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ASSESSING IMPLEMENTATION OF ENVIRONMENTAL PROVISIONS IN REGIONAL TRADE AGREEMENTS

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EXECUTIVE SUMMARY

Previous work by the OECD has highlighted that countries increasingly use trade agreements to co-operate on environmental matters. This study builds on that work to assess progress in implementation of environmental provisions in regional trade agreements (RTAs). It takes a two track approach, through a review of relevant documentation supplemented by a survey of trade negotiators and other experts.

The results of the expert survey reinforce indications from previous OECD annual updates on RTAs and the environment that good progress has been made in implementing the environmental provisions in many RTAs. This finding is based on a limited number of responses and largely anecdotal, but complemented by documentation in published records of meetings of the Parties, action plans and ex post reviews. For those RTAs for which they have been published, these documents provide a high degree of confidence that the provisions are being implemented to the satisfaction of all the Parties, and that action is being taken to rectify shortcomings. However, such documentation is only available for a limited number of RTAs. Only 15 out of 100 RTAs examined in the OECD's annual updates have such documentation. For this reason, the implementation of environmental provisions for the majority of RTAs remains largely unknown.

Based on the survey responses and the valuable information examined in this study, the United States is identified as having set what may be regarded as a benchmark for monitoring and reporting on the implementation of environmental provisions in RTAs. Of the other major Parties, the European Union has made significant progress towards such a benchmark. Additionally, regional initiatives for reviewing implementation of environmental provisions that were originally undertaken by the Commission for Environmental Cooperation (CEC) for the North American Free Trade Agreement (NAFTA), and subsequently by the Organization of American States (OAS) for the Central American – Dominican Republic – United States trade agreement (CAFTA-DR), have provided a valuable addition to the studies undertaken by individual Parties.

It is worthy of note that trade agreements of the United States are required by Congress to include commitments on the implementation and enforcement of environmental legislation, subject to the same dispute settlement procedures and sanctions as the commercial provisions. While countries with a less stringent political mandate may find it harder to obtain the necessary resources to follow these examples, all countries that promote the inclusion of environmental provisions in RTAs should be encouraged to strengthen their processes of monitoring, reporting and review as far as they reasonably can. In this regard, further analysis and discussion is necessary on how the process of monitoring, reporting and review can be developed.

1. INTRODUCTION

In 2007 the OECD Joint Working Party on Trade and Environment (JWPTE) published an in-depth study on experience in the negotiation and implementation of environmental provisions in RTAs (OECD, 2007). The study described the “state of the art” for environmental provisions, side agreements and co-operation agreements linked to RTAs, examined countries’ main motivations for including such provisions, reviewed the reasons why some other countries have resisted them, and discussed the potential benefits. A series of annual updates and analytical reports followed, accompanied by several workshops for government officials and other experts (see for example, Gallagher and Serret, 2010, 2011; George, 2011; 2013; 2014a; 2014b, George and Serret, 2011; Gigli, 2009; OECD, 2012; Tébar Less and Gigli, 2008; and Tébar Less and Kim, 2008). Notably, a workshop was held in Ha Noi, Viet Nam in September 2014, jointly organised with the Vietnamese government (OECD, 2015).

Overall, this body of work has highlighted that countries increasingly use trade agreements to co-operate on environmental matters, for example by including environmental provisions or entire environment chapters in RTAs. Some countries also adopt environmental side agreements in addition to their trade pacts (George, 2014a). Between 2010 and 2012, more than half of all RTAs notified to the WTO included environmental provisions that go beyond just including environment-related language in the preamble and reinstating environmental provisions of Article XX of the General Agreement on Tariffs and Trade. Before 2010, only 29% of RTAs did so.

While adopting environmental provisions and co-operation agreements is certainly an important step towards promoting environmental protection on an international scale, the success of such measures depends on how governments go about implementing the provisions and co-operation agreements.

This study builds on the past work of the JWPTE to assess progress in implementation of environmental provisions, including gathering input via a survey of negotiators and other experts. A broad interpretation of implementation is used, including direct measurable changes relating to implementation (e.g. creation of committees or co-operation bodies, funding of co-operation activities) together with a ‘softer’ interpretation which aims to draw out where environmental policy changes have occurred in the aftermath of RTA entry into force, even if direct causality with environmental provisions cannot be demonstrated.

It is to be expected that the inclusion of environmental provisions in RTAs can make a significant contribution to the implementation of environment policies in participant countries, and to the dissemination of environmental technology and products. However, the study does not attempt to assess the extent to which implementation has led to a measurable improvement in environmental conditions or environmental quality, which in many cases may not be practicable because of the difficulty of attributing observed effects to a multiplicity of potential causes. Rather, it focuses on the extent to which governments have complied with the environmental commitments made in the trade agreements to which they are party. The findings are used to draw policy-relevant conclusions, with a view to informing ongoing and future design and implementation of environmental provisions in RTAs and side-agreements.

The paper takes a two track approach, through a literature review supplemented by an expert survey. The rest of the paper is organised as follows. Section 2 summarises the background to the work, and Section 3 reviews the different approaches to verifying implementation. Section 4 summarises the various types of environmental provisions in trade agreements, and Section 5 reviews published records of their implementation. Section 6 describes the expert survey carried out as part of the work, and Section 7 presents the survey results. Section 8 discusses the implications for design and implementation of environmental provisions in RTAs, and Section 9 discusses the overall conclusions from the work.

2. BACKGROUND

The inclusion of environmental provisions in international trade agreements is derived from recognition that economic development and environmental protection are interdependent components of sustainable development. The Rio Declaration adopted at the 1992 UN Conference on Environment and Development states in Principle 4 that “in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it” (United Nations, 1992). It is to be expected that the inclusion of environmental provisions in trade agreements, whether multilateral or regional, can make a significant contribution to the implementation of environment policies in participant countries, and to the dissemination of environmental technology and products.

While the Rio conference accepted that environmental considerations may in certain circumstances be used to justify restrictions on trade, it also noted that trade liberalisation can itself make a positive contribution to sustainable development. Principle 12 of the Declaration therefore required that “trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade” (United Nations, 1992). Agenda 21, the plan of action agreed at the conference, defined the twin goals of (a) promoting sustainable development through trade liberalisation and (b) making trade and environment mutually supportive (Chapter 2, paragraph 2.3).

When the North American Free Trade Agreement (NAFTA) was signed two years later extensive environmental provisions were included, and the Commission for Environmental Cooperation (CEC) was established to oversee them. The founding of the World Trade Organisation (WTO) later in the same year included the creation of its Committee on Trade and Environment, with the broad aim of implementing the Rio objectives.

Much of the subsequent work on trade and environment focused on action at the multilateral level, with the launch of the Doha Round in 2001, and the subsequent extension of the Rio objectives through the UN Sustainable Development Goals and the Paris Agreement on climate change. However, only limited progress was made at the multilateral level, and attention shifted to the bilateral and regional level. In consequence, the incorporation of environmental provisions in RTAs has assumed increasing importance in the global effort to make trade and environment mutually supportive. Indeed, a recent study by the WTO confirms this trend by tracking 270 RTAs notified by May 2016 and among them identifying that 263 RTAs include at least one environmental provision either in their main text, annex or side agreements, and 177 RTAs include progressive environmental provisions that go beyond preambular statements and general exception clauses (Monteiro, 2016).

3. MEANS OF VERIFYING IMPLEMENTATION

Documentation on implementation of environmental provisions in RTAs is relatively limited, as discussed more fully in Section 5 below.

Progress is typically monitored through:

- dialogue between the Parties;
- a mechanism for resolving disputes;
- public accountability mechanisms such as public availability of environmental information, public submissions processes and access to redress and remedy;
- ex post monitoring and review.

Most RTAs include a mechanism for ongoing dialogue between the Parties, through which they will normally inform each other of progress in implementation. This may be supported by the exchange of documentation and/or direct monitoring of each other's progress. In many cases a record of meetings is made publicly available on the Parties' websites.

Some RTAs include a dispute settlement mechanism, which comes into effect when dialogue fails to address a perceived shortcoming in implementation

All the Parties to a trade agreement that are also parties to the Rio Declaration are subject to its Principle 10, which requires that members of the public have appropriate access to information concerning the environment, the opportunity to participate in decision-making processes, and effective access to judicial and administrative proceedings, including redress and remedy. Provided that the Parties meet these commitments (such as through an appropriately designed public submissions process), members of the public can themselves make a significant contribution to ensuring that the environmental provisions of an RTA are implemented, irrespective of whether the commitments are specified in the RTA itself.

Some RTAs include provisions for periodic review of the implementation of environmental provisions, while in other cases such reviews may be carried out on an *ad hoc* basis.

4. TYPES OF ENVIRONMENTAL PROVISION AND THEIR IMPLEMENTATION

Prior to the Rio conference and the subsequent NAFTA agreement, the inclusion of environmental provisions in RTAs was generally limited to exceptions to the trade obligations in the agreement, based on, or fully incorporating, Article XX of the General Agreement on Tariffs and Trade (GATT). Similar exceptions were subsequently included in Article XIV of the General Agreement on Trade in Services (GATS). NAFTA went considerably beyond this, to include several detailed, legally binding environmental provisions, along with a parallel side agreement, the North American Agreement on Environmental Co-operation (NAAEC). NAFTA set a precedent for all RTAs subsequently negotiated by the United States, and provided a framework for similar provisions in RTAs negotiated by most other OECD countries. Several RTAs not involving OECD countries (south-south agreements) have also included such provisions.

The annual OECD updates on RTAs and the environment, together with the initial 2007 review, have analysed the environmental provisions all these different types of RTAs. Nine key types of provision have been identified from these analyses.

4.1. General provisions

Many RTAs include a reference to environment or sustainable development in the preamble, through which the Parties establish broad objectives for the entire agreement. Such provisions may be relevant to treaty interpretation and thereby help determine the scope of a dispute settlement action (Gallagher and Serret, 2011).

4.2. Exceptions

Provisions based on or fully incorporating the general exceptions of Articles XX(b) and XX(g) of GATT or Article XIV(b) of GATS contribute to the definition of the scope of the agreement (Gallagher and Serret, 2011).

4.3. Environmental law

These types of environmental provisions aim to maintain or improve environmental standards and create a level playing field for trade between the Parties, by ensuring that they cannot secure a trade advantage through low standards of environmental protection. Such provisions typically include:

- ensuring that domestic laws and policies provide for high levels of environmental protection;
- a commitment not to derogate from environmental laws in order to gain a trade advantage;
- efforts to improve levels of environmental protection;
- effective enforcement of environmental laws;
- effective access to remedies for violations of environmental laws.

Implementation of such provisions may be verified through one or more of the means discussed in Section 3.

4.4. Public participation

In some RTAs the objectives of Principle 10 of the Rio Declaration are incorporated into the RTA itself, by specifying how its requirements are to be applied to the agreement's environmental provisions. In particular, provisions for public participation, public submissions and public sessions can make a valuable contribution to meeting Principle 10's requirements for access to environmental information, participation in decision-making processes, and effective access to proceedings. Such provisions provide one of the four means identified in Section 3 for verifying implementation of an RTA's other environmental provisions. Their own implementation may be verified through the other three of those means.

4.5. Dispute settlement

Most RTAs include some form of mechanism based on consultation between the Parties, at least in the initial stage of resolving disputes. Some include an arbitration procedure involving an independent panel for disputes not settled by consultation. In some cases there is no clear indication of the expertise required of panel members, while in others the panel is specifically required to include members with environmental expertise.

As noted above, for some RTAs the inclusion of a defined mechanism for settling disputes may be regarded as another key factor in ensuring that the other environmental commitments set out in the legal texts of RTAs are implemented and enforced. As with public participation, implementation of the dispute settlement provisions themselves may be verified through the other three means identified in Section 3.

4.6. Partnership and co-operation

The aim of enhancing co-operation in environmental matters has been identified as one of the primary reasons for including environmental provisions in RTAs (OECD, 2007). Some RTAs set out broad arrangements for environmental co-operation with few specific details. Others establish a commitment in greater depth by establishing a specific mechanism for implementing co-operation activities. In some cases these activities are defined within the trade agreement itself, or in an associated co-operation agreement, and in others the implementation body is made responsible for defining them.

Implementation of these provisions maybe verified through any of the four means discussed above.

4.7. Specific environmental issues

Some of the environmental provisions in RTAs, particularly those for environmental co-operation, address specific issues such as energy conservation or the promotion of renewable energy.

Issues that are fairly common in RTAs, and of potential interest in terms of ex post analysis include: promotion of trade in environmental goods and services; renewable energy; energy conservation; climate change; biodiversity; control of invasive species; air quality; water quality; soil quality; marine pollution; water resources; fisheries resources; forest resources; illegal timber; desertification.

Implementation of these provisions maybe verified through any of the four means discussed above.

4.8. Implementation mechanism

The creation of a specific body to oversee implementation of the environmental provisions of a trade agreement is a key factor in ensuring that the commitments made in the legal texts are implemented in practice. Some RTAs that establish an implementation body give little indication of its responsibilities. In others these responsibilities are defined in detail.

Adequate implementation of the implementation provisions can itself be verified through the three other three means discussed above.

4.9. Multilateral Environmental Agreements

One type of substantive environmental provisions in RTAs relate to ‘legal precedence of MEAs’. This type of provision first appeared in NAFTA in 1994. These provisions generally state that obligations of MEAs shall prevail, in case of any ‘inconsistency’ between the provisions and specific trade obligations set out in certain multilateral and bilateral environmental agreements. Most RTAs which include this provision provide a specific list of MEAs concerned.

Implementation of these provisions maybe verified through one or more of the four means discussed above.

5. AVAILABLE DOCUMENTATION OF IMPLEMENTING ENVIRONMENTAL PROVISIONS

5.1. Implementation reports

The United States (US), Canada and the European Commission have all published information on meetings of the Parties to their RTAs, summarising progress on implementation of environmental commitments.

Documents published by the US Department of State¹ include both meeting communiqués and action plans. In general these are published annually, and cover all recent US trade agreements with developing countries (Bahrain, CAFTA-DR, Chile, Colombia, Jordan, Korea, Morocco, Oman, Panama, Peru and Singapore). The US Trade Representative has also published minutes of progress meetings for the US-Peru RTA². The two agencies have issued a joint report summarising the environmental achievements of several US RTAs (USTR/USDS, 2015). For CAFTA-DR, the US Environmental Protection Agency has published annual reports on implementation of capacity-building programs (e.g. USEPA, 2016).

Under the North American Agreement on Environmental Cooperation (NAAEC), the Commission for Environmental Cooperation (CEC) prepares annual reports that include individual country reports, prepared by the Parties on the environmental actions and enforcement activities undertaken by Canada, the United States, and Mexico. Alberta, Manitoba, and Quebec are signatories to the Canadian Intergovernmental Agreement Regarding the NAAEC, and also provide input to Canada's report.

Canada has published implementation reports for its RTA with Chile³ since the inception of the Canada-Chile Agreement for Environmental Cooperation in 1997. These reports provide extensive information from both Parties on how they are meeting their environmental obligations, co-operative activities that have been undertaken, budgets, work programmes and lessons learned. Canada and Chile have also conducted two reviews of the agreement, in 2004 and 2010. The first of these reflects on the early cooperative work program and the submissions on enforcement matters received. The second reflects on the phases of cooperation under the agreement and lessons learned from cooperative activities which, among others, recommend the use of systematic monitoring systems to ensure greater accountability. A registry of public submissions on the Canada-Chile RTA is also published, along with details of individual submissions⁴.

The European Commission has published joint statements on meetings of the Parties on the implementation of environmental provisions in two of its recent RTAs⁵. These cover the RTAs with Korea (annually from 2012 to 2015) and Colombia/Peru (2014).⁶

¹ <http://www.state.gov/e/oes/eqt/trade/index.htm>

² <https://ustr.gov/peru-tpa/environment>

³ <http://www.ec.gc.ca/can-chil/default.asp?lang=En&n=52ECA0EF-1>

⁴ <http://www.ec.gc.ca/can-chil/default.asp?lang=En&n=D3DE2C48-1>

⁵ <http://ec.europa.eu/trade/policy/policy-making/sustainable-development/>

⁶ It should be noted that the EU also uses environmental dialogues with key partners and development cooperation to develop environmental cooperation activities which would not be part of the RTA implementation framework.

Other summary information on implementation has been provided by JWPTE delegates and can be found in the OECD annual updates on RTAs and the Environment.

In general, these joint statements and reports provide brief updates on the progress made and future plans in the implementation of environmental provisions in their respective agreements. For instance, implementation reports available for the agreements with the US outline the actions taken to increase levels of environmental protection, ensure effective enforcement of environmental laws and enhance public participation in environmental governance. Similarly, joint statements with the European Union (EU) highlight mutual progress in implementing environment-related provisions in their agreements and also identify potential areas for further cooperation.

5.2. Ex post monitoring and review

More comprehensive information on implementation is available in several ex post review studies that have been undertaken for RTAs involving either the European Union or the US. The US was the first to undertake such studies, in association with its partner countries, having pioneered the inclusion of environmental provisions in RTAs. The inclusion of sustainable development chapters in EU RTAs is a more recent development, with correspondingly less experience of ex post studies. Other countries have taken different approaches, for example with a focus on co-operation, for which ex post monitoring and review have yet to be applied.

European Union

Two evaluations of the EU-Chile RTA and one of the CARIFORUM-EU RTA (between the EU, the Caribbean States and the Dominican Republic) have been undertaken for the European Commission. The first of the EU-Chile evaluations (Ergon Associates, 2011) involved a retrospective ex post monitoring exercise of the trade agreement, alongside an evaluation of the involvement of workers' and employers' organisations in a range of trade Sustainability Impact Assessments. Although the main aim of the ex post study was to examine employment and social issues, some of its findings are equally relevant to environmental aspects. In the fruit and wine sectors in particular, Chilean business representatives reported that European buyers were placing increasing pressure on Chilean exporters to demonstrate compliance with social and environmental standards. While these ethical trade initiatives were not seen to be directly linked to the EU-Chile RTA or its associated technical assistance, they may be indirectly linked to the extent that the RTA may have facilitated greater trade between Chilean and EU companies, encouraging export industries to be more proactive on social and environmental standards in their supply chains.

The second evaluation of the EU-Chile agreement (ITAQA, 2012) examined the environmental impacts of the RTA on the basis of an ex post analysis of its economic impacts. The study derived its findings on implementation from interviews and input from workshops organised with industry stakeholders in Chile in 2011. Based on these interviews Chilean RTAs, including the EU-Chile RTA, appear to have been important for the adoption of stricter standards in the automotive sector and pulp production industry; better enforcement of domestic environmental regulation; the development of environmental certification; and cooperation between the EU and Chile on helping Chilean firms adapt to higher standards. The interviews suggested, for example, that these RTAs were a significant factor in the improvement of wastewater treatment systems and the reduction of air pollution, and have encouraged exporters to develop environmental certification to comply with EU standards and hence avoid risk to reputation and potential liability damages. It was also reported that the co-operation component of the EU-Chile RTA made adaptation to higher standards easier.

However, the report also stressed that the impact of other factors make it difficult to identify the specific contribution of the RTA towards these developments. The report acknowledges the difficulty of

assessing the environmental consequences of the trade agreement, given the numerous agreements that have been signed and the structural changes that have taken place in the Chilean economy since the RTA came into force. This is reflected in the report's findings, which cites numerous instances of continuing environmental deterioration in sectors where Chilean exports have risen, but finds little or no evidence that the impact could be linked directly to the RTA. Likewise, several improvements in environmental standards and management practices were identified that could be linked to trade, but the impact of the EU-Chile RTA was too diluted with other factors to single out its role. Overall, the report concludes that the impact of the EU-Chile RTA on the use of natural resources and the degradation of the environment seems to be marginal, while by imposing higher environmental standards, trade with the EU (and also with the US, Canada and Japan) has made a positive contribution to reducing the pollution intensity of production in some sectors.

The CARIFORUM-EU study (Singh et. al., 2014) was undertaken for the five-year review of the RTA that was specified in the Joint Declaration on signing the agreement. While the study aimed to assess the impact of the agreement as well as its level of implementation, methodological problems prevented any meaningful evaluation of environmental impact. Major shortcomings were identified in implementation of the trade agreement as a whole, due largely to difficulties in establishing effective governance structures within CARIFORUM. In particular, the Consultative Committee for civil society dialogue had yet to meet, there had been no substantive discussions on setting up the envisaged regional development fund to channel support, and the Parties had yet to agree on a mechanism to monitor implementation. In consequence there was no evidence regarding implementation of provisions related to compliance with or strengthening of environmental law. Evidence was found of EU support for capacity-building efforts, both at the regional and national level, but the specific areas identified did not include any of the agreement's provisions for environmental co-operation and capacity building. The key issues for the five-year review identified by the study included the beginning of substantive discussions on the regional development fund to channel resources for implementation, and continued discussions on a joint monitoring mechanism.

United States

In 2004 the Commission for Environmental Co-operation (CEC) undertook a ten-year review of the implementation and effectiveness of the North American Agreement on Environmental Co-operation (NAAEC) associated with the North American Free Trade Agreement (NAFTA) between Canada, Mexico and the United States (CEC, 2004). The key messages of the study were that the CEC had played an important role through which the three parties have benefited significantly, but with a need for greater engagement of the environment ministers of the three countries, and more effective outreach to key stakeholders. The main findings of the review were evidence of convergence of environmental standards, and that the trade agreement had not produced a "race to the bottom" as had been forecast by some commentators. The review refers to several CEC studies that have identified areas where increased trade had led to environmental effects, such as a close link between NAFTA freight truck transport and increased air pollution at border crossings. The review noted that such impacts relate to the bigger issue of the environmental implications of economic growth, more broadly, for which trade institutions have limited leverage. It was not possible to compare the impact assessment findings with any formal predictions, as no *ex ante* assessment had been done. The report also pointed to a few organisational challenges concerning the CEC and recommended a continued focus to build capacity in the Mexican government to implement environmental policies.

The US Government Accountability Office has undertaken two reviews of implementation of RTAs between the US and developing countries (GAO, 2009, 2014). The aim of the two studies was to shed light on the progress these partners have achieved in implementing the agreements, in improving their capacity to strengthen and enforce environmental laws, the resources that have been committed to assistance, and monitoring of cooperation activities. Both studies relied on information and analysis from legal and

secondary literature sources, interviews with US government and private sector officials and experts, information collected through visits to partner countries, as well as budget data.

The first of the GAO studies examined implementation of the RTAs with Jordan, Singapore, Chile and Morocco. It found several examples of planned actions being implemented. Jordan had established a Ministry of Environment in 2003, Chile had created the new position of Minister of Environment in 2007, Singapore had amended its National Endangered Species Act in 2006, and Morocco had created a new Framework Law on Environmental Protection, a law on environmental impact assessments and a law on air pollution in 2003. Both Jordan and Chile had implemented many of the planned activities, although in Chile the impact was limited by lack of funds. According to the GAO, very few of the activities planned in Singapore and Morocco had been implemented, because of limited assistance and funds.

The second GAO study included site visits to El Salvador, Guatemala, Peru, and Chile, where meetings were held with US and host government officials and representatives of the private and public sectors, to obtain first hand perspectives and current information on partner efforts. The study found that many countries had enacted environmental laws and established institutions to improve environmental protection, in line with their RTA commitments. For instance, Chile adopted a new environmental law in 2010 accompanied by the creation of new institutions such as the Environment Ministry and enforcement agencies, and modernised its framework for environmental impact assessments. El Salvador launched its national environmental strategy in 2013. Guatemala created an Environmental Auditing Unit in 2011 and passed a climate change legislation in 2013. Peru established its Ministry of Environment in 2008 and enacted a new Forestry and Wildlife Law in 2011. Nonetheless, it identified that each partner country had been facing challenges in capacity and enforcement of environmental protection. The report also identified decreasing funding levels for cooperation activities and developed recommendations on how the United States Trade Representative of the U.S. State Department (USTR) can improve its monitoring process.

Between 2009 and 2014, the Organization of American States issued four comprehensive reviews of the implementation of the Environmental Cooperation Agenda of the Central American – Dominican Republic – United States (CAFTA-DR) trade agreement (OAS, 2009; 2011; 2012; 2014). The assessments were based on interviews with government, civil society, and private sector stakeholders, among others; and a review of reports and documentation related to ongoing activities under the Environmental Cooperation Agenda. The reports also deployed qualitative evaluation criteria for development assistance, i.e. relevance, efficiency, effectiveness and sustainability of the ongoing and completed activities, against which progress was measured. Within effectiveness, the reviews assessed progress towards a variety of issues, including institutional strengthening, policy adoption and enforcement, capacity development, biodiversity and conservation. The reports also took into account evaluation principles developed and applied by the OECD.

On the whole, the four reports suggest fair to good progress in implementing the agenda, yet highlight that it is still premature to try to measure with precision the effects of many activities. The reports identified improvements in inter-institutional and inter-sectoral cooperation as well as improved public-private partnerships to address environmental issues. They also noted several joint activities on training and capacity building, projects to improve the implementation and enforcement of MEAs, and enactment of other environmental regulation. In particular, the most recent report (OAS, 2014) highlights that their environment cooperation program has led to improvements of 150 laws and regulations, and 28 new laws were established in areas such as wastewater, air pollution, and solid waste management. With respect to challenges in implementation, the studies underscored lack of political will to pass new legislation and insufficient enforcement, among others.

6. SURVEY OF EXPERTS

As part of this study an expert survey was carried out to gather first-hand views on the implementation and use of environmental provisions in RTAs. The questionnaire was structured to collect trade negotiators' and experts' views on how RTAs may have contributed to the enforcement of environmental law, strengthening of environmental legislation, enhancement of environmental co-operation and institution building, and implementation of specific environmental commitments. It also questioned to what extent RTAs familiar to these experts incorporate monitoring and assessment measures as well as dispute settlement mechanisms. The questions asked are presented in Annex 1.

The questionnaire was distributed to 308 experts, comprising 255 government officials, 20 university researchers and 33 other experts (from research institutes, international agencies and NGOs). Only 22 responses were received, mainly from JWPTE delegates. Efforts by JWPTE delegates to solicit responses from their counterparts in non-OECD countries achieved little success, such that only five responses were received from these countries. Of the 22 responses, 19 were from government officials, two from intergovernmental agencies, and one from a university researcher. A summary of these responses are also available in Annex 1.

The excellent response from JWPTE delegates may be associated with the fact that these officials are themselves responsible for the environmental provisions in RTAs. The poor response from other experts may be due to a lack of incentive to respond, or may indicate a lack of detailed knowledge about the environmental provisions in RTAs. In some cases even these officials may have fairly limited knowledge, as indicated by some of the responses received. Multiple responses were received for two countries, three in one case and two in the other. In both cases there were some marked differences in the factual information provided. Several of the respondents made use of the "don't know" option in answering some of the factual questions, but others did not.

The sample sizes for academic researchers (one) and other experts (two) were too small to provide reliable information, and these responses have been discarded from the analysis. The remaining 19 responses (from government officials) were analysed in two sets, representing developing countries (8 responses) and developed countries (11 responses, from Canada; EC; Japan; New Zealand; Norway; Sweden; Switzerland and US). Countries and economies assigned to the developing country set (Costa Rica; Chile; Dominican Republic; Guatemala; Honduras; Hong Kong, China; Korea and Mexico) are those that are members of one or more of the WTO's developing country negotiating groups⁷.

⁷

https://www.wto.org/english/tratop_e/dda_e/negotiating_groups_e.pdf

7. SURVEY RESULTS

The results presented in this section should be interpreted with care, as they are based on a limited number of responses (11 from developed countries and 8 from developing countries).

1. *Number of RTAs with environmental provisions*

The answers to this question were used in the numerical analysis of answers to later questions.

2. *How big a factor RTAs are in achieving observed improvement in enforcement of environmental legislation*

Respondents from developing countries had a more positive view of the impact of RTAs than those from developed countries. All saw at least a minor impact in both their own countries and their partners. Of those from developing countries, 75% felt that the impact was significant or major, for both their own countries and their partners. Of those from developed countries, only 30% felt that the impact was significant, again for both countries, and none identified any major impacts.

3. *Proportion of RTAs that have contributed to a noticeable improvement in enforcement of environmental legislation*

This question revealed a similar difference in perceptions between respondents from developed and developing countries. On average, respondents from developing countries judged that over half of RTAs had contributed to noticeably improved enforcement in both their own countries and their partners (many of which are also developing countries). Respondents from developed countries judged that less than a quarter of RTAs had made such a contribution in their partners, and 4% in their own countries.

4. *Reasons for success in improving enforcement*

Follow-up action was the most commonly identified reason for success (13 of the 19 respondents), followed by petitions / complaints procedures (10). Guidance documents and access to remedies were both identified by 5 respondents. Other reasons identified included awareness raising and technical support/financial aid. CAFTA-DR and NAFTA were cited as particularly successful examples in improving the enforcement of environmental legislation. In both cases the process for public submissions or petitions was regarded as a major factor. One member of CAFTA-DR noted that international co-operation in its various forms from developed countries contribute in strengthening capacities to enforce environmental legislation effectively.

5. *How big a factor RTAs are in achieving observed strengthening of environmental legislation*

None of the developed country respondents indicated any more than a minor effect in their own countries. Two identified a minor impact in their partner countries, and five a significant one. Developing country respondents took a slightly more positive view, with one identifying a major effect.

6. *Proportion of RTAs that have contributed to a noticeable strengthening of environmental laws and standards*

The results were similar to those reported for enforcement of legislation (question 3), again with a difference in perceptions between developed and developing countries. On average, respondents from developing countries judged that over half of RTAs had contributed to a noticeable strengthening of

environmental legislation in both their own countries and their partners (many of which are also developing countries). Respondents from developed countries judged that only a fifth of RTAs had made such a contribution in their partners, and 4% in their own countries.

7. *Reasons for success in strengthening legislation*

Capacity building was the most commonly identified reason for success (15 of the 19 respondents), followed by institutional development (11) and specific commitments (10). Guidance documents were identified by 5 respondents. Other reasons identified included links to dispute settlement and relationships with counterparts. The EU-Chile, US-Chile, US-Oman, US-Peru and CAFTA-DR RTAs were cited as particularly successful examples of strengthening environmental legislation. All contributed to the introduction of new laws and standards, and the EU agreement also helped to achieve proper implementation.

8. *Examples of legal changes*

The US-Peru RTA led to policies being brought into line with CITES provisions. In Costa Rica, CAFTA-DR led to more stringent regulations for shark finning and turtle protection. Peru strengthened its Forestry and Wildlife law and promulgated implementing regulations to come into compliance with its FTA commitments. El Salvador strengthened their CITES implementation laws, and Oman is in the process of improving its Air Pollution laws. A number of CAFTA-DR countries either have or are in the process of improving their waste water laws and environmental impact assessment laws or policies.

9. *Proportion of RTAs to which respondents are a party that include specific arrangements for environmental co-operation*

The responses indicate that nearly two thirds of RTAs include such arrangements.

10. *Those areas that have been or would be important for environmental cooperation, and their past success in achieving objectives*

Climate change was rated the highest for importance, followed by Environmentally Friendly Technology, Multilateral Environmental Agreements, Environmental Goods and Services, and biodiversity. All of these were also rated highly for success. The least successful areas (water resources, soil quality, marine pollution and forest resources) are also considered to be among the least important. One of the respondents added that environmental issues that have a natural fit with trade issues are particularly important to address.

11. *Forms of co-operation that should be most commonly used and their success in achieving their objectives*

Exchange of experience was rated the highest for importance, followed by technical assistance and capacity building. All of these were also rated highly for success. Other important forms of co-operation identified were joint research programmes and collaborative programmes on policy development.

12. *Factors that have been important for success in co-operation activities*

All of the factors identified in the question (provision of funding, clearly specified mechanisms and responsibilities, national contact points, commission or joint forum, working groups, regular meetings of the parties, specific work programmes, involvement of stakeholders) were considered to be important, along with institutional co-ordination. Particularly successful examples cited included a New

Zealand-China collaborative research project on safe disposal of dairy effluent, a CAFTA-DR working programme and evaluation system, numerous US RTAs and the NAFTA Joint Public Advisory Committee.

13. Importance of environment-related joint mechanisms such as joint councils or joint administrative bodies in effective implementation of environmental provisions

Two of the respondents felt that such mechanisms are unimportant, and one that they are of only minor importance. Nine considered that they are of significant importance, and five of major importance.

NAFTA, CAFTA-DR and the P4 RTA between New Zealand, Chile, Singapore and Brunei were cited as particularly successful examples.

14. Proportion of RTAs that include a formal dispute settlement mechanism for environmental provisions

The responses indicate that about a third of RTAs include such a mechanism.

15. Number of environmental disputes that have been notified and resolved by DSMs

Only two of the 19 respondents reported any notifications. One of these reported that they had all been resolved.

16. Most important factors contributing to successful implementation and avoidance of disputes

Eleven of the 19 respondents identified the inclusion of specific commitments in the RTA as a particularly important factor. Six identified treaty status of the RTA, and five identified legally binding commitments. Only four identified the inclusion of a formal dispute settlement mechanism, and only three the availability of sanctions. Other important factors identified by respondents were mutual willingness to successfully implement environmental provisions, positive and early results from cooperation programmes, the availability of funding, regular contact, free and frank sharing of information, the building of a stable and trust-based relationship between the parties, regular exchange of information, credible commitments of both parties, a clearly set incentives structure, stakeholder consultation and monitoring, and regular work on implementation involving a broad-range of institutions and stakeholders. One of the respondents argued that successful implementation relies less on push factors ('sticks') and more on pull factors ('carrots'). Another argued that mechanisms of control such as a petition process can be a better way to facilitate dialogue and follow-up action than a formal DSM. The sanctions can then be soft, such as the visibility of the specific situation of concern.

17. Mechanisms to monitor the implementation and enforcement of environmental provisions in RTAs

Three of the 19 respondents reported no such mechanisms. Three of the developing country respondents reported that such mechanisms were mainly for domestic implementation, and two that they were only domestic. Ten respondents (six developed, four developing) reported that they applied to both.

18. Forms of monitoring used

Twelve of the 19 respondents reported the use of joint institutions, and nine national contact points. Five contracted a third party to undertake monitoring, five undertook in house research, and three undertook visits to trading partners. Other forms of monitoring identified were annual meetings and reporting, and inputs and oversight by civil society and stakeholders.

19. *Frequency of monitoring*

Three of the respondents reported that no monitoring takes place, and three that it is done yearly. Seven reported that it is done continuously, and two that it is done on an ad hoc basis. Another reported that it is done every two or three years, and one approximately every two years, depending on circumstances.

20. *Public availability of reviews*

Where such reviews exist they were reported to be publicly available by most respondents, but only on request by three, and not in all cases by another three. One respondent reported that they are not made publicly available.

21. *Practicability of monitoring*

The types of provision for which monitoring was identified as being practicable were: those that require Parties to carry out a specific action; creation of administrative and governance arrangements; engagement in public participation; those related with MEAs and trade; those for receiving public communications; any provisions that are specific; numbers of public submissions delivered; results of cooperation initiatives; cooperation activities; upholding levels of protection; specific commitments such as ratification of a MEA, effective implementation of MEAs; promotion of trade in environmentally friendly products; non-derogation from domestic environmental laws. The types of provision for which monitoring was considered not to be practicable were: those that require Parties to recognise, endeavour, strive etc., with no specific action; those which have a domestic scope like water pollution regulation; those that require best endeavours.

22. *Primary reasons for sufficient/insufficient implementation of environmental commitments*

Of the 19 respondents only three identified a dispute settlement mechanism as a primary reason for sufficient implementation. Thirteen identified successful environmental co-operation and institution building, and eleven identified appropriate enforcement of environmental legislation. Having an effective monitoring and assessment mechanism was identified by seven, and strengthening of environmental legislation by six. One of the respondents also identified having provisions that align with institutional interests, positive and early results from cooperation programmes, availability of funding, regular contact between partner countries, and the existence of reform programmes that are already in progress.

Of the suggested reasons for insufficient implementation, partners' failure to enforce environmental laws appropriately was identified by 11 of the respondents, and lack of institutional cooperation by nine. Partners' failure to adopt necessary laws was identified by three, the absence of a dispute settlement mechanism by two, and insufficiently strong legal language by two. Additional reasons suggested by respondents were lack of political will, misalignment of environmental provisions with priorities, insufficient funding, asymmetric enthusiasm (one partner interested but the other not), irregular contact between contact points, and constraints on human and financial resources.

23. *Other comments*

One of the respondents noted that although obligations have been met in all cases, funding and staff resources have diminished over recent years and implementation efforts have had to be reprioritised to focus on a subset of partner countries. Another respondent suggested that other indicators of success in the environmental field would include, for instance, strengthened multilateral environmental governance, increased trade in environmentally friendly goods, or adoption of environmental technologies. All of these were rated highly in the answers to question 10.

8. IMPLICATIONS FOR DESIGN AND IMPLEMENTATION OF ENVIRONMENTAL PROVISIONS IN RTAS

Despite the small sample size some tentative conclusions can be drawn from the survey, as well as from the review of implementation records. These relate to both the design of environmental provisions with a view to their successful implementation, and the implementation process itself.

8.1. Design of environmental provisions

Of the eight types of provision discussed in Section 4, the first two (general provisions and exceptions) are normally regarded as non-implementable, and serve other purposes within the framework of an RTA. Each of the other six types of provision is considered below.

Environmental law

Provisions requiring effective enforcement of environmental legislation may already have been implemented by one or more of the Parties before the RTA is signed. If all the Parties are satisfied that this is the case, the only action required is a means of providing continued assurance that it remains the case. As noted in many of the survey responses, public accountability mechanisms such as submissions/complaints and access to remedies are a powerful means of achieving effective enforcement of environmental legislation. Since mechanisms of this nature are a requirement of Principle 10 of the Rio Declaration, it is highly desirable that any RTA whose environmental provisions include effective enforcement should also include a requirement to adopt such mechanisms, supported by well secured public access to information.

The petition process of the CAFTA-DR agreement was cited as a particularly successful example addressing lack of compliance with environmental regulations. The process facilitates dialogue between civil society petitioners and government in a manner that promotes positive change.

If any of the Parties is not satisfied that legislation is already being effectively enforced, follow-up action will be required (as noted in many of the responses). This will need to be incorporated into the implementation mechanism provisions (see below).

Some of the respondents also suggested that co-operation in the form of technical support/financial assistance may be an important success factor in achieving effective enforcement of legislation. The need for this will depend on Parties' judgement of the needs of enforcement bodies.

Provisions requiring strengthening of environmental legislation or improved levels of protection are likely to need follow-up in order to ensure implementation. Appropriate follow-up action should therefore be incorporated into the implementation mechanism provisions. As noted in the survey responses, provisions for strengthening legislation may also need to be defined in specific detail if they are to achieve their objective. As noted in other responses, there may also be a need to support them with initiatives for capacity building and institutional strengthening.

The New Zealand-China Environment Cooperation Agreement and the environment chapter of the US-Chile Free Trade Agreement were cited as particularly good examples of programmes addressing clearly specified issues. The New Zealand-China programme involved a collaborative project to undertake research on safe disposal of dairy effluent, demonstrating that New Zealand technology could be used safely in China. The US-Chile programme included technical and financial support to Chile to complete

specific design tasks in the development of a Pollutant Release and Transfer Register system through a multi-stakeholder process.

Public participation

As discussed above, it is highly desirable that mechanisms for public involvement in verification be included in any RTA whose provisions include effective enforcement of environmental legislation. They can also be a powerful means of verification for any RTA containing environmental provisions.

Dispute settlement

Opinion was divided over the value of including a formal dispute settlement mechanism for environmental provisions. While such a mechanism can contribute to verifying implementation, only a few respondents felt that it was a major success factor. Others felt that strong mechanisms for public involvement in verification were more important.

Partnership and co-operation

Co-operation in environmental matters is one of the most common types of environmental provision in RTAs. The survey responses identified several factors considered to be important for successful implementation: clearly specified mechanisms and responsibilities; national contact points; regular meetings of the parties; institutional co-ordination; a joint forum or commission; specific work programmes; formation of working groups; involvement of stakeholders; provision of funding. Sometimes co-operation focuses on better enforcement, by bringing enforcement officials together to co-operate on means of improvement.

About two thirds of the RTAs reported on included provisions that were sufficiently specific to have a good chance of achieving their goals. Other RTAs relied largely on the good will of the Parties. Simply having a sustainable development chapter or equivalent may be useful to bring all related stakeholders to the table and enable a discussion on the issues.

Specific environmental issues

The survey responses showed a close correlation between the importance of a particular environmental issue and its successful implementation. This underlines the need for specificity in defining the issues to be addressed in a co-operation programme.

Implementation mechanism

It is clear from the survey responses that a clearly specified implementation mechanism is a major factor in ensuring successful implementation of the other environmental provisions in an RTA. This can take various forms, which may be no more than the designation of contact points and regular meetings of parties, but should in all cases specify how implementation will be monitored on a regular basis and, ideally, subject to periodic review. The CAFTA-DR working programme and evaluation system was cited as an outstanding example of such a mechanism. The Environment Committees established in New Zealand's bilateral RTAs and the P4 RTA between New Zealand, Chile, Singapore and Brunei were cited as particularly successful examples of implementation mechanism, providing a forum for introducing staff in agencies responsible for implementation to each other, sharing information and ideas, deciding on priority actions, reviewing progress and results, and resolving any issues that arise. Contact points alone are unlikely to have the resources to carry out all these functions.

8.2. Implementation of environmental provisions

The clearest message to emerge from the review of implementation records is that, for the majority of RTAs, their success or otherwise in the implementation of environmental provisions is unknown. Of 100 RTAs with environmental provisions that have been examined in the OECD's annual updates, implementation records have been found for only 15. Of these, 12 involve the US and three the EU. It should however be noted that an implementation report has also been published for the Canada-Chile FTA, which came into force before the first of the updates.

With the annual publication of meetings of the Parties and action plans for all recent RTAs between the US and developing countries, the United States and its partners have established what may be regarded as a benchmark for monitoring and reporting on the implementation of environmental provisions in RTAs. While the published documents do not necessarily cover every provision in these agreements, they provide confidence that all the provisions are being implemented to the satisfaction of all the Parties. When combined with an effective mechanism for receiving and acting on public submissions, reporting of this nature provides a sound basis for routine verification that such provisions are being implemented as intended.

Of the other major Parties to RTAs with environmental provisions, only the European Union has made significant progress towards such a benchmark, by setting up appropriate structures and publishing joint statements for two of its recent RTAs

Similarly, the only RTAs for which the implementation of environmental provisions has been examined more fully in ex post reviews involve either the US or the EU.

The joint reviews of NAFTA undertaken by the CEC after the agreement's entry into force in 1994, culminating in the ten-year review in 2004, has been followed by a similarly comprehensive series of reviews of CAFTA-DR undertaken by the OAS. No other RTA has been examined as comprehensively as either of these, but the two studies by the US GAO are good examples of ex post review of five other US RTAs. These cover the environmental provisions of the RTAs with Chile, Peru, Jordan, Morocco and Singapore (along with El Salvador and Guatemala as Parties to CAFTA-DR). All of these reviews of US RTAs have reported shortcomings as well as achievements, with recommendations for follow-up action.

Of the EU's RTAs, only the EU-Chile agreement has been the subject of ex post review covering environmental issues. The first of the two studies focused on employment and social issues, and examined environmental ones only in so far as they were relevant to these. The second study considered environmental issues in more depth, alongside economic and social ones. However, its main aim was to identify outcomes and the extent to which they could be attributed to the RTA, rather than to examine implementation of the actual provisions of the RTA. For many trade agreements the attribution of observed effects may not be practicable, because of the multiplicity of potential causes (George, 2011). This difficulty is compounded for the EU-Chile association agreement, in which cooperation is a parallel pillar, distinct from the trade pillar.

The absence of ex post reviews of RTAs other than those involving the US, and to a more limited extent the EU and Canada, remains a significant gap in ensuring satisfactory implementation of the environmental provisions in these agreements.

9. CONCLUSIONS

As illustrated in section 8.1, the opinions gathered in the survey reinforce the information presented in previously published OECD annual updates and other JWPTE publications on RTAs and the environment, in indicating that good progress has been made in implementing the environmental provisions in many RTAs. The survey results also add weight to many of the observations made in these documents regarding the factors which contribute to successful implementation and the hurdles to be overcome. These include:

- Public accountability mechanisms such as submissions/complaints and access to remedies provide a powerful means of achieving effective enforcement of environmental legislation;
- While a formal dispute settlement mechanism can contribute to verifying implementation, the inclusion of strong mechanisms for public involvement in verifying implementation may be complementary and serve a similar purpose;
- Clearly specified institutional mechanisms, such as identifying how each of the Parties will monitor and report on implementation on a regular basis, are a major factor in ensuring successful implementation of environmental provisions in an RTA;
- Appropriate follow-up action to rectify shortcomings identified by monitoring or other means should be incorporated into the provisions defining the implementation mechanism.

It should however be noted that the information on implementation gathered from the survey is incomplete in its coverage of RTAs with environmental provisions, and is in itself largely anecdotal.

Much firmer evidence of successful implementation, and of any shortcomings, and of action being taken to rectify them, is to be found in the published documents giving records of meetings of the Parties, action plans and ex post reviews. For those RTAs for which they have been published, these documents provide a high degree of confidence that the provisions are being implemented to the satisfaction of all the Parties, and that action is being taken to rectify shortcomings. However, such information is only available for a limited number of RTAs. Therefore, as a next step, it would be worthwhile to discuss and investigate how the process of monitoring, reporting and review could be developed, while maximizing the usage of available information.

The US has set what may be regarded as a benchmark for monitoring and reporting on the implementation of environmental provisions in RTAs, and, along with the OAS, for ex post reviews of these RTAs. Of the other major Parties to RTAs with environmental provisions, only the European Union has made significant progress towards such a benchmark.

In this context it is worthy of note that US trade agreements are required by Congress to include commitments on the implementation and enforcement of environmental legislation, subject to the same dispute settlement procedures and sanctions as the commercial provisions. Other countries with a less stringent political mandate may find it harder to obtain the financial and other resources that may be necessary for undertaking a fully comprehensive process of monitoring, reporting and review. Nonetheless, all countries that promote the inclusion of environmental provisions in RTAs should be encouraged to strengthen their processes of monitoring, reporting and review as far as they reasonably can.

Also worthy of note are the regional initiatives for reviewing implementation of environmental provisions that were originally undertaken by the CEC for NAFTA, and subsequently by the OAS for CAFTA-DR. These have provided a valuable addition to the studies undertaken by individual Parties, and may be regarded as benchmark for other international bodies involved in the development and implementation of trade agreements.

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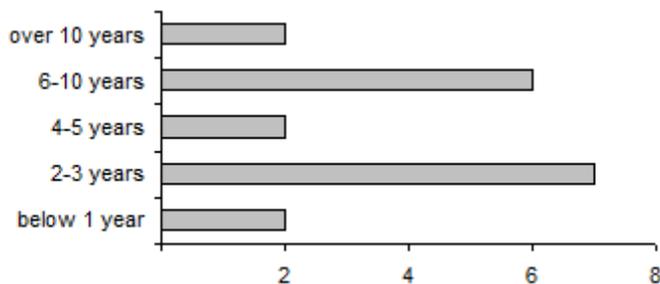
ANNEX 1. SURVEY ON IMPLEMENTATION OF ENVIRONMENTAL PROVISIONS IN REGIONAL TRADE AGREEMENTS: QUESTIONS AND SUMMARY OF RESPONSES

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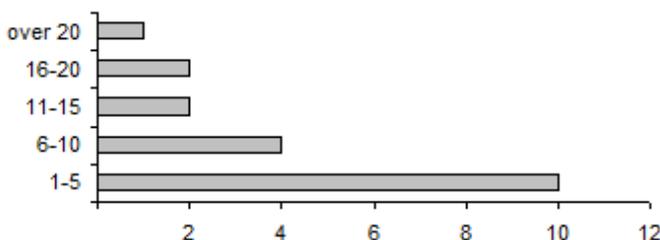
- developed country respondents
- developing country respondents
- developed + developing

About you	Name: Position: Country:
Type of organisation	government/inter-governmental/NGO/university or research institute/other

Approximately how many years of experience do you have in following the implementation of environmental provisions in RTAs?

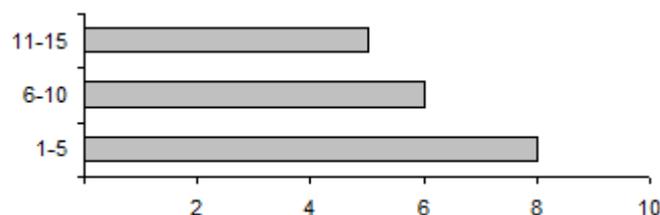


Approximately, how many RTAs do you know well or have been analysing?



General information on RTAs

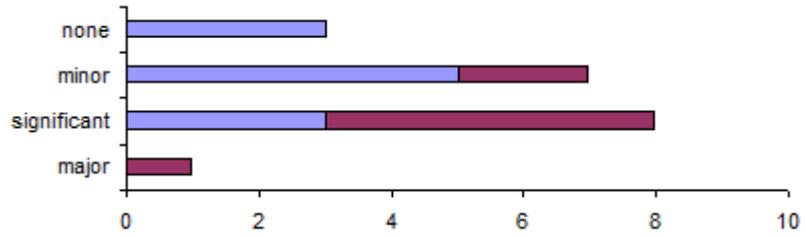
1. Approximately how many RTAs with environmental provisions have come into force between your own country and partner countries in your experience and knowledge?



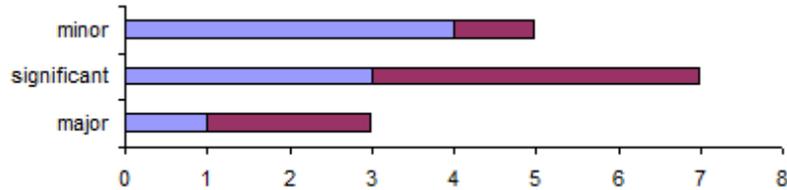
Enforcement of environmental legislation

2. In your judgement, how big a factor are RTAs in achieving any observed improvement in enforcement of environmental legislation?

In own country:

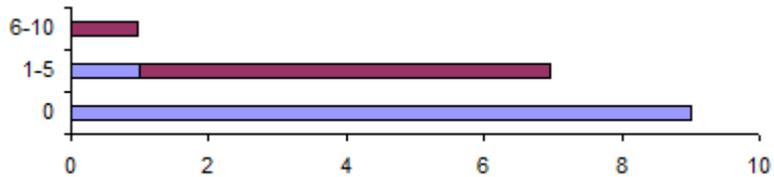


In partner countries:

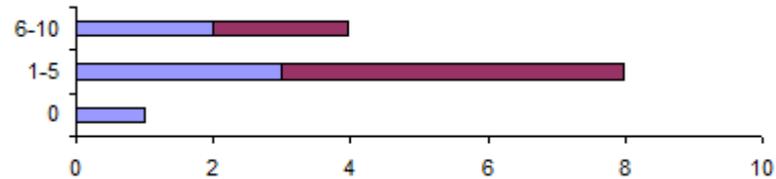


3. Approximately how many RTAs have likely contributed to a noticeable improvement in enforcement of environmental legislation in your experience and knowledge?

Approximate number of RTAs exhibiting improvement in enforcement of environmental legislation in own country:

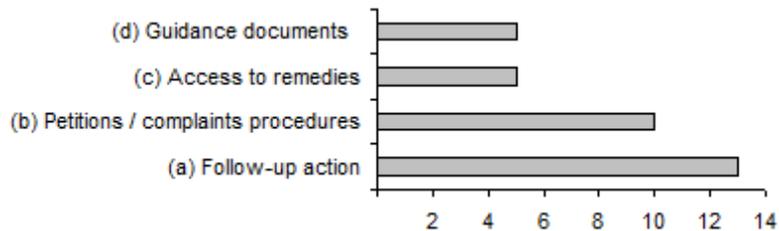


Approximate number of RTAs exhibiting improvement in enforcement of environmental legislation in partner countries:



4. Please identify any particular reasons for success in improving enforcement of environmental legislation through environmental provisions of RTAs

- (a) Introduction of continuing follow-up action from the relevant government
- (b) Introduction of petitions and complaints procedures
- (c) Introduction of access to remedies
- (d) Introduction of guidance documents



(e) Other

- Awareness raising
- RTA-connected technical support and financial aid
- Dissemination of environmental awareness to all sectors in urban and rural areas

Where possible, expand your answers with key examples and factors for any RTAs that have been particularly successful or unsuccessful in improving the enforcement of environmental legislation

Successful

- US-Peru - links to CITES are enforceable through the dispute settlement provisions
- The petition process of the CAFTA-DR agreement between Central America and the US has been very helpful to address lack of compliance with environmental regulations.

- Interagency coordination has been an important factor
- Under the framework of the Chile-US Environment Cooperation Agreement; several activities were developed to enhance capacity of government officers to enforce environmental regulations (examples provided).
- The North American Agreement on Environmental Cooperation opened the door for a more transparent implementation of environmental legislation in Mexico, through the implementation of a public submission scheme.
- In certain NAFTA and CAFTA-DR countries, the environmental submissions processes have facilitated public engagement in environmental enforcement in new and constructive ways. The Agreements or related Environmental Cooperation Agreements (ECAs) have provided platforms for deeper engagement between the United States and its FTA partners on environmental enforcement issues. Our enforcement experts work directly with their counterparts in FTA countries to train inspectors, prosecutors, and judges and otherwise strengthen environmental institutions. The United States and our FTA partners also have created or supported regional or global environmental enforcement networks like the Central America Wildlife Enforcement Network.

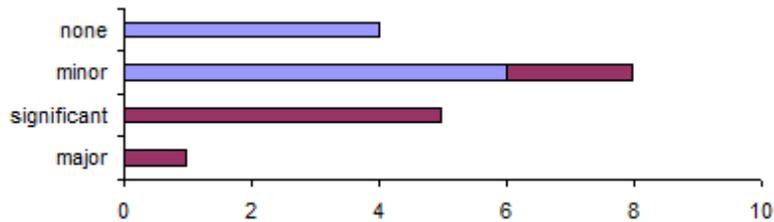
Unsuccessful

- Most of the provisions on environment in Asia-Pacific RTAs are weak and hence ineffective in bringing changes in environmental legislation.
- We are not aware of any direct evidence that demonstrates a causal link between improved enforcement of environmental laws and environmental provisions in RTAs.
- Any evidence is anecdotal, to date none of the EU's RTAs with environmental provisions have had an ex post evaluation.

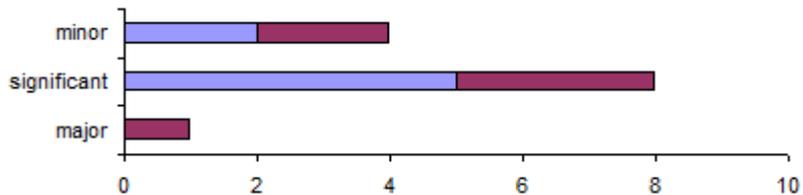
Strengthening environmental legislation

5. In your judgement, how big a factor are RTAs in achieving any observed strengthening of environmental legislation?

In own country:

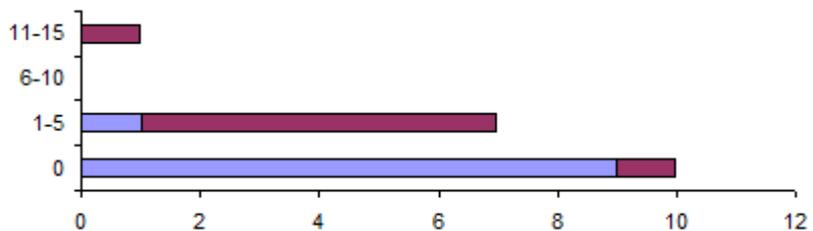


In partner countries:

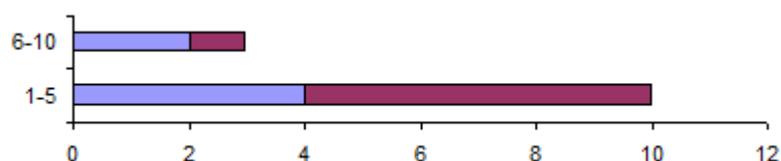


6. Approximately how many RTAs have likely contributed to a noticeable strengthening of environmental laws and standards in your experience and knowledge?

Approximate number of RTAs exhibiting strengthening of environmental laws and standards in own country:

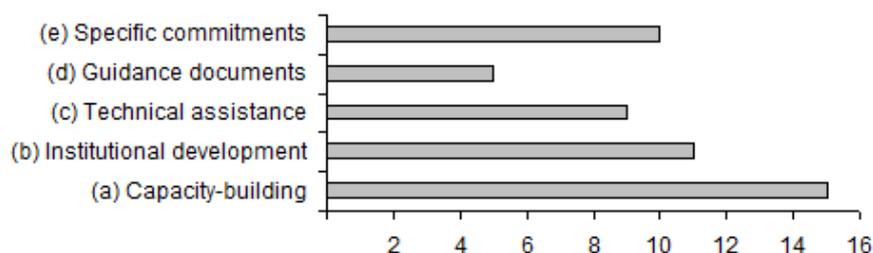


Approximate number of RTAs exhibiting strengthening of environmental laws and standards in partner countries:



7. Please identify any particular reasons for success in strengthening of environmental legislation through environmental provisions of RTAs.

- (a) Capacity-building in environmental authorities
- (b) Institutional development
- (c) Technical assistance
- (d) Introduction of guidance documents
- (e) Specific commitments in trade agreements



- (f) Other
 - Links to dispute settlement
 - Contacts/relationships with foreign officials and counterpart

Where possible, expand your answer with key examples and factors for any RTAs that have been particularly successful or unsuccessful in strengthening environmental legislation.

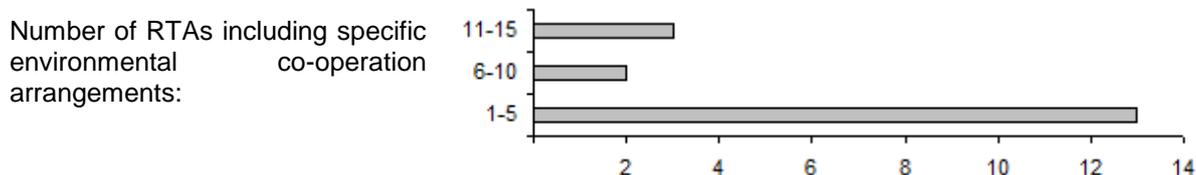
- See above for US-Peru PTA
- Cooperation activities may be assumed to contribute to strengthening environmental legislation in a partner country, but it can be difficult to draw a direct link.
- Chile-EU Association Agreement: a project co-financed by the European Union and the Government of Chile contributed to the incorporation of SEA into the Law N°20.417 and also contributed to its proper implementation.
- U.S.-Chile Free Trade Agreement: Pollutant Release and Transfer Register (PRTR) Design and Capacity Building Project.
- NAFTA: The Commission for Environmental Cooperation has been successful in promoting enhanced cooperation and in the administration of the public submission system.
- Experts from the United States Environmental Protection Agency worked directly with their counterparts in CAFTA-DR countries to draft a model waste water law and get it adopted. Likewise, attorneys from the U.S. Department of Justice have provided advice to officials from Oman's Ministry of Environment and Climate Affairs on improving Oman's air pollution control law. U.S. experts also have worked closely with officials in a number of our FTA partner countries to strengthen their laws implementing the Convention on International Trade of Endangered Species. U.S. experts provided support to Peru in updating its Forestry and Wildlife law.

8. Please give examples of legal changes related to environmental regulations implemented in either your country or RTA partners.

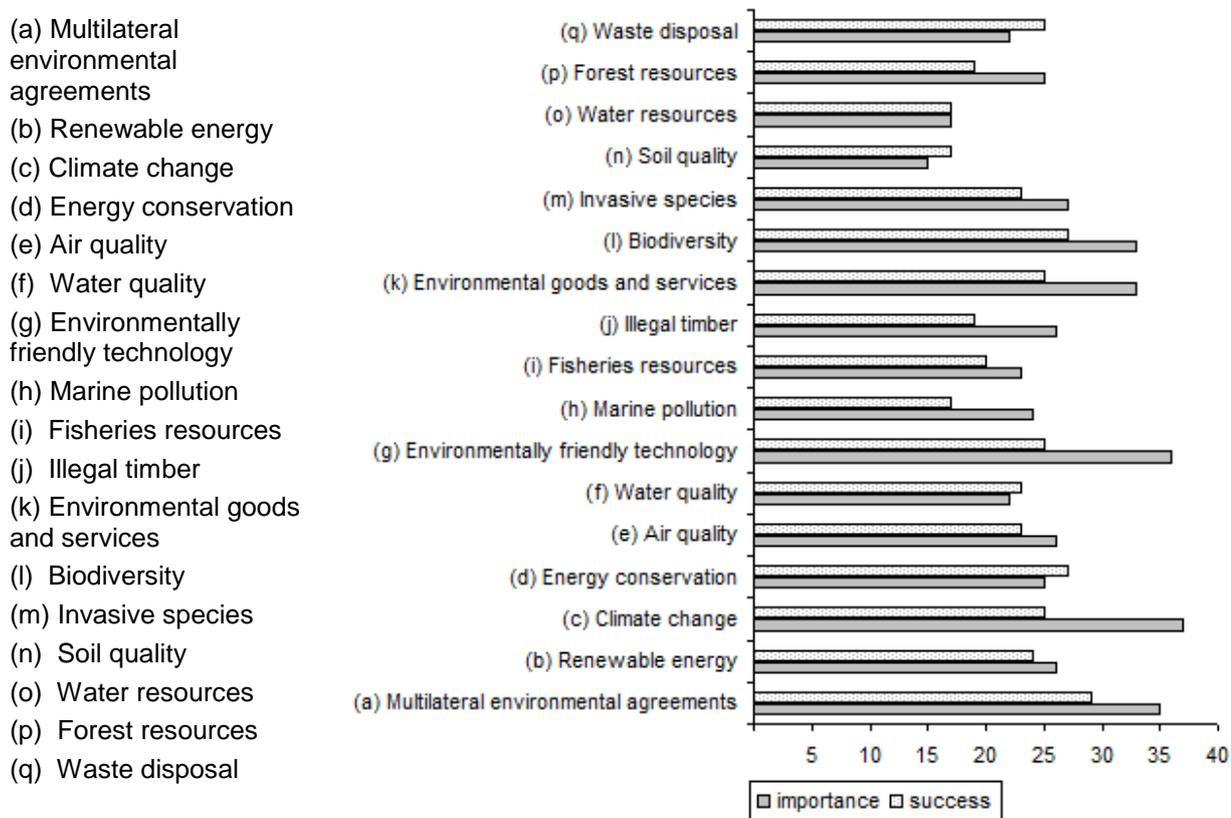
- Following the entry into force of the Peru PTA, Peru brought its policies into line with CITES provisions
- More stringent regulations for shark finning and for turtle protection.
- An important outcome that is missing in this question is de fact that the RTA can also support enhancement of environmental performance of the private sector.
- National policies relating to numerous environmental issues.
- Any evidence is anecdotal; to date none of the EU's RTAs with environmental provisions have had an ex post evaluation.
- Peru strengthened its Forestry and Wildlife law and promulgated implementing regulations to come into compliance with its FTA commitments. Peru and El Salvador strengthened their CITES implementation laws to achieve Category One status under the CITES Secretariat Law Project. Oman is in the process of improving its Air Pollution laws. A number of CAFTA-DR countries either have or are in the process of improving their waste water laws and environmental impact assessment laws or policies.

Environmental co-operation and institution building

9. Approximately how many RTAs in your country have included specific arrangements for environmental co-operation in your experience and knowledge?

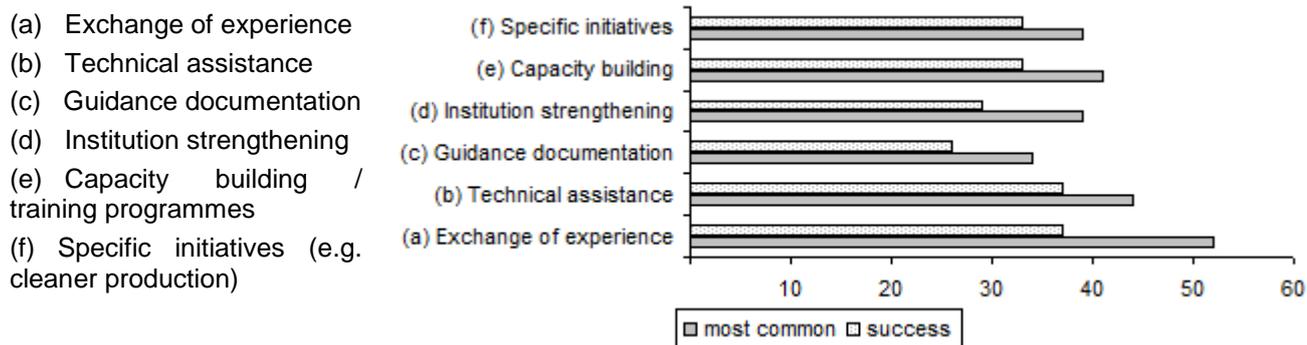


10. In your view, which are the more important areas for the implementation of environmental cooperation under RTAs. Where applicable, please rate how successful they have been in achieving their objectives.



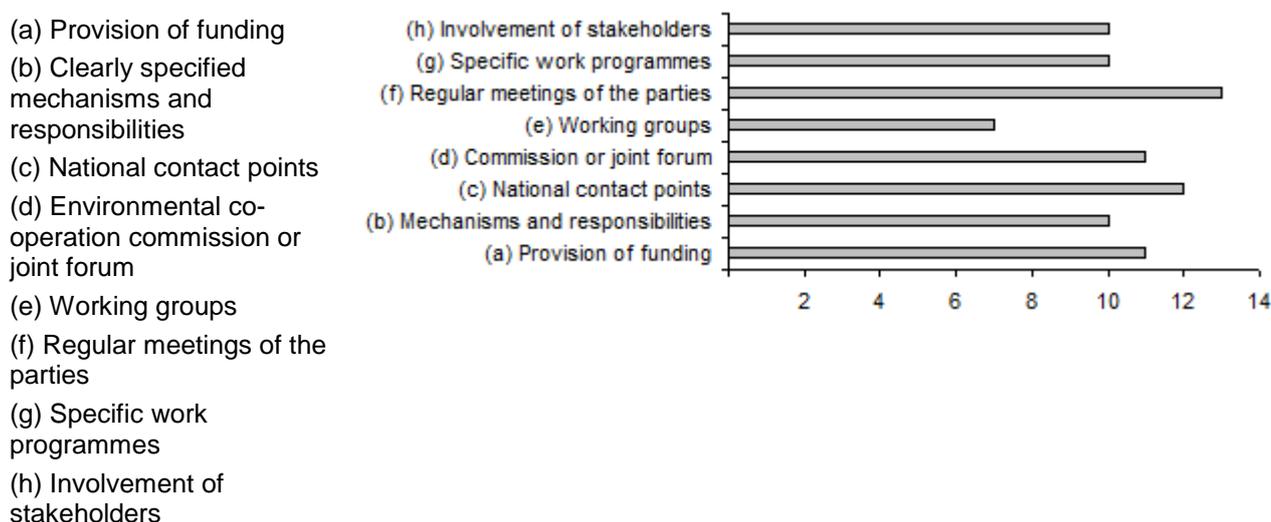
- (r) Others
- Combatting wildlife trafficking, environmental governance generally
 - Environmental issues with a natural fit with trade issues are most important to address in this context.
 - Not possible to make a generic response as it depends on the partner country

11. Please identify which forms of co-operation should be most commonly used in the RTAs. Where applicable, please rate how successful they have been in achieving their objectives.



- (g) Others
- Joint research programmes.
 - Collaborative programmes aimed at policy development
 - Scaling pilot projects; awareness raising; engaging the public in environmental decision making and enforcement

12. Please identify factors that have been important for success in co-operation activities.

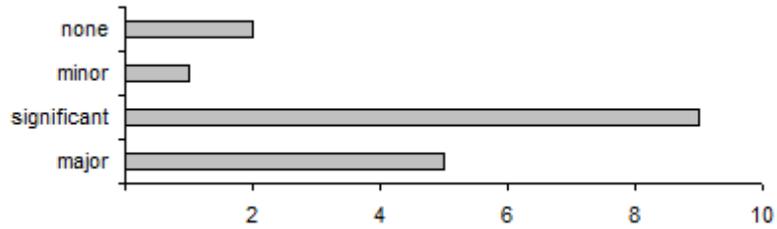


- (i) Others
- Institutional coordination

Where possible, expand your answer with key examples and factors for any RTAs that have been particularly successful or unsuccessful in co-operation activities. Please give any examples of institutional changes related to co-operation on environmental governance implemented in either your country or RTA partners.

- New Zealand-China Environment Cooperation Agreement - collaborative project to undertake research on safe disposal of dairy effluent.
- CAFTA-DR working programme and evaluation system is outstanding
- FTAs Chile-Canada, Chile-US, Chile-Colombia, P4 Environment Cooperation Agreement
- The Joint Public Advisory Committee established under the North American Agreement on Environmental Cooperation is one important source of stakeholder input for co-operation activities.
- The United States has very successful trade-related environmental cooperation programs with many of its FTA partners. Factors contributing to success including designating active, creative points of contact in each country; developing and updating work programs; convening periodic high-level meetings of the parties; engaging stakeholders in the work; and facilitating connections between staff of technical agencies, among other things. Provision of funding is important but we also have active cooperation program with other developed countries where we did not receive dedicated resources.

13. How important do you consider environment-related joint mechanisms such as joint councils and/or joint administrative bodies are to greater effectiveness of implementation on environmental provisions of RTAs?



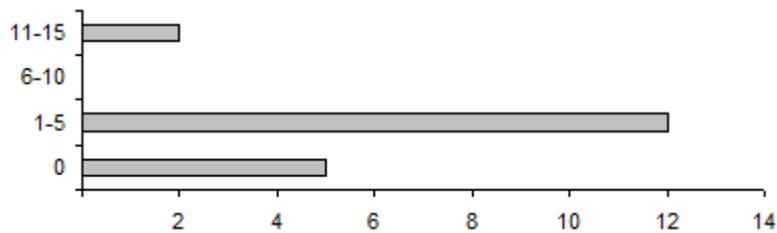
Where possible, expand your answer with key examples for any RTAs that have been particularly successful or unsuccessful in implementation by containing provisions to establish or mandate joint institutions to oversee environmental commitments and/or implement environmental cooperation activities.

- Coordination mechanisms such as Environment Committees are essential to successful implementation. Contact points alone cannot carry out all the functions. For New Zealand, the P4 RTA and bilateral FTAs such as with China have established Environment Committees that have delivered positive results.
- In my personal experience if there are good high level contact points a Council is not essential, though to have a body that can discuss the results at the political level is very important to give follow up and implement certain projects.
- The DR-CAFTA Secretary of Environmental Affairs plays a key role in the functions prescribed in Articles 17.7 and 17.8 of the Agreement
- In Chile's experience these mechanisms are key to oversee environmental commitments and implement environmental cooperation activities.
- NAFTA: The Commission for Environmental Cooperation is one successful example of a joint-administrative body in charge of overseeing the activities under the Agreement

Dispute settlement

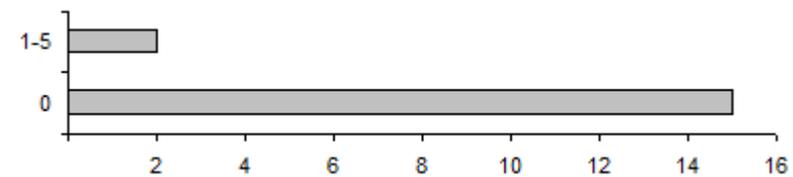
14. In your experience and knowledge, approximately how many RTAs include a formal dispute settlement mechanism (DSM) for environmental provisions, and how many have led to the establishment of prescribed institutions?

Approximate number of RTAs including formal DSM for environment:

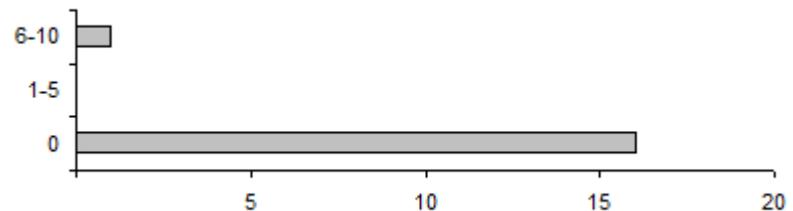


15. In your experience and knowledge, approximately how many environmental disputes have been notified and resolved by DSMs?

Approximate numbers of notifications:

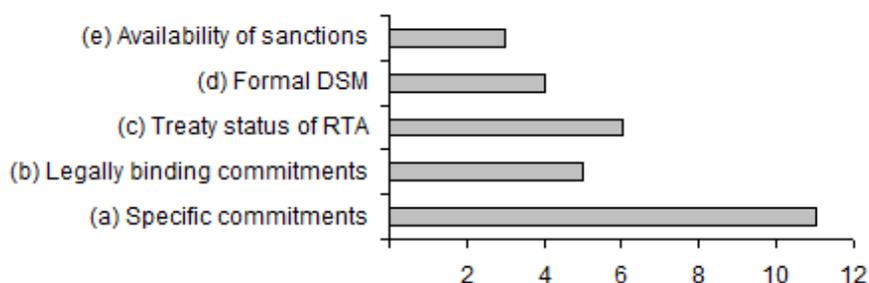


Approximate numbers resolved:



16. Please identify the most important factors contributing to successful implementation of the RTA provisions and avoidance of disputes

- (a) Specific commitments
- (b) Legally binding commitments
- (c) Treaty status of RTA
- (d) Formal dispute settlement mechanism
- (e) Availability of sanctions



(f) Other

- Mutual willingness to successfully implement environmental provisions; positive (and early) results from cooperation programmes; availability of funding; regular contact; and free and frank sharing of information
- Building of a stable and trust-based relationship between the parties with regular exchange of information, credible commitments of both parties, clearly set incentives structure as well as stakeholders' consultation and monitoring
- Cooperation and dialogue
- Regular work on implementation - involvement of a broad-range of institutions and stakeholders

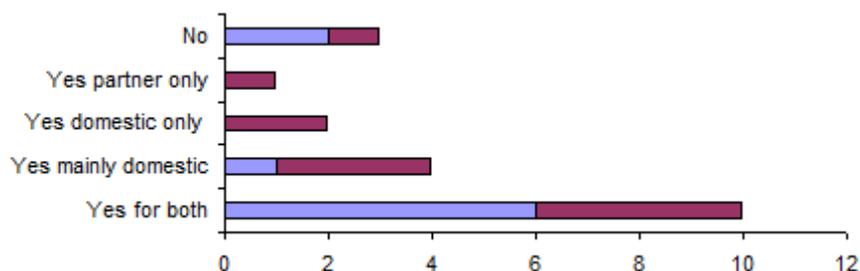
Where possible, expand your answer with key examples and factors for any RTAs that have been particularly successful in implementation of the RTA provisions and avoidance of disputes.

- In New Zealand's experience, successful implementation of environmental provisions in RTAs relies less on push factors ('sticks') and more on pull factors ('carrots'). Binding commitments underpinned by dispute settlement are useful as a backstop, but do not motivate partner countries to be proactive in addressing environmental or institutional challenges. Cooperative action based on mutually agreed priorities and outcomes, joint work programmes, sufficient funding, senior level support, regular monitoring and review is the main motivating factor and has worked well for New Zealand since 2005.
- Dispute settlement mechanism in an RTA for non-application of environmental law is quite a complex mechanism. RTAs are mainly trade agreements, and to use them for sanctioning non-compliance of environmental law is not practical in my experience. Creating mechanisms of control such as the petition process of CAFTA-DR can be a better way to facilitate dialogue and actions in areas that require improvement. The "sanctions" can be soft, such as the visibility that a specific situation might have when it is addressed in this kind of mechanism.
- Chile has not been involved in any dispute for which DSM could be needed.
- The existence of dispute settlement provisions that allow for sanctions underlines the importance of the environmental provisions and helps generate political will to comply.

Monitoring and assessment

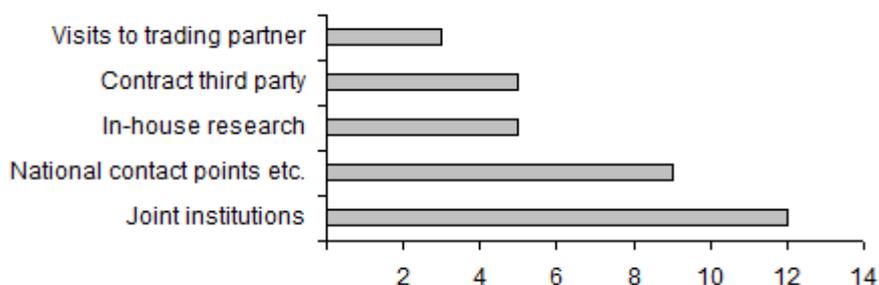
17. Are there mechanisms to monitor the implementation and enforcement of environmental provisions in RTAs, covering implementation in your country and in the trading partner's?

- Yes, for domestic implementation and implementation in trading partner
- Yes, for domestic implementation and sometimes for implementation in trading partner
- Yes, but only for domestic implementation
- Yes, but only for implementation in trading partner
- No



18. Which forms of monitoring are used?

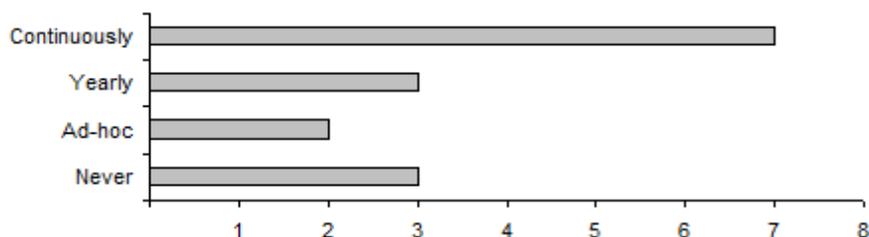
- Use information of joint institutions established by RTA
- Rely on information from other ministry/government, e.g. through national contact point
- In-house research by government agencies
- Contract third party do the monitoring
- Send people to jurisdiction of trading partner to monitor implementation; site visits



Other

- Oversight by stakeholders
- Annual meetings and reporting
- Civil society mechanisms may make inputs

19. How often does monitoring take place?

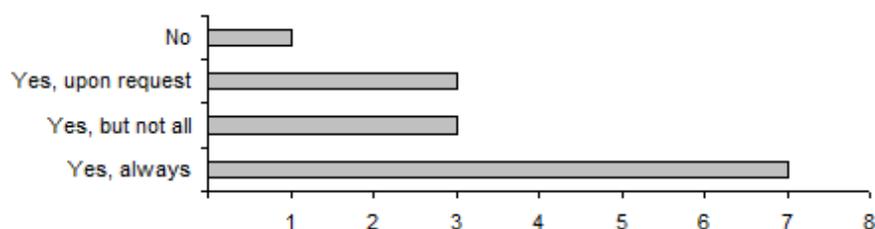


Other

- Approximately every two years, but this can vary depending on prevailing circumstances in partner countries.
- every second or third year

20. If reviews of implementation exist, are they publically available?

- Yes, always
- Yes, but not all
- Yes, upon request
- No



21. When considering the implementation of environmental provisions of RTAs, which types of provision can be monitored in a practical way and which types cannot? Please provide examples.

Practical:

- Provisions that require Parties to carry out a specific action such as cooperation (the Parties shall cooperate ..) , establish administrative and governance arrangements and engage in public participation. These can be easily monitored.
- Those related with MEAs and trade
- Under the DR- CAFTA , the Ministry of Environmental Affairs works as a regional body responsible for receiving communications from the public for any alleged breach of effective environmental legislation of each country Party
- Articles 17.7 and 17.8 of DR-CAFTA
- Provisions in environmental chapters that are specific; generally they can be monitored under institutional arrangement meetings
- The total number of public submissions delivered among the Parties.
- The replication or utilization of the results of cooperation initiatives or projects
- Cooperation activities
- Upholding levels of protection
- "Specific commitments (e.g. ratification of a MEA, or effective implementation of MEAs with specialised scope),
- MEAs with well-structured reporting and monitoring mechanisms,
- Promotion of trade in "green" products,
- Non-derogation from domestic environmental laws"

Not practical:

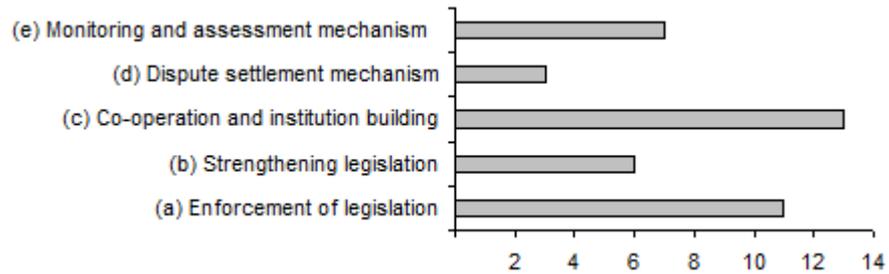
- Provisions that require Parties to recognise, endeavour, strive etc. are not practical to monitor because no specific action is implied and hence there is no way to identify whether something has changed or not
- Those which have a domestic scope like water pollution regulation
- Best endeavours to raise the standards

Implementation of environmental commitments

22. For cases in which you perceive that RTA partners have sufficiently / insufficiently implemented environmental commitments, what do you believe have been the primary reasons for this?

Primary reasons for sufficient implementation:

- (a) Appropriate enforcement of environmental legislation
- (b) Strengthening of environmental legislation
- (c) Successful environmental co-operation and institution building
- (d) Existence of the dispute settlement mechanism
- (e) Effective monitoring and assessment mechanism

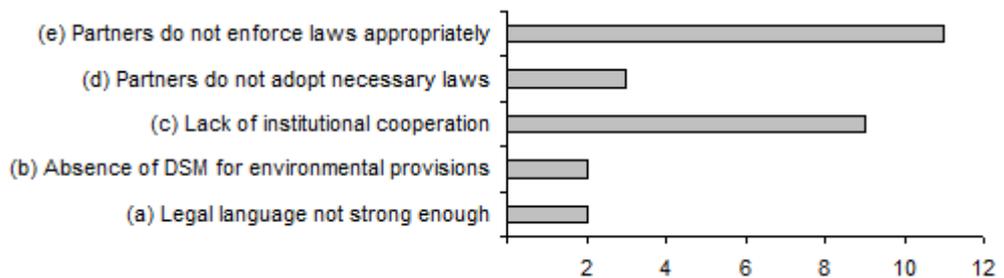


(f) Other

- Provisions align with institutional interests (i.e. willingness to implement the provisions); positive (and early) results from cooperation programmes; availability of funding; regular contact between partner countries; reform programmes already in progress
- Domestic factors

Primary reasons for insufficient implementation:

- (a) Legal language in RTA not strong enough
- (b) Absence of dispute settlement mechanism for environmental provisions
- (c) Lack of institutional cooperation
- (d) RTA partners do not adopt necessary laws
- (e) RTA partners do not enforce environmental laws appropriately



(f) Other

- Lack of political will
- Misalignment of environmental provisions with priorities, insufficient funding, asymmetric enthusiasm (one partner interested but the other is not), irregular contact between contact points
- Human resources and financial constraints
- Resource constraints

Where possible, expand your answers with key examples where environmental commitments were sufficiently or insufficiently implemented

- For New Zealand, environmental commitments have been sufficiently implemented in all RTAs/FTAs in relation to provisions on institutional arrangements and cooperation
- It is important to note that the environmental issue should be framed in a mutual manner with trade, as a

supplier of raw materials and other supplies

Other comments

- For New Zealand, the obligations in most RTAs/FTAs are in relation to commitments such as those on non-derogation and non-discrimination, institutional arrangements, cooperation, and consultation.
- In practice, New Zealand does not monitor the actions of partner countries in relation to the commitments but relies on reports of breaches by those affected. No such breaches have been reported during the past ten years. For this reason, the consultation provisions have also never been invoked. Therefore, the focus of implementation actions is on institutional arrangements and cooperation.
- For New Zealand RTAs the obligations in relation to institutional arrangements (contact points, environment committee etc.) have been met in all cases. However, funding and staff resources have diminished over the past five years and implementation efforts reprioritised to focus on a subset of partner countries. In practice this means that New Zealand has initiated cooperation activities only with priority partners. We have received requests or proposals from other partner countries for cooperation activities (to which we respond), but are not able to undertake all such activities. There is a small number of partner countries from whom we have not received any requests for cooperation and to whom we have not made any requests.
- International cooperation in its various forms from developed countries contributes in strengthening capacities to enforce environmental legislation effectively.
- A challenge for the country is the inclusion of the environmental variable in other trade agreements under negotiation, as a contribution to sustainable development.
- The questions in this questionnaire suggest that the implementation of environmental provisions in RTAs should be assessed in terms of environmental legislation and its enforcement and cooperation to this end. While these are valid indicators we consider that other indicators of success in the environmental field would include, for instance, strengthened multilateral environmental governance and increased trade in environmentally friendly goods, or adoption of environmental technologies.