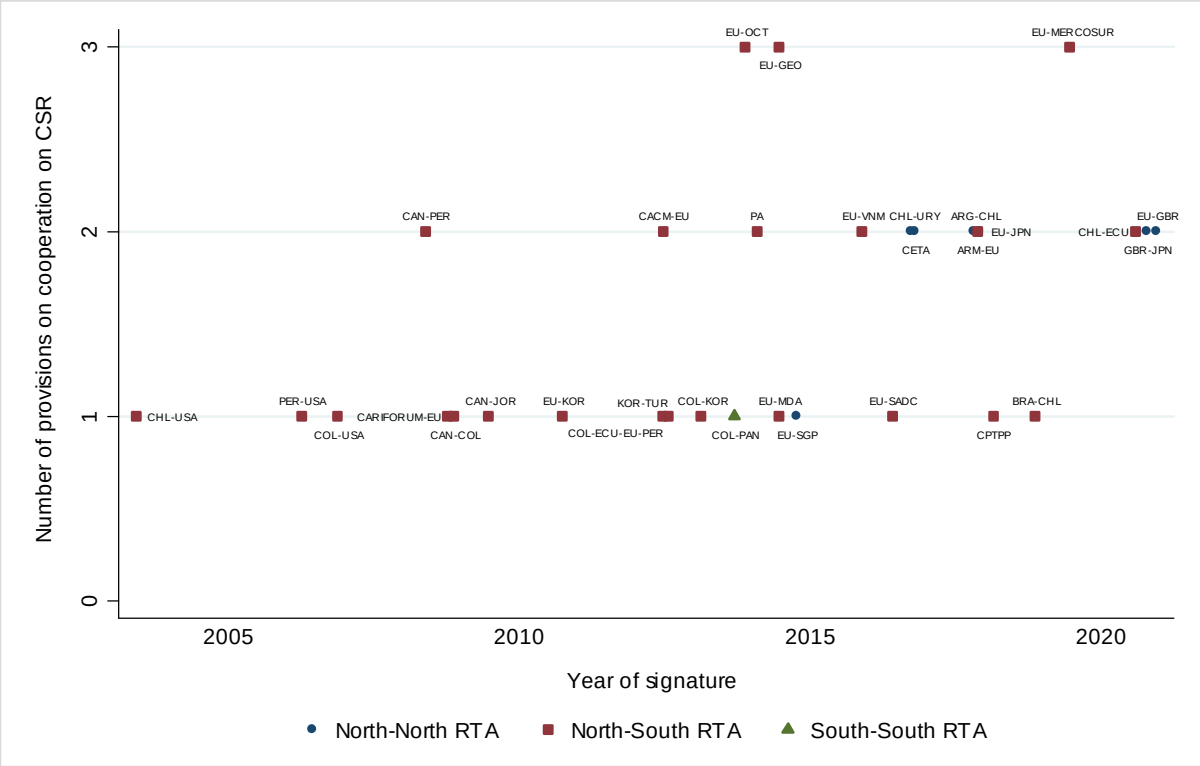


Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.

5.5 Cooperation

Cooperation can facilitate the implementation of some provisions set out in RTAs, including by sharing relevant information and building institutional capacity. A growing number of RTAs include cooperation provisions on CSR, as shown in Figure 24. The most detailed cooperation provisions on CSR are found in RTAs negotiated by Canada, Chile, the European Union, and more recently the United Kingdom.

Figure 24: Cooperation provisions on CSR are found in an increasing number of RTAs

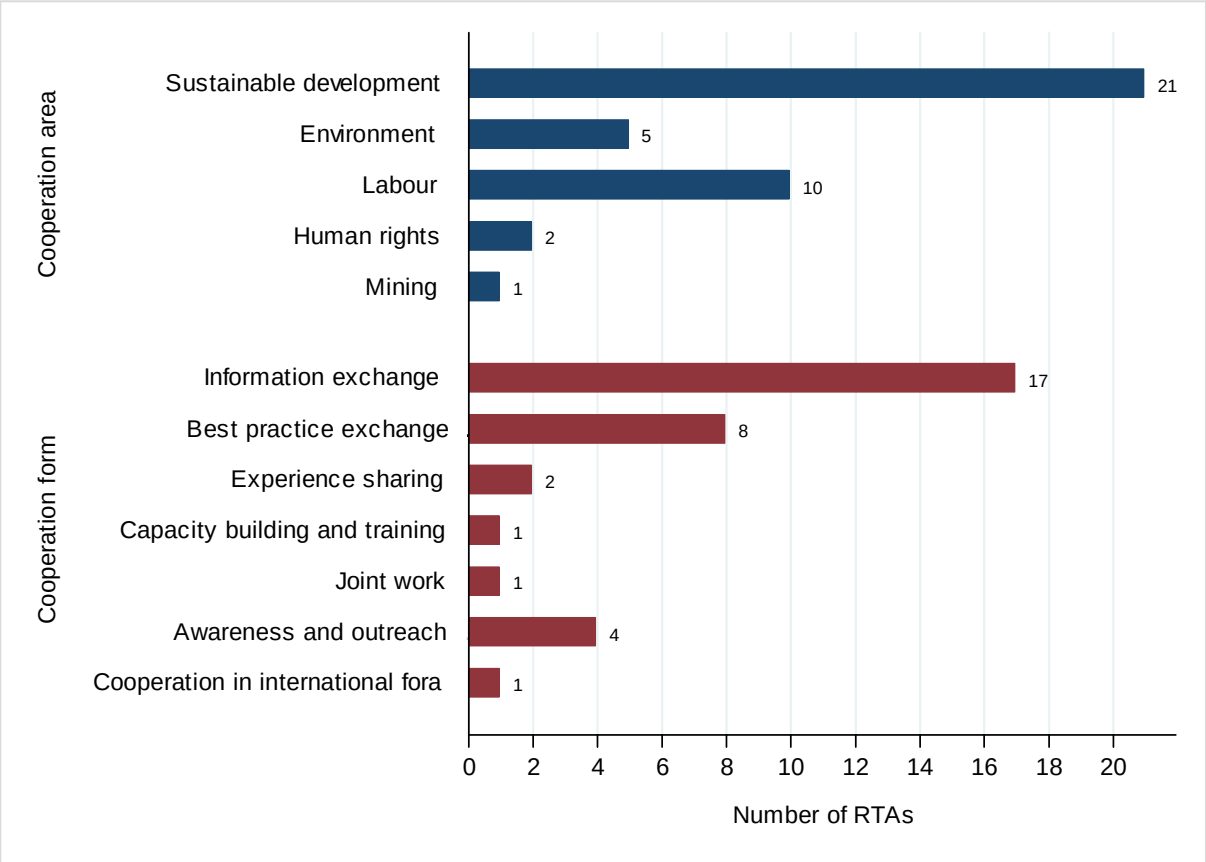


Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.

The language of the cooperation provisions on CSR differ substantially across agreements. Part of the heterogeneity of cooperation provisions stems from the fact that some provisions identify CSR as a potential area of cooperation, while other provisions are more specific and require the parties to cooperate on CSR. Part of the heterogeneity of cooperation provisions is also due to the fact that some cooperation provisions cover CSR in general while others address internationally recognized CSR principles, standards and guidelines. Similarly, and as highlighted in Figure 25, cooperation provisions cover different issues from sustainable development, including labour and environment, to human rights and mining activities.

Some cooperation provisions refer to the sustainable development dimension of CSR. For instance, the RTA between the European Union and the Overseas Countries and Territories (OCTs) stipulates that cooperation in the field of sustainable development may be pursued by promoting internationally recognised principles and guidelines in the area of CSR, and encourage companies operating in the territory of OCTs to implement them. Some cooperation provisions focus on the labour dimension of CSR. For instance, the RTA between Peru and the United States lists CSR as a potential cooperation area on best labour practices. Similarly, some cooperation provisions, address the environmental dimension of CSR. For instance, the RTA between Colombia and Panama commits the parties to develop and promote incentives to promote sustainable environmental management, including voluntary CSR practices on socio-environmental matters. Other specific issues are only covered in a few RTAs. A couple of recent agreements, including the RTA between Chile and Uruguay, list raising awareness and compliance with the principles and rights established under the UN Guiding Principles on Business and Human Rights. A joint declaration of the Pacific Alliance calls for the creation of a group on mining development, social responsibility and sustainability to share experience on CSR.

Figure 25: Cooperation provisions on CSR cover various issues and take different forms



Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.
Note: Only cooperation forms explicitly associated with CSR are considered.

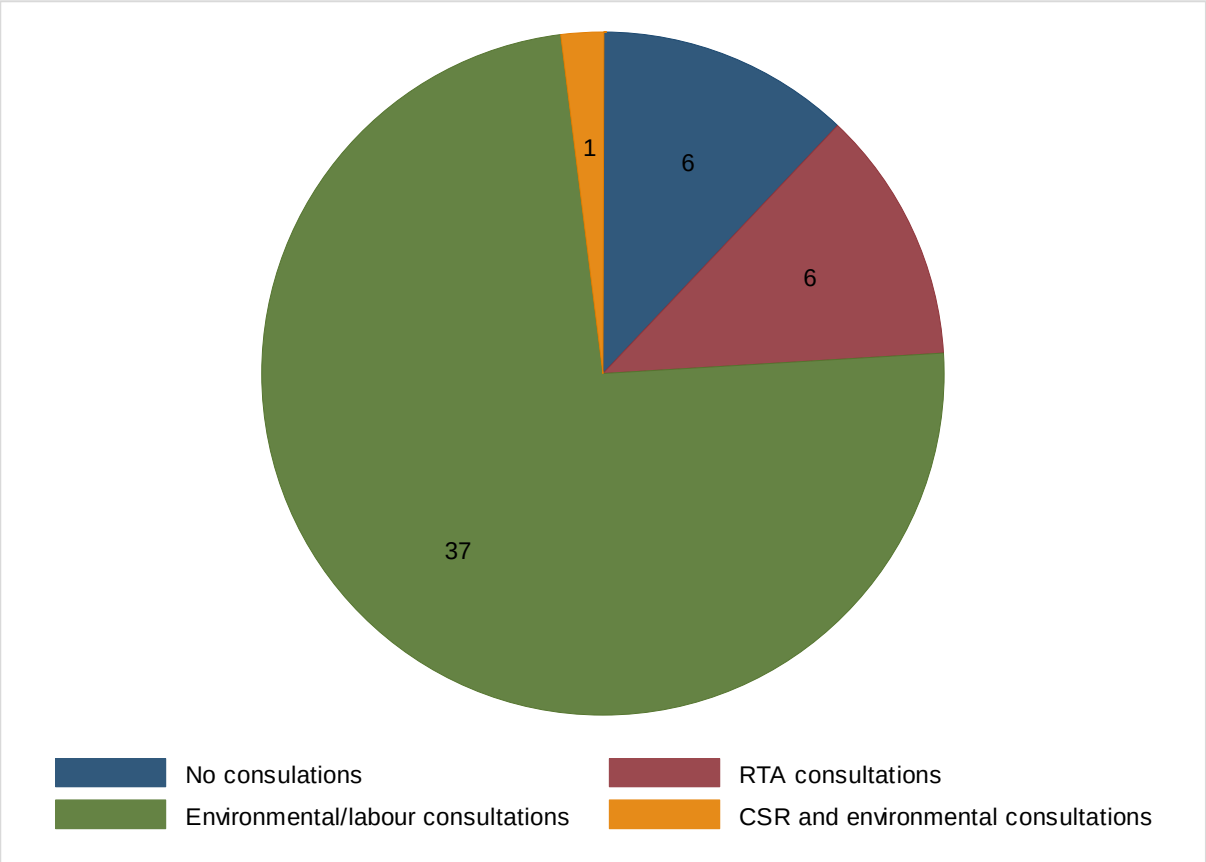
The heterogeneity of cooperation provisions on CSR is also partly explained by the fact that while some provisions identify CSR as a general cooperation area without providing any additional details or defining any actions, some provisions describes the (potential) forms of cooperation. Several of these cooperation provisions on CSR list the exchange of information and best practices as (possible) cooperation forms. Other less common cooperation forms related to CSR listed in RTAs include raising awareness, outreach, experience sharing, capacity building, training, and cooperation in relevant regional and international fora.

5.6 Consultations

A key feature of many trade agreements is the possibility to hold consultations among parties when their views on the agreement's interpretation, implementation and enforcement by the other party differ. Depending on their location in the agreement, some CSR-related provisions can be covered by the RTA's main consultation procedures or by specific consultation procedures established under the chapters on environment, labour or sustainable development. Similarly, CSR-related provisions found in side agreements, such as environmental and labour cooperation agreements, can be covered by the consultations procedures, if any, established under these cooperation agreements.

As confirmed by Figure 26, most CSR-related provisions are covered by specific consultations procedures set out in the chapters on environment, labour or sustainable development. Building on provisions on environment, labour or more recently gender, a recent type of CSR-related provision, found so far only in the amended RTA between Canada and Israel, sets out a specific consultations procedure for the article on CSR. In particular, the parties to that agreement are required to make all possible efforts, through dialogue, consultations, and cooperation to resolve any matter arising relating to the article on CSR.

Figure 26: Most CSR-related provisions are covered by specific consultations procedures



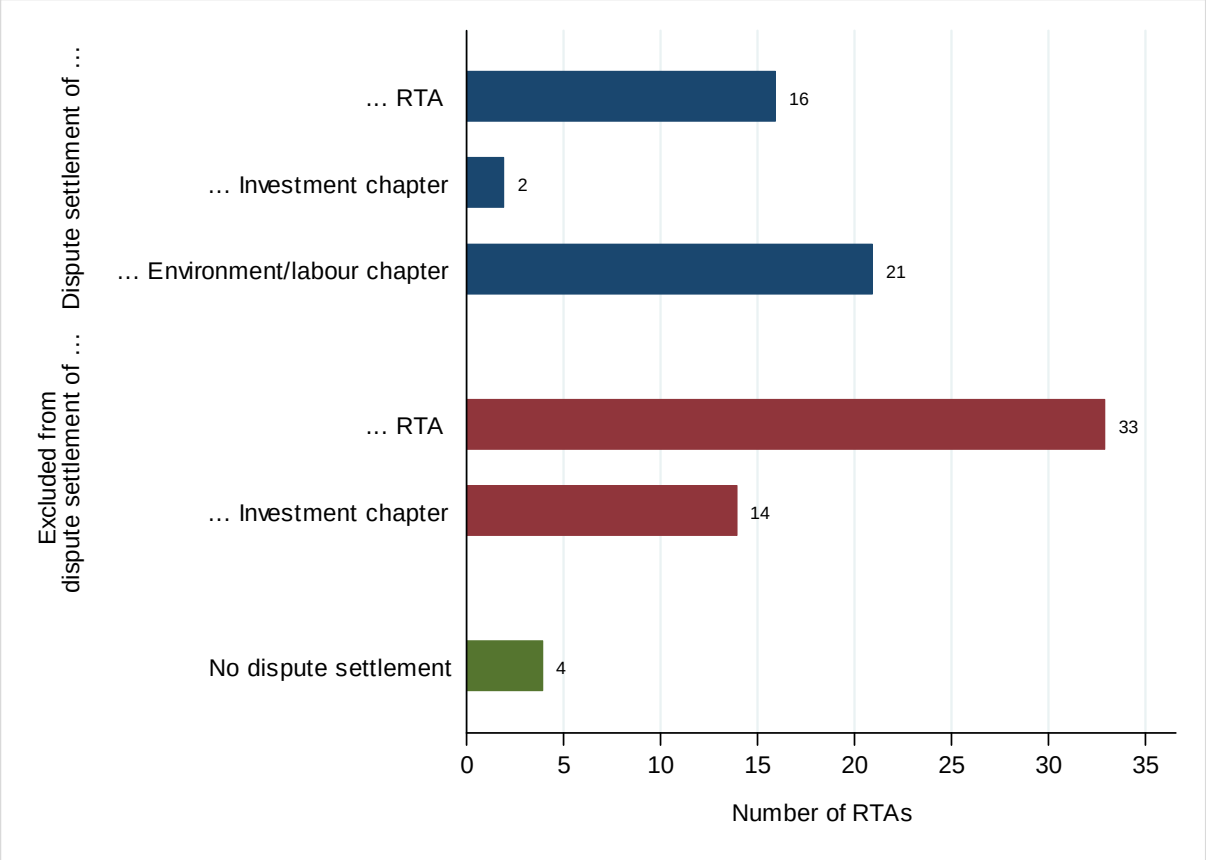
Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.
Note: The slices represent the number of RTAs with CSR-related provisions covered or not by consultations procedures. Preambular provisions on CSR are not considered. RTAs with only CSR-related preambular provisions are excluded from the analysis.

5.7 Dispute settlement

Besides consultations procedures to resolve amicably any dispute arising between parties, RTAs often provide for dispute settlement procedures to detect, prove and retaliate against violations of the terms of the agreement in a specified framework. Overall, the extent to which CSR-related provisions are covered by the RTA's dispute settlement procedures hinge on two main elements: (1) the relevant type of CSR-related provisions and (2) their location in the RTA or side agreement. Depending on their location, some CSR-related provisions can be covered or not by the same dispute settlement procedures as any other commercial disputes, or by dispute settlement procedures established under a specific chapter, such as the chapters on investment, environment, labour or sustainable development. Unlike the dispute settlement procedures set out between the parties to the agreement (i.e. state-state), the investor-state dispute settlement (ISDS) mechanism established under the chapter on investment of certain RTAs provides foreign private investors with the possibility to challenge the host government on its compliance with some of the disciplines of the RTA's chapter on investment.

Most CSR-related provisions, whether found in the chapters on environment, labour, and sustainable development, are explicitly excluded from the dispute settlement procedures set out in the RTA. This exclusion is not specific to articles or provisions on CSR, but to all or most of the provisions included in the chapter on environment, labour or sustainable development. Only one RTA, the amended RTA between Canada and Israel, explicitly excludes the article on CSR from the scope of the dispute settlement procedure established under the RTA. Similarly, most articles on CSR included in the chapter on investment are explicitly excluded from the ISDS mechanism.

Figure 27: Most CSR-related provisions are excluded from dispute settlement procedures



Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.
Note: The slices represent the share of RTAs with CSR-related provisions covered or not by dispute settlement procedures. Preambular provisions on CSR are not considered. RTAs with only CSR-related provisions are excluded from the analysis.

6 CONCLUSION

Over the years, CSR has gained greater importance as a concept and corporate strategy for an increasing number of companies. This growing prominence is also reflected in an increasing number of RTAs. As of December 2020, 65 RTAs, of which 51 agreements notified to the WTO and in force, have established at least one provision mentioning explicitly CSR.

The number of detailed CSR-related provisions included in a given RTA has also tended to increase in the last five years. However, most CSR-related provisions, even in RTAs negotiated by the same country, remain highly heterogenous in terms of location in the RTA, language, scope and commitments. An increasing number of RTAs include a dedicated article on CSR often in the chapters on investment, labour, environment, sustainable development, or cooperation. Most CSR-related provisions are formulated in best endeavour language. Similarly, most of these provisions promote the voluntary adoption and respect of CSR, including internationally recognized CSR principles standards and guidelines. Only a couple of recent RTAs, negotiated by Brazil with Chile and Peru, have expanded the scope of CSR-related provisions by requiring investors to make their best efforts to comply with some of the principles established under the OECD Guidelines for Multinational Enterprises.

Overall, the evolution of CSR-related provisions in RTAs highlights the dynamic context in which they are set. If this evolution is any indication, the language and structure of CSR-related provisions in RTAs are also likely to keep evolving and become more comprehensive and specific, with an increased focus on internationally recognized CSR principles standards and guidelines.

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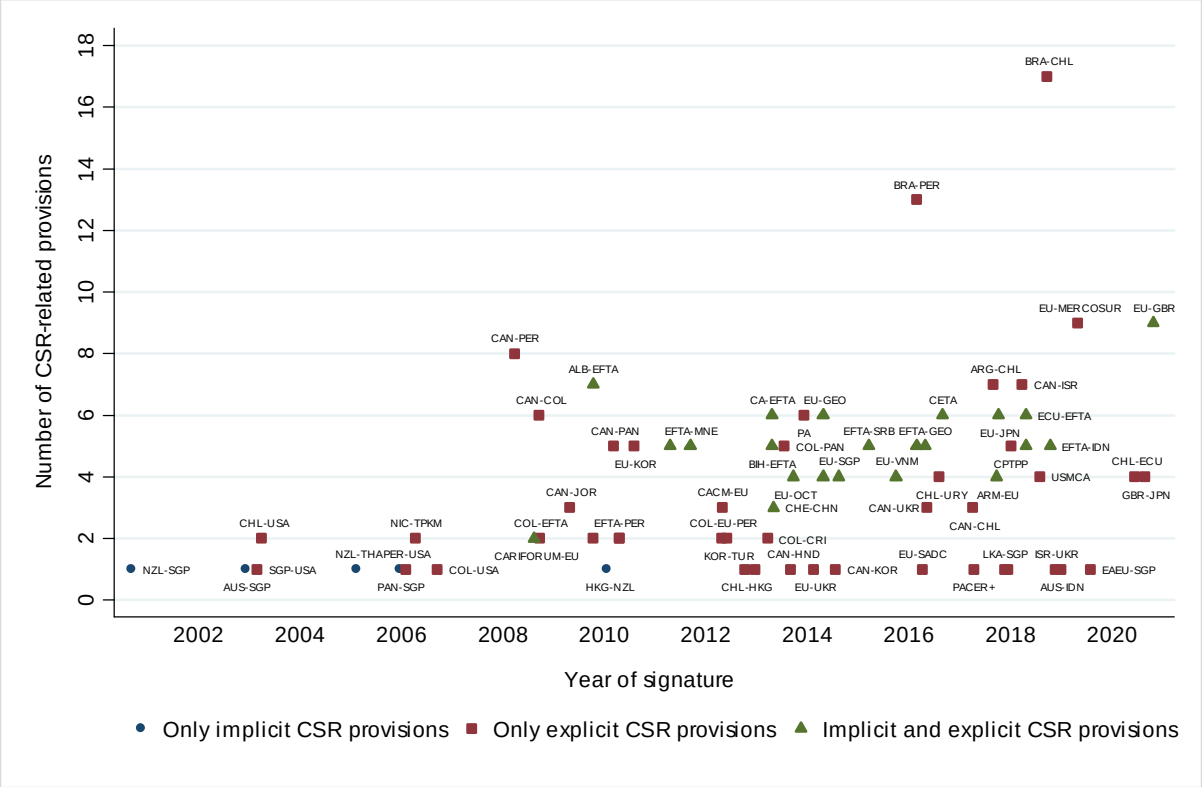
ANNEX

Table A1: List of non-notified RTAs covered

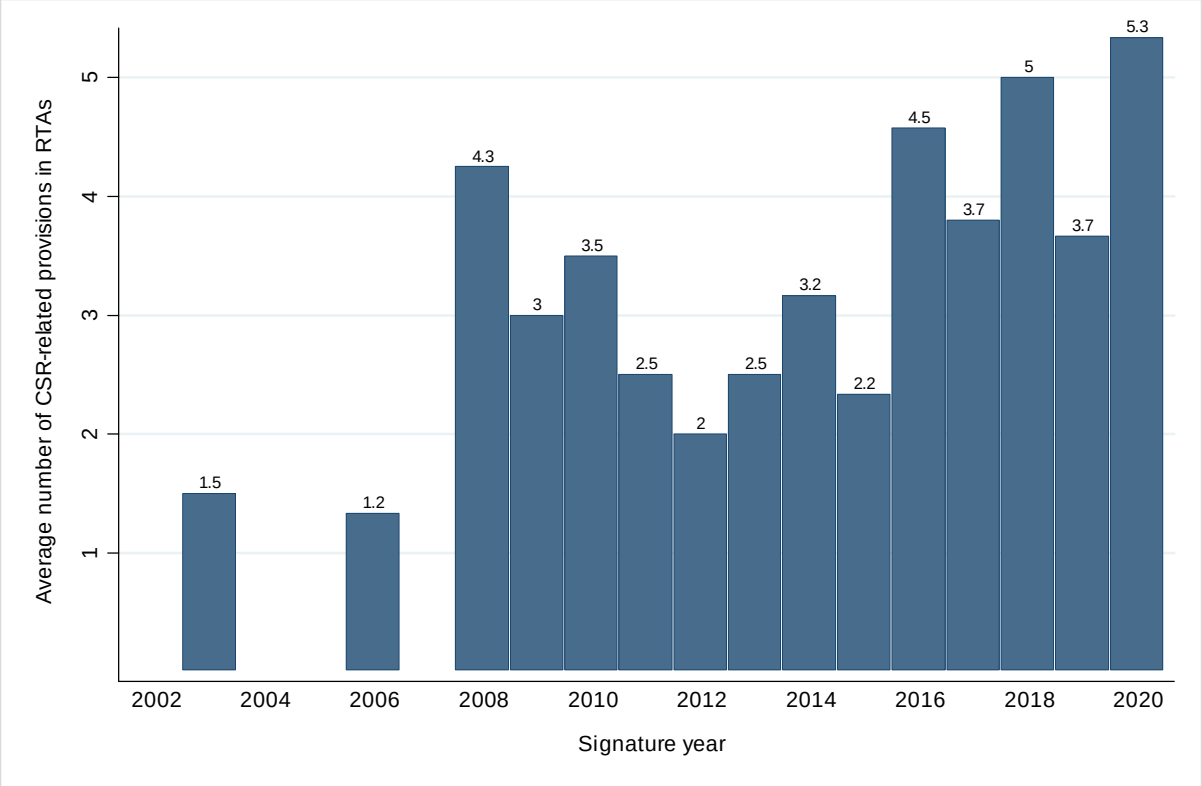
Association of Southeast Asian Nations (ASEAN) Services
ASEAN - Hong Kong, China
African Continental Free Trade Area (AfCFTA)
Argentina - Brazil
Argentina - Chile
Argentina - Paraguay
Armenia - Singapore
Australia - Indonesia
Belize - Guatemala
Botswana - Zimbabwe
Brazil - Guyana
Brazil - Uruguay
Brazil -Suriname
Caribbean Community (CARICOM) - Colombia
CARICOM - Costa Rica
CARICOM - Dominican Republic
Chile - Argentina
Chile - Bolivia
Chile - Brazil
Chile - Cuba
Chile - Ecuador
Chile - Uruguay
Chile - Venezuela
China - Mauritius
Colombia - Israel
Colombia - Panama
Colombia - Venezuela
Cross-Straits Economic Cooperation Framework Agreement
Eurasian Economic Union (EAEU) - China
EAEU - Serbia
EAEU - Singapore
European Free Trade Association (EFTA) - Ecuador
EFTA - Gulf Cooperation Council (GCC)
EFTA - Indonesia
European Union (EU) - East African Community (EAC)
EU - Southern Common Market (MERCOSUR)
EU - United Kingdom
EU - West Africa
Economic Community of Central African States (ECCAS)
Ecuador - Guatemala
El Salvador - Venezuela
Guatemala - Peru
Guatemala - Venezuela
Honduras - Venezuela
Israel - Panama
Japan - United Kingdom
Korea, Republic of - Central America
MERCOSUR - Bolivia
MERCOSUR - Chile
MERCOSUR - Colombia
MERCOSUR - Mexico
MERCOSUR - Peru
Malawi - Botswana
Nicaragua - Venezuela
Pacific Agreement on Closer Economic Relations Plus (PACER+)
Pakistan - Iran
Panama - Cuba
Panama - Trinidad and Tobago
Peru - Brazil
Peru - Cuba
Peru - Thailand
Peru - Venezuela
Regional Comprehensive Economic Partnership (RCEP)
South Asian Association for Regional Cooperation (SAARC) Services
Singapore - Sri Lanka
Tunisia - Morocco
Turkey - Faroe Island
Venezuela - Costa Rica

Figure A1: Evolution of the number of explicit and implicit CSR-related provisions in RTAs



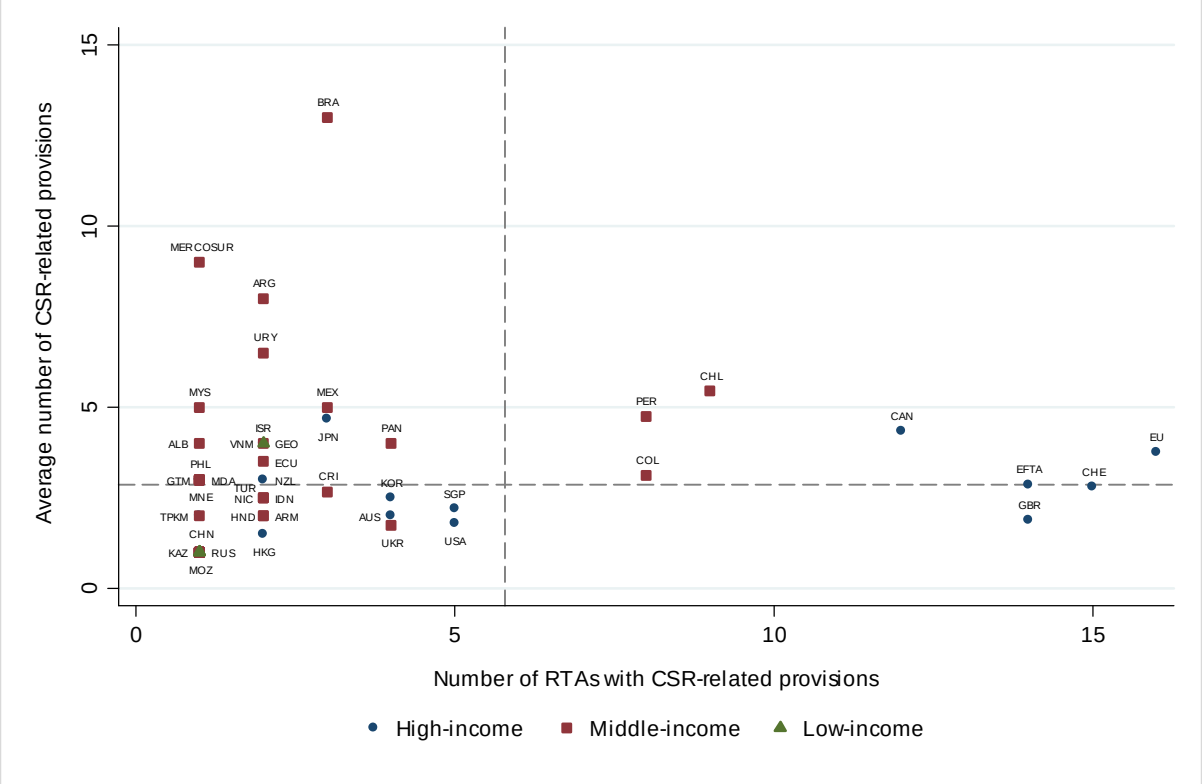
Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.
Note: Original and amended RTAs are analysed separately.

Figure A2: Evolution of the average number of CSR-related provisions in RTAs



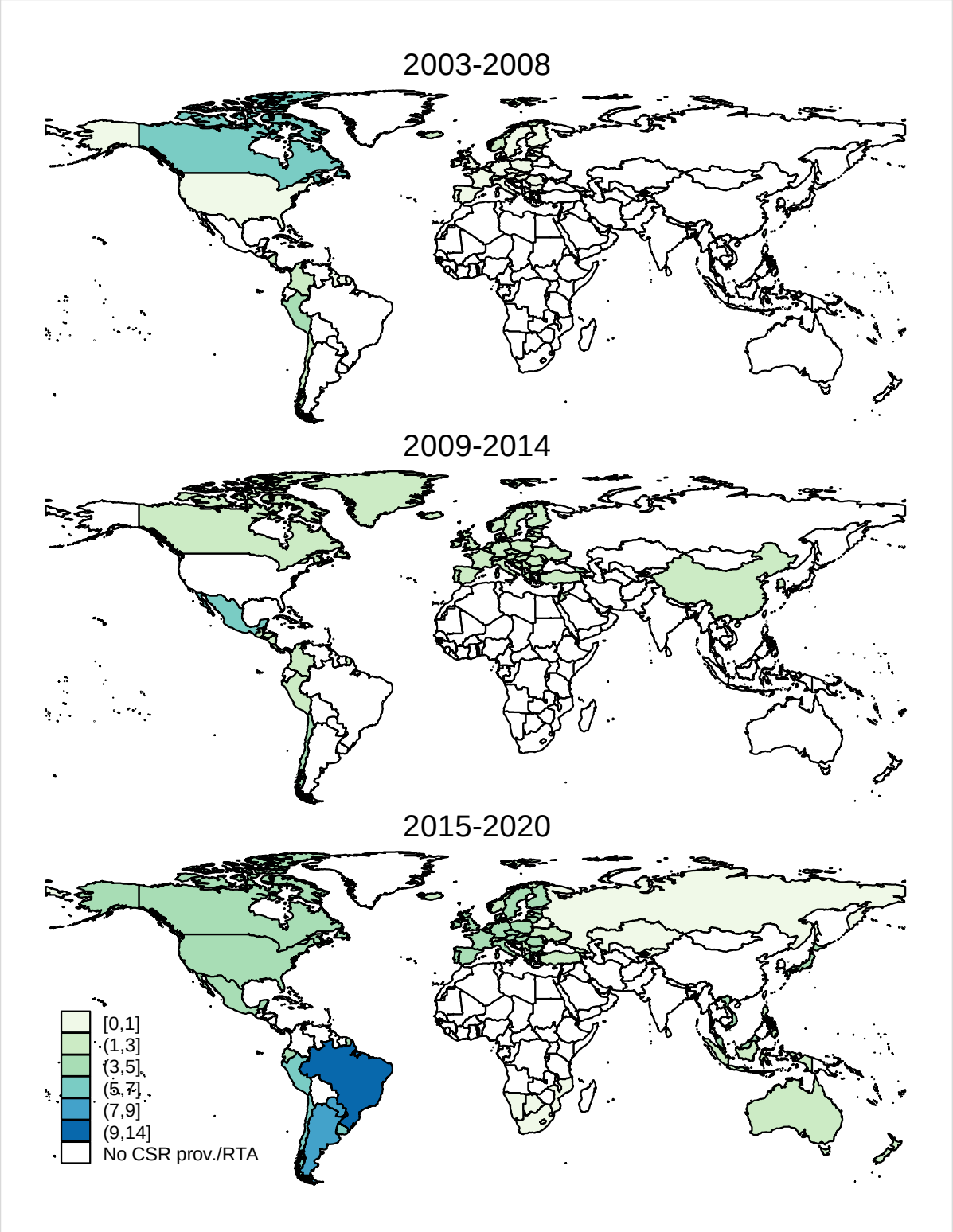
Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.

Figure A3: Relationship between average number of CSR-related provisions in RTAs and number of RTAs with CSR-related provisions



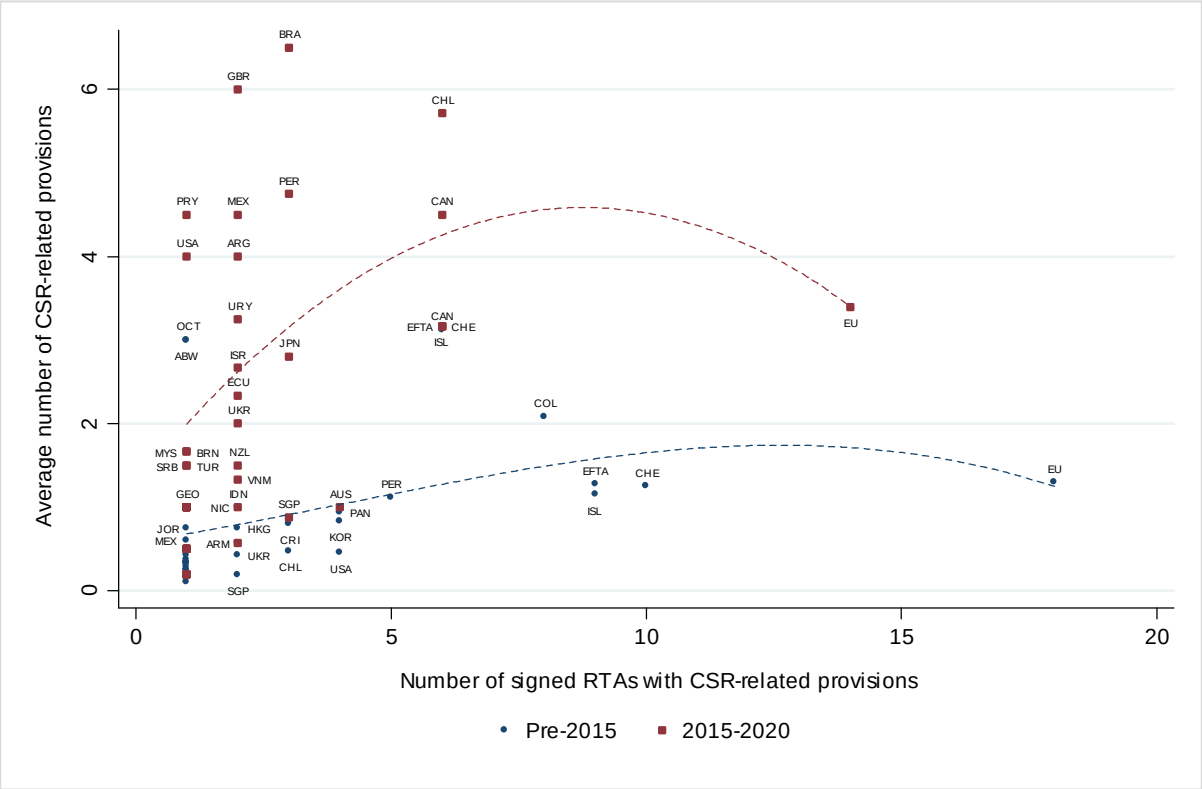
Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.

Figure A4: Average number of CSR-related provisions in RTAs by country



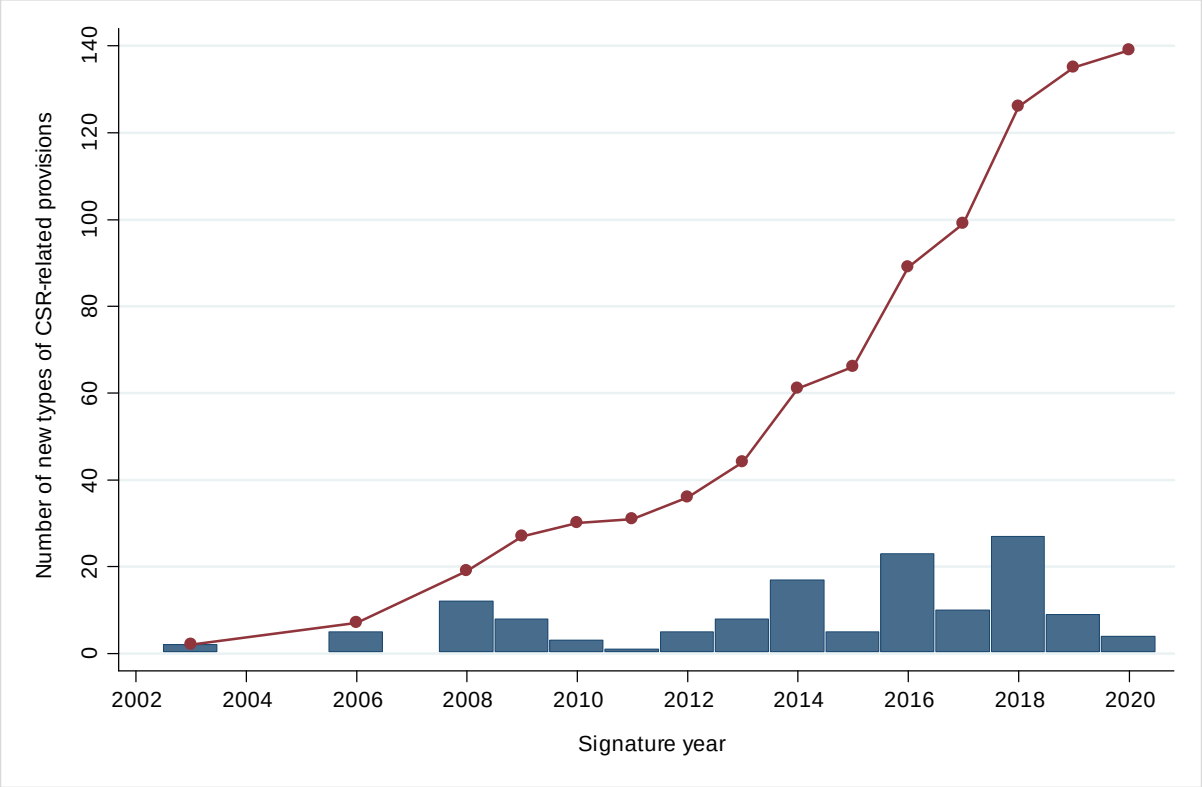
Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.

Figure A5: Dynamic relationship between the number of RTAs and average number of CSR-related provisions



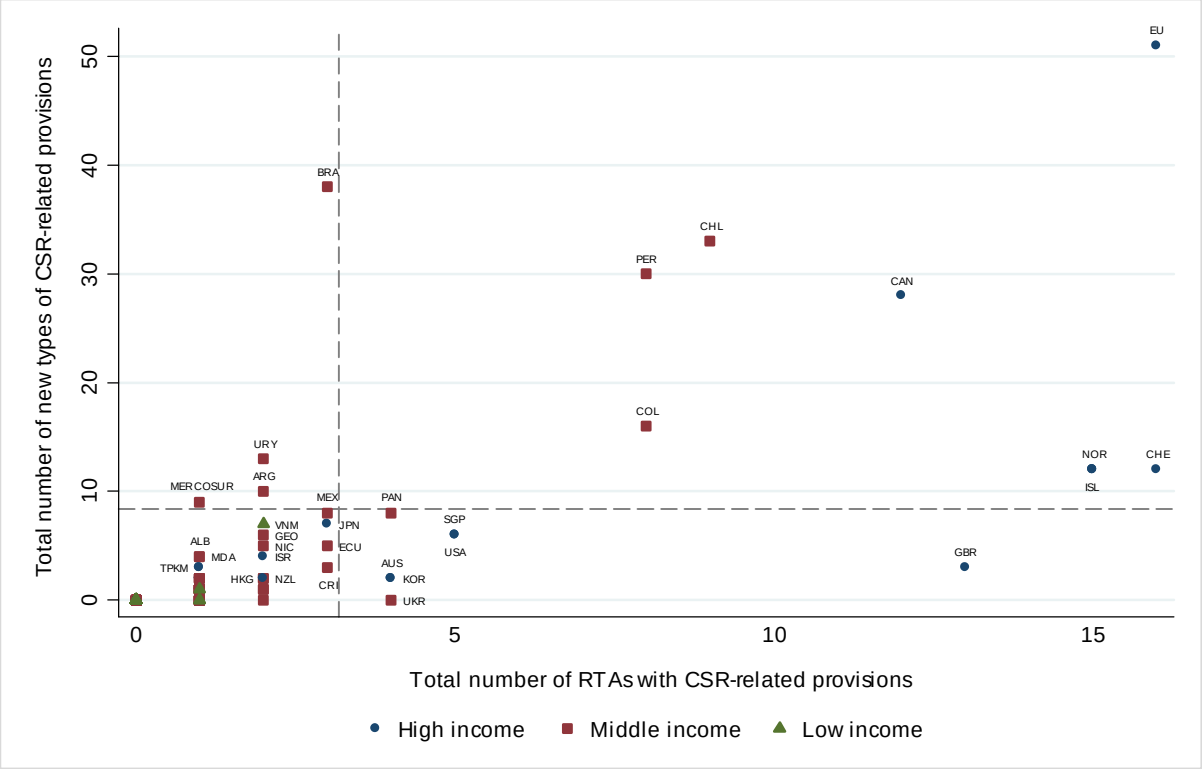
Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.

Figure A6: Evolution of new types of CSR-related provisions



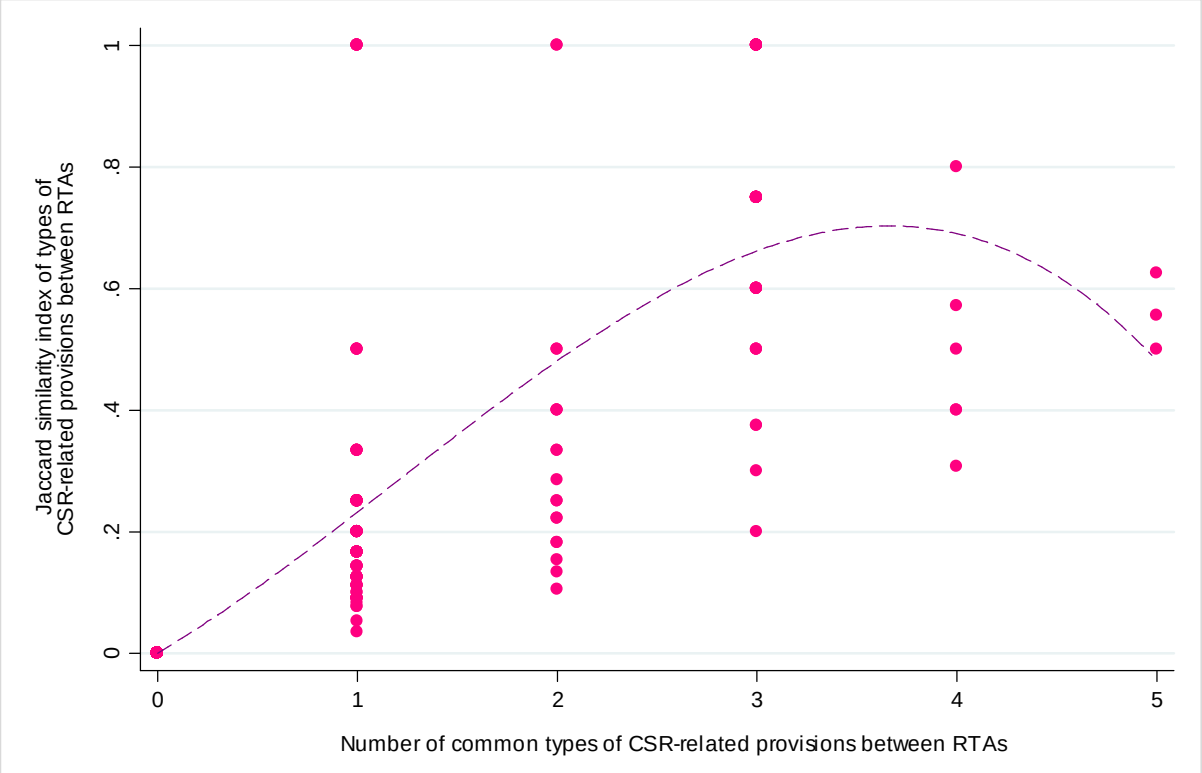
Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.
Note: The definition of new type of provisions is based on language differences.

Figure A7: Relationship between the number of new types of CSR-related provisions and the number of RTAs with CSR-related provisions



Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.
Note: The definition of new type of provisions is based on language differences.

Figure A8: Evolution of similarity index of types of CSR-related provisions



Source: Author's calculations based on the mapping of CSR-related provisions in RTAs.
Note: The closer the Jaccard index is to one (zero), the more (less) both RTAs include the same CSR-related provisions.