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Bearing of the International System in a south-south *cutting-edge* free trade agreement

The case of the free trade agreement between Uruguay and Chile

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Abstract

Uruguay signed a *cutting-edge* free trade agreement with Chile that triggered political discussions on the impact it would have on Uruguay's development. This agreement is the first bilateral trade instrument framed under Uruguay's current international economic and trade insertion strategy, and serves as a case study to examine the bearing of the *International System* on that strategy, on the instruments Uruguay pursues to further it, and on the country's future development prospects. Theories extensively used to study multilateral, north-south and south-south trade agreements are tested to analyse this cutting-edge south-south agreement, following a deductive and qualitative approach to research. This thesis casts doubts on the idea that south-south trade agreements are the least restrictive of developing countries' *national policy space* for development. Interviews, documents, conferences and seminars revealed that this cutting-edge agreement has unique features that distinguish it from conventional south-south trade agreements: it includes standards of regulation now required by developed countries in the trade agreements they pursue. These standards are concluded to be the *good policies* and *good institutions* of the global economy organised around global value chains. They are furthered by developed countries in their own self-interest and adopted by Uruguay through this agreement in the understanding that they would help it broaden its markets. However, by abiding to these rules and standards it would shrink its own national policy space for development, *kicking away the ladder* to its development and locking-in its structural heterogeneity and technological exogeneity.

Key words: free trade agreement, development, International System, policy space, kicking away the ladder

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List of abbreviations

ACE	<i>Acuerdo de Complementación Económica</i>
ACE 35	<i>Acuerdo de Complementación Económica N° 35</i>
ALADI	<i>Asociación Latinoamericana de Integración</i>
ANTEL	<i>Administración Nacional de Telecomunicaciones (Uruguay)</i>
CETA	Comprehensive Economic and Trade Agreement
CPC	Central Product Classification
ECLAC	Economic Commission for Latin America and The Caribbean
EFTA	European Free Trade Association
EU	European Union
FTAs	Free Trade Agreements
G7	Group of 7
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GPE	Global political economy
GVCs	Global value chains
IDPE	International development policy establishment
IMF	International Monetary Fund
IP	Intellectual property
IPR	Intellectual property rights
ISI	Import-substitution industrialisation
MERCOSUR	<i>Mercado Común del Sur</i>
MFN	Most-favoured-nation
MPs	Members of Parliament
NAFTA	North American Free Trade Agreement

NAMA	Non-Agricultural Market Access
NDCs	Now-developed countries
OECD	Organization for Economic Cooperation and Development
OPP	<i>Oficina de Planeamiento y Presupuesto (Uruguay)</i>
PCT	Patent Cooperation Treaty
PIT-CNT	<i>Plenario Intersindical de Trabajadores-Convención Nacional de Trabajadores (Uruguay)</i>
RBTAs	Regional and Bilateral Trade Agreements
R&D	Research and Development
SOEs	State-owned enterprises
TISA	Trade in Services Agreement
TPP	Trans-Pacific Partnership
TRIMS	Trade-Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TTIP	Transatlantic Trade and Investment Partnership
UCFTA	Uruguay-Chile Free Trade Agreement
UDELAR	<i>Universidad de la República (Uruguay)</i>
UK	United Kingdom
UN	United Nations
US	United States
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

1. Introduction

1.1 Statement of the problem

Uruguay has had a relatively open economy since the 1970s, based on the identification of the international economy as the source of the country's economic growth (Oddone París, 2014, p. 11). Although it is arguable that economic liberalisation leads to higher growth rates in the long run, there is relative consensus in Uruguay that international economic relations are essential for the country's development, because the small scale of its market constrains its economic growth (Oddone París, 2014, pp. 9, 12). Based on that, the current political debate is centred on determining the best means to advance the country's international insertion (Oddone París, 2014, p. 12).

Countries' foreign policy and international insertion are constrained by the international structural context (Bizzozero as cited in Fernández Luzuriaga, 2010, p. 100). Particularly in the case of small economies or peripheral countries, the *International System*¹ has influence on the design and implementation of their foreign policy (Fernández Luzuriaga, 2010, p. 104). The International System's structure -within which interactions occur in line with certain rules- is ultimately determined not by the relations of the System's actors in general, but by the configuration of power brought about by the most powerful states (Fernández Luzuriaga, 2010, p. 103).

Multilateralism is in crisis and lost its credibility due to the lack of successful results in the Doha Round of the World Trade Organization (WTO) (Pérez del Castillo, 2014, p. 18).

¹ Barbé defines the International System as the group of stakeholders whose relations produce a configuration of power (structure), within which a complex network of interactions (processes) is created, in accordance to certain rules (as cited in Fernández Luzuriaga, 2010, p. 103).

Major countries are using preferential trade agreements to get what they could not achieve in the WTO, deepening the commitments undertaken in that venue through negotiations that involve a reduced number of countries (Peña, 2014, pp. 50, 56). Preferential trade agreements have ceased to be primarily about tariff reduction and market access; they are rather aimed at harmonising countries' regulations, improving their local institutions and reducing international transaction costs, in order to facilitate and strengthen global supply and production chains (Pérez del Castillo, 2014, p. 19). Many countries' international trade negotiation agendas are being reassessed in light of these developments (Peña, 2014, pp. 55–56). They move away from the multilateral framework to bilateral or regional spheres (Pérez del Castillo, 2014, p. 18).

Uruguay's current foreign policy -defined by the Ministry of Foreign Affairs' Strategic Plan 2015-2020 (hereinafter referred to as "Strategic Plan")- is grounded in the understanding that the country's international insertion is essential for its viability, advocating for a critical evaluation of the current status of economic multilateralism and a reassessment of the country's international economic and trade insertion strategy (Ministerio de Relaciones Exteriores. República Oriental del Uruguay, n.d., pp. 3–4). It aims to align this strategy to the new negotiation formats² and with globalisation and its trends³ (Ministerio de Relaciones Exteriores. República Oriental del Uruguay, n.d., pp. 3–4). With respect to MERCOSUR, its goal is to strengthen and modernise the regional integration process, and to

² New negotiation formats consist of agreements between different regional blocs, countries with blocs, and innovative bilateral agreements (Ministerio de Relaciones Exteriores. República Oriental del Uruguay, n.d., p. 4).

³ The globalisation trends mentioned are the increasing development of the digital economy, services and information technologies, and their use in international trade and in the organisation of work (Ministerio de Relaciones Exteriores. República Oriental del Uruguay, n.d., p. 3).

work collaboratively with its partner member states towards an efficient integration to the world (Ministerio de Relaciones Exteriores. República Oriental del Uruguay, n.d., p. 5).

Overall, the Strategic Plan seeks to contribute to the expansion of the country's goods and services productive base, to preserve and diversify markets and the countries that provide foreign investment, and to improve the country's terms of trade, so as to attain the broader objectives of economic growth and development (Ministerio de Relaciones Exteriores. República Oriental del Uruguay, n.d., pp. 1–2, 4–5, 20).

On October 4, 2016, Uruguay signed a free trade agreement (FTA) with Chile (hereinafter referred to as “UCFTA”⁴) to advance its Strategic Plan (Ministerio de Relaciones Exteriores. República Oriental del Uruguay, 2016). UCFTA is considered a *cutting-edge* agreement because it comprises rules on new disciplines for which Uruguay had never made commitments, including e-commerce (Ministerio de Relaciones Exteriores. República Oriental del Uruguay, 2016). In some other disciplines, Uruguay's commitments in UCFTA go beyond those undertaken in previous agreements with Chile or with other countries.

Considering that UCFTA is the first bilateral trade instrument that Uruguay negotiated in the framework of its current international economic and trade insertion strategy, this thesis takes it as its case study. Through its analysis, the leverage of the International System over Uruguay's international insertion strategy is explored. Given that Uruguay's international economic insertion is not an end in itself but a means for development (Oddone París, 2014, p. 5; Ons, 2010, p. 35; Pérez del Castillo, 2014, p. 25), the agreement's bearing for the country's development is also analysed, as the concrete manifestation of Uruguay's current international economic and trade insertion strategy.

⁴ UCFTA stands for Uruguay-Chile FTA. It is not an official acronym, but an abbreviation coined by this thesis' author in order to render the text easier to read.

1.2 Background

Economic and trade relations between Uruguay and Chile are framed in different agreements, which would be complemented by UCFTA. ACE 35 was signed in the framework of ALADI and binds MERCOSUR and Chile since 1996 (Asociación Latinoamericana de Integración, n.d.-a). It created a free trade area under which all Uruguayan export goods enter the Chilean market with zero tariffs (Uruguay XXI, 2017b, p. 15). The Protocol on Trade in Services, which is additional to ACE 35, liberalised trade in services between MERCOSUR and Chile, but is not applicable among the Parties to the regional bloc^{5 6} (Asociación Latinoamericana de Integración, n.d.-b). Uruguay and Chile are also bound by a Public Procurement Agreement and a Bilateral Investment Agreement, both of which are in force since 2012 (Uruguay XXI, 2017a, pp. 17, 20).

The negotiation and signature of UCFTA triggered public and political debate in Uruguay, based on the fact that there was already a framework in force for bilateral economic and trade relations between Uruguay and Chile. The debate was focused on the agreement's expected implications for the country's international insertion and development. Positions emerged arguing for the convenience of UCFTA's ratification and against it.

This debate was also linked to the broader political discussion mentioned in the

⁵ The Protocol on Trade in Services entered into force on April 2012 between Uruguay and Chile (Asociación Latinoamericana de Integración, n.d.-b).

⁶ Liberalisation was done on individual schedules of national commitments by members (Uruguay XXI, 2017a, p. 15). They followed the GATS model in that they adopted a positive list approach under all four modes of service supply (Uruguay XXI, 2017a, p. 15). For a definition of positive list approach see:

http://www.sice.oas.org/dictionary/SV_e.asp. For an account on the four modes of supplying services see:

https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm.

introduction, which according to Oddone París (2014, p. 12) is grounded on the belief that international economic relations are essential for Uruguay, and is focused on determining the best means to develop them. One of the main controversies centres on whether to pursue regional integration or a unilateral market opening to the rest of the world (Oddone París, 2014, p. 14). Uruguay's stance with respect to MERCOSUR is at the heart of this debate.

MERCOSUR plays a key role in Uruguay's economic growth and development strategy, hence, its sound functioning –in terms of compliance with what has been agreed and the consequent satisfaction of expectations- is fundamental (Ons, 2010, p. 42). Nevertheless, MERCOSUR includes two provisions that are hindering the achievement of its aims. It incorporates the principle of reciprocity in international trade relations, which -taken from the General Agreement on Tariffs and Trade (GATT) Uruguay Round- states that there is no need to grant special and differential treatment to less developed countries (Masi & Bittencourt, 2002, p. 375). In addition, Decision CMC N° 32/00 establishes, inter alia, the commitment of MERCOSUR member states to jointly negotiate trade agreements with third countries or with extra-zone country groupings whenever they incorporate tariff preferences (Decisión CMC N° 32/00, 2000).

MERCOSUR's lack of an instrument to deal with existing asymmetries within the bloc, the implementation of protectionist measures by Brazil and Argentina –which deepen asymmetries and inequalities in the distribution of the costs of integration-, and the lack of progress in the attainment of FTAs with other regions -hindered by Decision CMC N° 32/00- have meant that the regional bloc has stopped to be a source of dynamism for Uruguay (Masi & Bittencourt, 2002, p. 392; Molteni, De Leon, & Giudice, 2011, p. 68; Oddone París, 2014, p. 35; Rodríguez Mendoza, 2012, p. 41).

Discussions on Uruguay's international insertion are and have always been linked to the analysis of its bearing on the country's development -as inferred from what was said

above. More broadly, trade agreements in which Latin American countries participate have as well been historically analysed in connection to development. Whether multilateral, north-south or south-south, they have been extensively studied from theoretical perspectives that were nonetheless never applied to the analysis of cutting-edge south-south trade agreements.

As a result of the debate elicited by UCFTA, some political groups within the governing party requested an impact assessment on Uruguay's economy before ratifying it in Parliament. Such study was subsequently commissioned by the government⁷ and the agreement was thereafter ratified by the Uruguayan Parliament, although not free from critiques on the way in which the impact assessment had been carried out. Despite Uruguay's ratification, UCFTA is not yet in force.

⁷ The study commissioned by Uruguay's government is not an academic research and was not considered in this thesis for it was carried out after our analysis was finished.

1.3 Aim and research questions

The aim of this research is to analyse the bearing of the International System on Uruguay's international economic and trade insertion strategy, on the instruments the country pursues to further it, and on its resulting future development prospects, testing the application of selected theories to the study of UCFTA: a cutting-edge south-south trade agreement that is the first bilateral trade instrument that Uruguay negotiated and signed under the framework of its current international economic and trade insertion strategy.

This thesis seeks to answer the following questions: Why did Uruguay negotiate and sign a cutting-edge FTA with Chile? How does UCFTA impact on Uruguay's future development prospects?

1.4 Relevance to global studies and delimitations

This thesis is relevant to the multidisciplinary field of global studies because it refers to Global Political Economy (GPE) dynamics, which trigger debates on the role of the state. As countries advance trade, investment and finance liberalisation, their *policy space* is reduced (Weiss, 2010, p. 166). Still, states play a key role in global governance, albeit to varying degrees, because major states have sway over others to adopt certain sets of policies (O'Brien & Williams, 2013, p. 296).

This thesis also touches upon major debates on globalisation and GPE: it is linked to theoretical disputes on international trade and growth and development. Regarding international trade, this thesis challenges the argument of the liberal political economy and trade theory that everyone is better off under a free trade regime that, as understood by liberal perspectives, leads to innovation and knowledge dissemination (O'Brien & Williams, 2013,

pp. 111–112). In relation to growth and development, it contests liberal perspectives that assign greater weight to internal factors when considering constraints to countries' development.

Although we share the view of O'Brien and Williams (2013, pp. 225–226) that development is subject to both internal and external forces -to different degrees depending on the country and the time-, it was decided to leave internal forces out of consideration in this research for reasons of scope. Since Uruguay is a small economy and a peripheral country, the assessment of the influence of external forces on its prospects for development was prioritised.

Another delimitation refers to the very concept of development. Even though nowadays it also generally involves non-material values, for the sake of simplicity this thesis equals development to economic growth and the improvement in material capabilities, which are still central to most conceptions of development (O'Brien & Williams, 2013, pp. 305–306). This by no means implies that the author ignores that development has multiple dimensions.

For reasons of scope, not all chapters of the UCFTA could be considered in this research analysis. Three chapters were selected according to the criterion described in Section 5.2, paragraph 2, of this thesis.

2. Previous research

The purpose of this chapter is to present what has been published that is of relevance to this thesis. Following Bryman (2012, p. 8), it more specifically introduces what is known about this thesis' broad themes, the concepts and theories that have been employed to analyse them, and the researcher's comments on the way they were studied (Bryman, 2012, p. 8). To a greater or lesser extent, all what follows were inputs for this thesis, particularly contributing to the definition of its aim and theoretical framework.

The first part of this chapter (2.1) reviews studies of trade agreements in which Latin American countries participate (multilateral, north-south, and south-south) that provide conceptual input for investigating treaties' link with development. As it is shown hereunder, the same concepts and theories tend to recur in the various studies, namely: *policy space for development* and *kicking away the ladder*. They were thus deemed useful for constructing this thesis' theoretical framework.

The literature available so far has failed to analyse south-south trade agreements that include cutting-edge issues with the same concepts and theories used for the study of other south-south, north-south and multilateral agreements. South-south agreements studied in articles reviewed here are different from UCFTA, because they are not cutting-edge, and their liberalisation commitments are most often less extensive.

The second part of this chapter (2.2) reviews a book that poses a question that is similar to this thesis' first research question, although it refers to an FTA between Uruguay and the United States (US) -which was never concluded. That study touches upon the concepts and theories that appear in the first part of this chapter (2.1).

There are no academic works on this thesis' case study. That is probably due to the relative novelty of UCFTA, but even more so because the public and political debate around it took long time to start. Newspaper articles were published as the discussion unfolded, but

they are not theoretical analyses of the agreement. The economic impact assessment commanded by Uruguay's government is not either.

2.1 Relevant works on trade agreements' development impacts on countries that are Parties to them in Latin America

Gallagher (2008) and Shadlen (2008) both study regional and bilateral trade agreements (RBTA) linking Latin American countries with the US. Through RBTA the US kicks away the ladder of development for Latin American countries (Gallagher, 2008; Shadlen, 2008). In exchange for granting access to its market, the US demands that its counterparties undertake policy reforms that reduce their policy space for development, banning the use of the policy tools that it itself used to develop (Gallagher, 2008; Shadlen, 2008). WTO treaties imply a similar trade-off, though the extent to which participating countries waive their policy space for development is much less (Shadlen, 2008).

Gallagher (2008) concludes that RBTA are less beneficial than multilateral trade agreements, and interrogates why then have Latin American countries signed so many of the former. Gallagher (2008) and Shadlen (2008) argue that the greater bargaining power of the US and the importance and dynamism of its market are determining factors. Market access and fear of exclusion appear as the main reasons for Latin American countries to negotiate with the US (Gallagher, 2008; Shadlen, 2008).

Although their options are limited, Latin American countries still get to choose whether to negotiate with the US or not (Shadlen, 2008). Hence, Gallagher (2008) holds that they *trade away the ladder* of development when concluding these agreements; they prioritise immediate market access over the possibility to deploy industrial development policies in the future. Decisions are taken on the basis of their costs and benefits at specific

points in time, without consideration of their implications for future generations (Gallagher, 2008).

Khor (2008) studies north-south trade agreements, their issue areas, and their implications for developing countries' policy space. The focus is on trade agreements between the US and developing countries, and comparisons are drawn with WTO agreements in corresponding areas of regulation (Khor, 2008). A distinction is made between north-south and south-south treaties like MERCOSUR and the Andean Community (Khor, 2008).

According to Khor (2008), RBTAs shrink developing countries policy space more than WTO agreements, banning or more seriously hampering the use of policy instruments that contribute to countries' development process, and which were used by now-developed countries (NDCs) when they were developing. Khor (2008) affirms that in RBTAs, developing countries undertake commitments on non-trade issues that most probably will end up being incorporated into the WTO, when an increasing number of countries agree to be bound to those rules under other arrangements.

Thrasher and Gallagher (2010) also analyse countries' policy space for development under different types of trade agreements and argue that south-south agreements afford participating countries more wiggler room. Again, their evaluation of south-south arrangements is based on those in which liberalisation commitments do not go as far as in north-south RBTAs.⁸ According to Thrasher and Gallagher (2010), countries policy space thus shrink the most under north-south arrangements, specifically under those in which the US is a Party.

⁸ On trade in services, Thrasher and Gallagher (2010, p. 337) cite the example of MERCOSUR's Montevideo Protocol, which they consider "by far the most comprehensive south-south services agreement". However, that agreement follows GATS model (Thrasher & Gallagher, 2010, p. 337; Uruguay XXI, 2017a), which as will be shown is less comprising than the NAFTA model present in UCFTA.

Thrasher and Gallagher (2010) explain that trade agreements determine the set of policy tools that remain available for participating countries, and thus delimit their development prospects. In order to rectify market failures and to diversify their production, countries need to have available a set of development policies that they can implement whenever needed, add Thrasher and Gallagher (2010). These policies have historically been deployed during countries' development processes, but Thrasher and Gallagher (2010) argue that because they are in the way of trade liberalisation, their use is being increasingly restricted.

Wade (2003), Stiglitz (2006), and Kumar and Gallagher (2007) analyse WTO agreements that resulted from GATT Uruguay Round. Those agreements shrink countries' policy space for development in that they prohibit the deployment of industrial and technology policy instruments that NDCs and newly developed countries implemented in their development process, Kumar and Gallagher (2007), Stiglitz (2006) and Wade (2003) affirm. Kumar and Gallagher (2007) add that the Doha Round is probably going to further entrench policy space reduction.

Building on the theory of kicking away the ladder, Wade (2003) and Stiglitz (2006) argue that WTO agreements were used as instruments to advance the interests of developed countries, allowing their companies to operate in developing countries' markets with very few restrictions, and securing developed countries' appropriation of technological rents. While developing countries were forced to advance liberalisation, developed countries did not heed their promise to open up their markets for developing countries' exports (Stiglitz, 2006; Wade, 2003). As a result, WTO agreements on Trade-Related Aspects of Intellectual Property Rights (TRIPS), on Trade-Related Investment Measures (TRIMS), and the General Agreement on Trade in Services (GATS) "help to lock in the economic, political and military

dominance of these [G7] and other states in the core of the world economy” (Wade, 2003, p. 622).

2.2 Research on a bilateral FTA pursued by Uruguay

Porzecanski (2010) studied the reasons why Uruguay wanted to pursue an FTA with the US and the failure of the attempt. Although the study does not revolve around kicking away the ladder, it does touch upon that theory. The concept of policy space for development is also used. Porzecanski (2010) argues that FTAs -especially those between developed and developing countries- incorporate rules that shrink countries’ policy space, hindering their use of policy instruments that have been historically deployed to catch up with the more developed economies.

Porzecanski (2010) explains that in Uruguay, positions against the conclusion of an FTA with the US were built on a negative evaluation of the impacts that the treaty would have on the country’s policy space for development. According to Porzecanski (2010), critics of the agreement defended an active role for the state in the process of development and the preservation of Uruguay’s policy space by not committing to new trade disciplines on non-trade issues. Critiques also emerged because the conclusion of a bilateral FTA between Uruguay and the US would have meant the flexibilisation of MERCOSUR⁹ (Porzecanski, 2010).

Porzecanski (2010) argues that Uruguay’s participation in MERCOSUR is the foundation of the country’s international insertion strategy on which it bases its decisions on trade policy. In light of MERCOSUR’s failure to deliver the benefits expected, promoters of

⁹ In terms of the non-compliance with MERCOSUR’s Decision CMC N° 32/00.

the FTA with the US strived to gain preferential access to new markets outside of the regional bloc, Porzecanski (2010) explains. They argued that this agreement would serve that goal and would help Uruguay to attract more foreign investment (Porzecanski, 2010).

Porzecanski (2010) concludes that the pursuit of the agreement with the US was more of an intention to change Uruguay's strategy for international insertion, than an end in itself.

3. Theoretical framework

Three theoretical approaches were identified as being useful tools to tackle this thesis' research questions. They all fall into the discipline of GPE and share a historical approach as the base for their analyses. O'Brien and Williams (2013, p. 38) insist that historical perspectives are key to understand how past events have locked-in countries' or part of countries' development patterns.

Following is an overview of each theoretical approach selected.

3.1 Kicking away the ladder

This concept originated in the analysis that Friedrich List made in the mid-nineteenth century of the economic history of western richer countries up to his time (Chang, 2003). List proved that most of those countries used state intervention and protectionist measures to develop their infant industries, opening up their economies to foreign competition only when they had reached a secure level of industrial development (Chang, 2003). Once their industrial supremacy was guaranteed, they started to promote free trade (Chang, 2003). List said:

It is a very common clever device that when anyone has attained the summit of greatness, he *kicks away the ladder* by which he has climbed up, in order to deprive others of the means of climbing up after him.... Any nation which by means of protective duties and restrictions on navigation has raised her manufacturing power and her navigation to such a degree of development that no other nation can sustain free competition with her, can do nothing wiser than *to throw away these ladders* of her greatness, to preach to other nations the benefits of free trade, and to declare in

penitent tones that she has hitherto wandered in the paths of error, and has now, for the first time succeeded in discovering the truth. (As cited in Chang, 2003, pp. 4–5)

That was the case of Britain and the US, which are -or were until very recently- the most fervent preachers of economic liberalism, casting a veil over their development history (Chang, 2003).

List's thesis was later confirmed by Ha-Joon Chang (2003) as a result of his own study on the development paths of NDCs, which extended until the late twentieth century. Chang (2003, pp. 2, 125–126) identified a pattern in which all NDCs put in place a broad spectrum of interventionist industrial, trade and technology policies in their early stages of development, as a means to catch-up with the more developed economies. According to Chang (2003, p. 126) the reason is that the transformation of countries' production structures to high-value-added activities is a prerequisite for economic development, and history has proven that it does not happen naturally, hence state intervention is needed, though it allows for different degrees and modalities.

Nevertheless, the same countries that applied those interventionist measures as part of their development strategies are the ones now deeming them as bad, and are thus currently hindering their application by developing countries (Chang, 2003, p. 127). NDCs exert an enormous pressure on the developing world to adopt a set of *good policies* and *good institutions* to further economic development (Chang, 2003, p. 1). The good policies that NDCs promote are those commanded by the Washington Consensus, namely: free trade, liberalisation of international investments, privatisation, deregulation, restrictive macroeconomic policies and open capital markets¹⁰ (Chang, 2003, p. 1). The good

¹⁰ To guard coherence with the theory of kicking away the ladder, neoliberal policies will hereinafter be called good policies. The qualifier 'good' reflects the opinion that NDCs have of those policies that they promote; in no case shall good policies be understood as reflecting the author's point of view.

institutions that they advocate resemble the institutions of Anglo-American developed countries today, which were not implemented -at least not to the degree they are now required from developing countries- when NDCs were themselves developing (Chang, 2003, pp. 2–3). Those good institutions comprise a *good governance* package, intended to advance market freedom and strongly protect private property rights, and IPR in particular^{11 12} (Chang, 2003, p. 1, 2011, pp. 473–474).

The international development policy establishment (IDPE), controlled by developed countries, is one of the means used to put pressure on developing countries to implement

¹¹ According to Chang (2003) key good institutions are “democracy; ‘good’ bureaucracy; an independent judiciary; strongly protected private property rights (including IPR); and transparent and market oriented corporate governance and financial institutions (including a politically independent central bank)” (p. 1). A broader list includes,

(i) a common law legal system, which by allowing all transactions unless explicitly prohibited, promotes free contracts; (ii) an industrial system based on private ownership, which requires significant privatisation in many countries; (iii) a financial system based on a developed stock market with easy M&A (mergers and acquisitions), which will ensure that the best management team available runs each enterprise; (iv) a regime of financial regulation that encourages ‘prudence’ and ‘stability’, including a politically independent central bank and the strict observance of the BIS (Bank for International Settlements) capital adequacy ratio; (v) a shareholder-oriented corporate governance system, which will ensure that the corporations are run by their owners; (vi) a flexible labour market that allows quick re-allocation of labour in response to price changes; (vii) a political system that restricts arbitrary actions of political rulers and their agents (i.e., bureaucrats) through decentralisation of power and the minimisation of discretion for public sector agents. (Chang, 2011, p. 474)

¹² To guard coherence with the theory of kicking away the ladder, institutions that further market freedom and intellectual property rights (IPR) protection will hereinafter be called good institutions. The qualifier ‘good’ reflects the opinion that NDCs have of those institutions that they promote; in no case shall good institutions be understood as reflecting the author’s point of view.

good policies and good institutions (Chang, 2003, p. 1). The International Monetary Fund (IMF) and the World Bank enforce governance-related conditionalities attached to their loans; developed countries' governments have done the same with bilateral aid (Chang, 2011, p. 473). Bilateral, regional, and multilateral trade and investment agreements that began to proliferate in the mid-1990s add up to the list of developed countries' pressure instruments (Chang, 2011, p. 474). So do the Organization for Economic Cooperation and Development (OECD), the G7, and the World Economic Forum, among other bodies (Chang, 2011, p. 474).

Despite the fact that the relationship between good institutions and economic development admits various interpretations, the World Bank and its associates have supported and nourished the currently dominant discourse, which argues that there is a causal relationship running from good institutions to economic development, meaning that the latter is the result of the former (Chang, 2003, p. 69, 2011, pp. 475–476). WTO agreements also subscribe to this understanding, requiring countries to adopt good institutions (Chang, 2003, p. 69). However, NDCs history illustrates that the causality may in fact run in the opposite direction, from economic development to good institutions, as effectively happened in their case (Chang, 2003, p. 129, 2011, p. 476).

Anglo-American-style institutions were not the cause of NDCs economic development, but their result; in fact, what are now branded as good institutions were only implemented by NDCs when they had already developed (Chang, 2003, p. 129, 2011, p. 476). Hence, the dominant discourse on the relationship between good institutions and economic development is questioned by historical evidence, and so is the imposition of good institutions on developing countries, deemed as essential for their economic development (Chang, 2003, pp. 129–130).

As stated above, the set of good policies that developing countries are compelled to

adopt also runs counter to NDCs development history (Chang, 2003, p. 127). These good policies are beneficial for developed countries, instead of assisting developing countries to bridge their productivity gap with the advanced economies (Chang, 2003, p. 127). In fact, it was during the period when developing countries implemented the neoliberal policy reforms prescribed by developed countries (1980-2000) that they experienced a slowdown in their economic growth (Chang, 2002, 2003, p. 128). In contrast, when *bad policies*¹³ prevailed in most developing countries (1960-1980), their growth rates doubled those of the following years (Chang, 2002, 2003, p. 128). Bad policies are thus likely to be beneficial to developing countries, provided they are not poorly implemented (Chang, 2003, p. 129).

Good institutions can be fruitful for developing countries provided that bad policies are concurrently introduced, and that the forms and quality of those institutions, as well as the time frame bestowed to attain them are adequate (Chang, 2003, pp. 133, 135). During 1960-1980, developing countries grew much faster than NDCs did at comparable periods in their development history, because the former had more advanced institutions than the latter, and they drew upon bad policies (Chang, 2003, p. 134). During 1980-2000, when bad policies were replaced by good policies in developing countries, their better institutional development was insufficient to attain higher economic growth than that of NDCs at analogue development stages (Chang, 2003, p. 134).

With regards to policies and institutions alike, developed countries are thus kicking away the ladder they themselves used to develop so that developing countries cannot catch up with them (Chang, 2003, pp. 127–128, 135). On the one hand, although good institutions could have played a positive role in developing countries' development process, they are

¹³ Bad policies shall hereinafter be understood as opposed to good policies -as they were described above. The qualifiers 'good' and 'bad' reflect NDCs' viewpoint and not the author's opinion.

becoming instruments for kicking away the ladder because the commanded institutional reform is accompanied by a policy reform that does not allow for bad policies, and the forms and quality of the institutions, as well as the time frame to adopt them are not adequate (Chang, 2003, pp. 134–135). On the other hand, as formerly explained, NDCs impose on developing countries policy and institutional standards that they did not implement when their economic development was comparable to that of currently developing countries, and which are therefore not necessary for attaining countries' development objectives (Chang, 2003, pp. 127, 135).

3.2 National policy space for development

Hamwey (2005) proposes a conceptualisation of national policy space that understands it as “a sub-space of the universe of policy options available to a country in an ideal world without policy constraints” (Executive Summary section, para. 1). It is comprised of endogenous and exogenous policy space (Hamwey, 2005, p. 4). The *endogenous policy space* is delimited by *endogenous* constraints, which restrict the effective range of policy options that a country has for advancing development, among a larger universe of policy options that would have been available should those constraints had not existed (Hamwey, 2005, p. 3). Endogenous constraints stem from countries' deficient domestic resources¹⁴ and economic development, as well as from restricted policy acceptability by national stakeholders and apathetic political leaderships¹⁵ (Hamwey, 2005,

¹⁴ Hamwey (2005, p. 3) refers to domestic resources of various kinds, namely: financial, human, institutional and infrastructural resources.

¹⁵ Although all these are identified as endogenous constraints, Hamwey (2005) de facto emphasises the role played by economic development.

pp. 3–4). The *exogenous policy space* is delimited by *exogenous* constraints resulting from countries' commitments under international agreements, which require that Parties' domestic policy-making is consistent with them (Hamwey, 2005, p. 3).

Developed countries have greater endogenous policy space than developing countries (Hamwey, 2005, p. 3) -see Figure 1 (Hamwey, 2005, p. 4). Hence, drawing on Hamwey (2005), even if developed and developing countries enjoyed identical exogenous policy space -as would be the case if an international agreement to which both countries are Party and in which they undertake equal commitments were the only consideration-, the former would still have broader *effective national policy space* than the latter -see Figure 2 (Hamwey, 2005, p. 6).

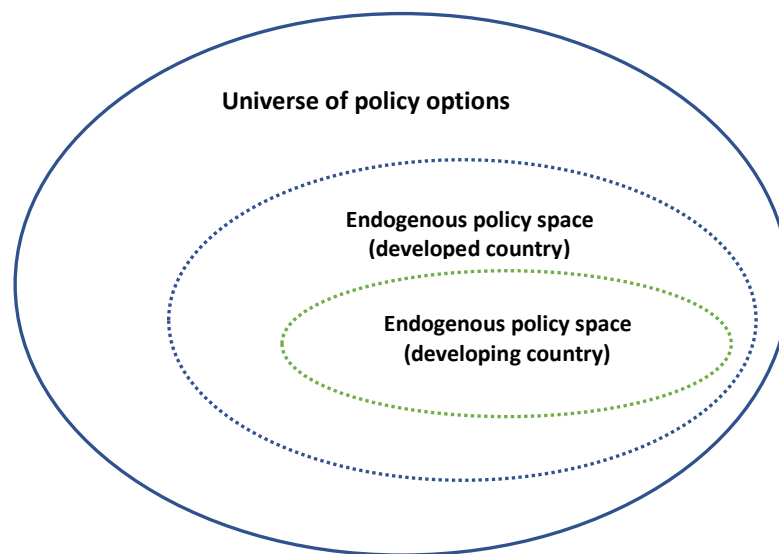


Figure 1: Countries' endogenous policy space as a subset of possible policies in the policy universe. The size of this space, which depends on the availability of domestic resources and the level of the country's economic development, is larger for developed countries and smaller for developing countries. Adapted from "Expanding National Policy Space for Development: Why the Multilateral Trading System Must Change", by

R. M. Hamwey, 2005, *South Centre. Trade-Related Agenda, Development and Equity*
(*T.R.A.D.E.*). Working papers, 25, p. 4.

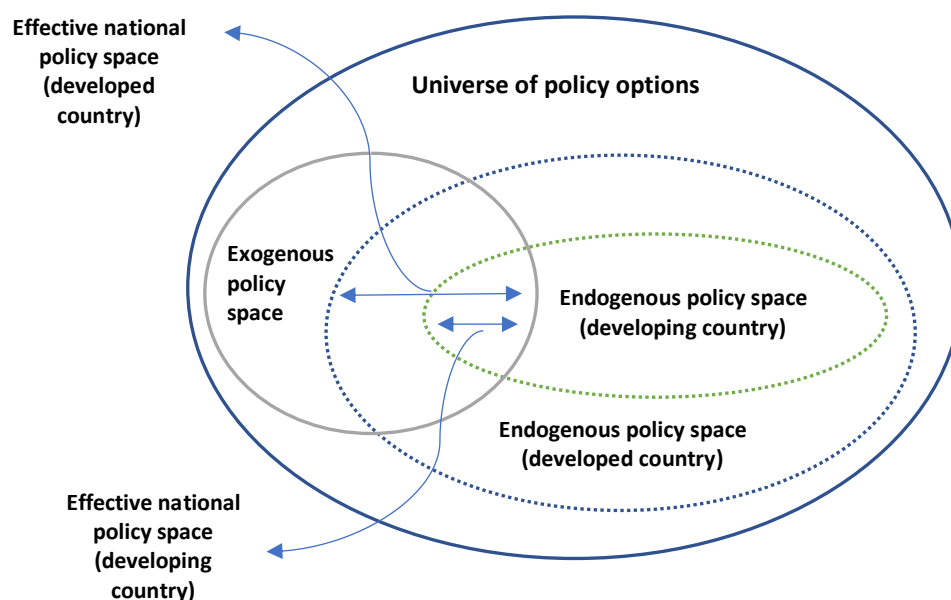


Figure 2: Developed and developing countries' effective national policy space under a uniformly applied exogenous constraint. Adapted from "Expanding National Policy Space for Development: Why the Multilateral Trading System Must Change", by R. M. Hamwey, 2005, *South Centre. Trade-Related Agenda, Development and Equity* (*T.R.A.D.E.*). Working papers, 25, p. 6.

As exogenous constraints affect countries' effective national policy space differently depending on their level of economic development, the timing in countries' development history in which international agreements are concluded is determinant of their future development (Hamwey, 2005, pp. 11–12). If a developing country commits to an international agreement that is restrictive of its effective national policy space to an extent beyond what would be advisable for its development, the agreement may lock-in the

country's economic position, as the country foregoes its possibility to introduce pivotal development policies at times when they are essential for its future (Hamwey, 2005, pp. 11–12).

Drawing on Chang's work, Hamwey (2005, p. 15) states that during their early stages of development, NDCs safeguarded broad national policy space for themselves, in order to be able to implement policies that were critical at that time for their economic development. Once developed, countries' national policy space does not need to be as extended as when they were developing (Hamwey, 2005, p. 15). Hence, in order to lock-in their privileged economic position, NDCs brand as *trade-distorting* the policies they had historically implemented, prohibiting their use by other developed or developing countries by means of liberalising rules included in trade agreements (Hamwey, 2005, p. 15). Since developing countries need those policies for their economic development, their prospects for achieving that aim are consequently locked-out (Hamwey, 2005, p. 15).

Hamwey (2005) argues that “the timing and sequencing of trade liberalisation must be carefully matched to a country's level of economic development, and that a one-size and one-time fits all approach to trade liberalisation cannot serve the development aspirations of developing countries” (p.15).

In contrast to countries' endogenous policy space that may expand when an endogenous constraint disappears and recede when a new endogenous limitation emerges, countries' exogenous policy space is rarely extended; instead, it shrinks every time countries conclude a new international agreement, or when the scope of their international commitments is widened (Hamwey, 2005, p. 4). According to Hamwey (2005, p. 4), the result of this workings is that most developing countries see their effective national policy space shortened over time. Although Hamwey (2005) is not specific about this, his argument may be suggesting that in most developing countries, new exogenous constraints are adopted

before endogenous barriers are overcome.

3.3 Structuralism: Centre-Periphery paradigm and the deterioration of the terms of trade

Structuralism argues that the world economic system is unequal, with *central and peripheral countries* participating unevenly in the distribution of the technical progress that resulted from the industrial revolution in the centre and the ensuing increase in the productivity of the factors of production (Kay, 1991, p. 35). While central countries developed an industrial capital-goods sector that internalised the technical progress and subsequently expanded it to the whole productive fabric, peripheral countries were integrated into the world economic system as importers of those technologies, which were primarily used for the production of commodities destined for foreign markets (Kay, 1991, p. 35). Thus, in contrast to the integrated and homogeneous economies of central countries, peripheral economies are disarticulated –meaning that advanced technologies are imported from the centre-, and dualist or characterised by structural heterogeneity –meaning that there are big productivity gaps between and within economic sectors (Kay, 1991, pp. 35–36).

The periphery's structural heterogeneity results in a large low-productivity pre-capitalist sector that fuels a constant surplus labour force, which keeps wages low and prevents workers from retaining the fruits of increased productivity and technical progress (Kay, 1991, pp. 36–37). According to structuralism, a productivity rise in the periphery does not translate into a payment rise to factors of production –as happens in the centre-, but as a reduction in the price of commodities (Kay, 1991, p. 37). The low income-elasticity of demand for commodities also contributes to the latter (Vilches, n.d.). As long as income increases do not result in corresponding growth in the demand for commodities, the

competition among export-producers in the periphery for markets where to sell their produce becomes greater, thereby leading them to reduce prices in order to be competitive (Vilches, n.d.). In contrast to manufactured goods, which enjoy broader possibilities of diversification to respond to changes in consumer preferences brought about by technical progress, productivity improvements and increased income in central countries, primary products face more limitations for diversification and change (Prebisch, 1986, pp. 203, 207).

The result of the above is what the Economic Commission for Latin America and the Caribbean (ECLAC) and Raúl Prebisch called the deterioration of the periphery's terms of trade (Kay, 1991). If export volumes remain stable, peripheral countries' exports of commodities lose purchasing power in relation to the value of imported industrialised goods and services, thus reducing these countries' import capacity over time (Vilches, n.d.). This thesis questioned the international division of labour in force in most of the twentieth-century, and gave way to the proposition of different policies aimed at tackling that tendency and helping the periphery to retain the *fruits of technical progress* (Kay, 1991). More specifically, the policies proposed in the 1950s promoted *development from within*, consisting of endogenous industrial and technological development to increase productivity (Salazar-Xirinachs, 1993b, pp. 363–364).

Those policies assigned a leading role to peripheral states, which were supposed to design and implement trade policies and measures to protect domestic markets in order to facilitate the development of an industrial sector through imports substitution (Salazar-Xirinachs, 1993b, p. 365). A change in peripheral countries' production structures was advisable so as to reduce their external vulnerability (Salazar-Xirinachs, 1993b, pp. 363–365). The *import-substitution industrialisation* (ISI) strategy was thought to be temporary and gradually combined with regional economic integration and incentives for export diversification (Ocampo, 2014, p. 44; Salazar-Xirinachs, 1993a, p. 21). Peripheral states

would thereby be ready to reciprocally trade industrial products with central countries, thus breaking the centre-periphery divide, rising income, expanding employment and improving these countries' living standards (Salazar-Xirinachs, 1993a, p. 21). States were also supposed to take on the duty of conducting countries' technical progress in cooperation with universities and related institutions, following industries' demands (Salazar-Xirinachs, 1993b, p. 365).

Although ECLAC and the structuralist approach advocated for state intervention in the market, they also favoured private enterprise and supported its balanced participation in economic development jointly with the state (Salazar-Xirinachs, 1993b, pp. 364–366). The size of Latin American states and the scale and scope of their intervention in the economy nonetheless went beyond what structuralism had envisaged (Salazar-Xirinachs, 1993b, p. 366). Protectionism in Latin America ended up being permanent in most cases, meaning that industries had no incentives for productivity improvements (Prebisch, 1986, p. 205). It was carried out through *ad hoc* measures that were indiscriminately applied, without considering which industries it would be most convenient to develop according to a set of strategic goals defined in the framework of an economic development policy (Macario as cited in Prebisch, 1986, p. 214).

This way of conducting the process of industrialisation was one of its main flaws, coupled with the fact that it did not manage to put an end to Latin America's external vulnerability and that it was only oriented to domestic markets (Prebisch, 1986, p. 213). Industrialisation developed asymmetrically inasmuch incentives to import substitution were not accompanied with measures to encourage the production of industrial goods for export to central countries (Prebisch, 1986, pp. 207, 209). Exports of manufactures were also hampered by central countries' unwillingness to open their markets to Latin American industrial products (Prebisch, 1986, pp. 207, 213).

Hence, Prebisch (1986, p. 206) argued that critiques should be focused on the way protectionist policies were implemented, instead of being directed to protectionism as such. ECLAC (n.d.) and Kay (1991, p. 54) contend that structuralism is still useful as an analytical framework for understanding Latin America's structural problems, and its propositions retain their validity in terms of their potential to change these countries' integration into the world economy, overcoming their limited economic diversification and structural heterogeneity. East Asian newly industrialising countries' experience shows that ISI can be successful if carried-out correctly (Kay, 1991, p. 57).

4. Methodology

4.1 Research design

This research adopted a case study approach -one of the typically preferred methods when addressing international political economy questions, according to O'Brien and Williams (2013, p. 27). Bryman (2012, p. 45) states that a case study is not a research method, but a research design, which is complemented by research methods for data collection. A case study consists of an in-depth investigation and theoretical analysis of a particular case, the results of which are not necessarily generalisable to other cases because it is not a sample of all cases pertaining to the same subject area (Bryman, 2012, pp. 66, 69–71; O'Brien & Williams, 2013, pp. 27–28). As mentioned earlier in the introduction, the case study for this thesis is UCFTA.

The relationship between theory and research when using a case study approach can be deductive or inductive, because the case study can be used for theory testing or theory building (Bryman, 2012, pp. 69, 71; O'Brien & Williams, 2013, p. 28). Although the deductive approach is usually associated to quantitative research, and the inductive approach is most often linked to qualitative research, their correlation is not clear-cut (Bryman, 2012, pp. 25, 27, 36–37). Just as quantitative research can adopt an inductive approach, qualitative research can be deductive, and any study -regardless of its quantitative or qualitative nature- can have elements of both induction and deduction (Bryman, 2012, pp. 26–27, 36–37, 387).

This qualitative research has features that complicate a straight-forward characterisation of the approach taken to the relationship between theory and research. Still, it is more deductive than inductive. A deductive approach demands that research questions are derived from theoretical issues (Bryman, 2012, pp. 383–384). This thesis' research questions did not directly originate in theoretical concerns, but in the Uruguayan society's unease about

the steps being taken by the government in the framework of its current international insertion strategy, as made apparent in interviews, documents collected, and conferences and seminars attended by the researcher. The aim, however, does derive from theoretical issues, or more specifically from concerns on the use that has been made of theories and concepts comprised in this thesis' theoretical framework. Following a deductive approach, theories are tested (Bryman, 2012) in their application to a new context: a cutting-edge south-south FTA. They thus guided the analysis of data, the results of which feed back into discussions of corresponding theories (Bryman, 2012, pp. 383–384).

UCFTA -as seen from the perspective of Uruguay-, has been chosen as the case study for this research for various reasons. Firstly, Uruguay's international insertion and development is of interest because it is the researcher's home country. A thorough understanding of the country's geopolitical dynamics and political and economic structures has assisted the research process, also facilitated by the absence of language and cultural barriers, and easier access to informants and other sources of data. Secondly, UCFTA is the first bilateral trade agreement negotiated and signed by Uruguay in the framework of its current international economic and trade insertion strategy, designed to advance the country's development. Thirdly, it is a cutting-edge free trade agreement that comprises a south-south relation, but which incorporates standards of regulation that are typical of new preferential trade agreements and negotiations led by developed countries.

4.2 Data collection

Data was gathered through interviews, the collection of documents, and attendance in conferences and seminars on topics bearing to this thesis. Interviews were semi-structured and were carried out face-to-face with key informants. Bryman (2012, pp. 470–471) states

that semi-structured interviews allow for flexibility; in fact, although an interview guide covering a range of relevant topics was developed, interviewees' perspectives were put at the centre, which led to an adjustment of the interview questions, the research questions and the focus of the research.

Interview guides were designed for analysing the consequences UCFTA could have on Uruguay's telecommunications state-owned enterprise (SOE), ANTEL, as an instrument for economic growth and social development.¹⁶ However, interviewees did not know the UCFTA in depth, nor its possible implications for ANTEL. Such investigation was thus too big a task for a master's thesis -apart from a thorough understanding of the UCFTA, the researcher would have needed comprehensive knowledge of the SOE. In addition, the agreement's consequences for ANTEL was not what concerned interviewees the most.

Although not all interviews conducted were finally used for this thesis' analysis, they certainly helped to gain insight into the research subject and to turn the eye to what was most relevant and feasible to investigate. The change in focus was also triggered by the approach to UCFTA taken in conferences and seminars held after the interviews were conducted, when the topic started to be part of Uruguay's public and political debate. Discussions on the UCFTA primarily revolved around what were to become this thesis' final research questions.

Despite changes, some of the interviews and their questions resulted especially useful to answer: *Why did Uruguay negotiate and sign a cutting-edge FTA with Chile?* Confirming what Laforest (2009, p. 2) states about key informants, their experience or position held furnished them with informed knowledge about the research topic, which they provided to the researcher.

¹⁶ For that, the fact that telecommunication services are excluded from UCFTA's trade in services chapter was considered.

Drawing on Bryman (2012, pp. 416, 418, 424), key informants were selected using a purposive sampling approach and a snowball sampling technique. The former implied that categories of relevant informants were defined on the basis of the research purpose and questions (Bryman, 2012, pp. 416, 418). Although the research purpose and questions changed after the interviews were conducted, key informants were still considered to be such. The snowball sampling technique, which is a kind of purposive sampling, meant that the initial sample of informants was enlarged as the data collection process unfolded, because interviewees recommended new informants to the researcher, who they thought could provide valuable data for the investigation (Bryman, 2012, p. 424).

Categories of key informants included Uruguay's government officials and Members of Parliament (MPs), ANTEL's executives, the leadership of Uruguay's confederation of trade unions (PIT-CNT), the leadership of ANTEL's trade union, national business chambers, academia and civil society. While all interviewees fitted into these categories, outreach was not successful in some categories (e.g. business chambers, PIT-CNT's leadership and civil society) because the people contacted did not reply to the interview request. The same happened with some people within categories that were effectively covered, such as MPs and ANTEL's executives.

In total, eighteen interviews were conducted between December 2016 and February 2017. Of those eighteen interviews, five were used for the analysis.¹⁷ Bryman (2012, p. 425) and Kvale (2007, pp. 43–44) affirm that the right number of interviews is always difficult to estimate. Nonetheless, those five interviews provided valuable yet certainly insufficient data to complete this research. Hence, interviews were complemented with documents and conferences and seminars as sources for data collection. When this investigation was

¹⁷ All interviews were conducted in Spanish. It has been decided to present interviewees' quotations and paraphrasing only in English, translated by the author, to make this thesis reader-friendly.

initiated, in late 2016, there was hardly anyone in Uruguay writing or speaking about UCFTA, so the collection of data was a rather difficult task. Over time, however, its ratification became one of the main political concerns in the country, so newspaper articles and different positions on the topic began to be published, and conferences and seminars were organised. This facilitated this research and reinforced its relevance. This is the first academic work on UCFTA, or at least no other has yet been published.

Following is a profile of each of the five interviewees whose input was used for the analysis. Ambassador Ricardo Nario (interviewed on December 12, 2016) was at the time Director General of International Economic Affairs at the Ministry of Foreign Affairs of Uruguay. Nario led the Uruguayan delegation for UCFTA's negotiation. Although he consented to have his identity revealed in this study, he requested that his answers during the interview were not quoted word for word. José Manuel Quijano (interviewed on December 14, 2016) is an economist and researcher, former Director of Uruguay's Office for Budget and Planning's (OPP) Sectoral Commission for MERCOSUR, and of MERCOSUR Secretariat, as well as author of numerous works on integration and development. Iván Posada (interviewed on December 20, 2016) is an opposition party MP and is Delegate to the Committee of International Affairs of Uruguay's House of Representatives. As such, Posada took part in at least one of the Parliament's sessions in which members of the Chancellery were invited to inform about UCFTA. Gerardo Caetano (interviewed on December 22, 2016) is a renowned Uruguayan historian and political scientist, researcher and professor, author of numerous award-winning publications. Juan Piaggio (interviewed on February 10, 2017) is advisor for the Vice-Presidency of ANTEL and has represented Uruguay in various international telecommunications commissions.

4.3 Problematisation of data sources

4.3.1 Primary sources of data

Difficulties to gain access to potential interviewees were reflected upon on the basis of contrasting structural and post-structural perspectives on power relations in interviews.

From a structural perspective, most key informants and potential interviewees for this research could be regarded as *elite*. According to structural views of power, the elite are those individuals who due to their professional positions possess power in all contexts, including the interview space (Smith, 2006, p. 645).

From a post-structural perspective, Smith (2006, pp. 645–646) questions this postulate, problematising both the identification of elites as power holders and the transferable nature of their power as invariably resulting in an asymmetric power relation that favours the interviewee over the interviewer.

The researcher's experience in collecting data for this thesis was that the power available to interviewees due to their authoritative positions was not translated into an asymmetrical relationship with the researcher during interviews. In fact, in all but two of this thesis' interviews, the authoritative position of the interviewees was hardly made evident. Even in those two cases, informants were willing to share their thoughts and knowledge on the topic with the researcher. Other interviewees, for their part, were interested to know the results of this investigation, because they admitted having little awareness of UCFTA's content and its potential implications.

The researcher's experience in the process of data collection through interviews would thus seem to validate the post-structural perspective presented above. This, and Smith's (2006, p. 648) argument that putting up barriers to access is not specific nor more common practice of elite groups, made one conclude that the absence of a reply to the interview

request by some, may have not been related to their professional position and possible categorisation as elite, but to a sheer lack of time or insufficient knowledge on the agreement, which at that time had been recently signed and there was yet no debate around it.

4.3.2 Secondary sources of data

Regarding secondary sources of data, Scott (as cited in Bryman, 2012) presents a set of criteria that can be used to evaluate the quality of documents. Considering the type of documents used for this study, special emphasis was made on *credibility*, which involves assessing the accuracy of the evidence presented (Scott as cited in Bryman, 2012, p. 544). Following Bryman (2012, pp. 550–554), data retrieved from official documents issued by the state, newspaper articles and the internet, was examined and contrasted to avoid possible distortions. As a result of this process some evidence was discarded.

4.4 Ethical considerations

Turning to the problematisation of the possible identification of this thesis' interviewees as elite, Smith (2006, pp. 649–650) was followed in the sense that the ethics and codes of conduct applied in interviewing them were in no way special. As Bryman (2012, p. 138) and Kvale (2007, pp. 42–43) suggest, information about the use of the interviews and the purpose of the research were provided in order to get their informed consent to take part in this investigation. Drawing on Kvale (2007, pp. 42–43), interviewees were also asked for permission to be quoted. In all cases authorisation to disclose interviewees' names was solicited and given, and permission to record the interviews was also requested. With regards to conferences and seminars, since they were public events, speakers' consent to be part of this study was not requested, and the identity of the researcher -who was part of the general

audience- was not revealed. Having that in mind, it was decided not to expose their names, just in case doing that could be against their will.

4.5 Data analysis

A deductive content analysis of the data collected was carried out. Following Elo and Kyngäs (2008, p. 109), this approach to data analysis was determined by this thesis' aim, which includes theory testing in a new context. Categories were thus established on the basis of concepts included in the theoretical framework, as Elo and Kyngäs (2008, p. 111) suggest, and organised in a structured categorisation matrix. Such kind of categorisation matrix implies that only those aspects of the data that fit the established categories are chosen for the analysis (Elo & Kyngäs, 2008, pp. 111–112). Once categories were defined and the structured matrix designed, data collected was broken down and coded according to their correspondence with categories or as a means to exemplify them (Elo & Kyngäs, 2008, p. 111). Coding was done manually. Only the manifest content of documents was looked at -the latent content, which is derived from people's attitudes or behaviour, was not considered of interest for this research (Elo & Kyngäs, 2008, p. 109).

5. Analysis

5.1 Why did Uruguay negotiate and sign a cutting-edge FTA with Chile?

The bearing of the International System on Uruguay's decision to negotiate and sign a cutting-edge FTA with Chile is here analysed. Using the theory of kicking away the ladder requires us to look into the reasons behind Uruguay's signature of this specific type of agreement with Chile, to assess whether the decision was influenced by the dominant discourse on the relationship between institutions and economic development.

Uruguay's Ministry of Foreign Affairs' Strategic Plan makes a case for what Bizzozero (as cited in Fernández Luzuriaga, 2010, p. 100) and Fernández Luzuriaga (2010) affirm about countries' foreign policy. Although foreign policy is designed by countries' national political systems, their decisions are constrained by the international context resulting from the International System -particularly so in small and peripheral countries like Uruguay (Fernández Luzuriaga, 2010, pp. 100–101, 104). In fact, the Strategic Plan calls for an update of Uruguay's foreign policy to accommodate the country to new global trends (Ministerio de Relaciones Exteriores. República Oriental del Uruguay, n.d.).

According to Uruguay's Minister for Foreign Affairs, UCFTA was the first agreement that Uruguay signed in an attempt to participate of the new international trade dynamics, in order to improve its preferential access to the global market (Parlamento del Uruguay, 2016a). R. Nario (personal communication, December 12, 2016) similarly suggested that UCFTA was the result of pragmatic thinking, derived from Uruguay's need for increased preferential access to the global market and the inefficiency that the two most beneficial negotiation schemes for the country (namely, the multilateral and regional) are proving to have in delivering their objectives. Regarding multilateral trade negotiations, R. Nario (personal communication, December 12, 2016) said that the WTO has become devoid of

purpose because of developed countries' economic approach. Giving the example of e-commerce, R. Nario (personal communication, December 12, 2016) affirmed that trade issues are being negotiated outside the WTO, in the framework of bilateral and plurilateral agreements including commitments that go beyond multilateral instruments, which are thereafter brought back to the WTO as a "leave it or take it" package.

In light of the above, some connections can be drawn between Uruguay's Ministry of Foreign Affairs' decision to negotiate and sign UCFTA and recent developments in the International System. As was stated in the introduction, the interactions within the International System occur according to rules created by the most powerful states (Barbé as cited in Fernández Luzuriaga, 2010, p. 103). Drawing on what Uruguay's Minister of Foreign Affairs (Parlamento del Uruguay, 2016a) and R. Nario (personal communication, December 12, 2016) said, we can infer that developed countries had influence in Uruguay's decision, at least indirectly through the evisceration of the WTO and the creation of new international trade dynamics. The stalemate in the WTO goes hand in hand with developed countries' advancement of new negotiation schemes, through which -due to their power- they create new trade dynamics and standards of regulation that they would then try to incorporate into the WTO (Peña, 2014, p. 56). Countries that do not participate in those agreements in which the standards of regulation are established, have no bearing on their definition nor in devising the institutions that are to govern global trade (Peña, 2014, p. 56).

Uruguay's Minister of Foreign Affairs recognised that there are costs related to countries' non-participation in the agreements where the new trade negotiations blueprint is being sketched (Parlamento del Uruguay, 2016b). Through UCFTA, Uruguay sought to explore and delve into the new model of trade agreements, in order to assess their benefits and costs for the country and to start "speaking their language" (Parlamento del Uruguay, 2016a, 2016b). It was the first time that Uruguay negotiated topics that are typical of cutting-

edge trade negotiations -including e-commerce-; it was also the first bilateral trade negotiation that Uruguay undertook since the signature of an FTA with Mexico in 2003 (Parlamento del Uruguay, 2016a). R. Nario (personal communication, December 12, 2016) said one of Uruguay's main objectives was to get back on the track of bilateral negotiations, adding that was the greatest achievement of UCFTA. This was the first of a series of cutting-edge FTAs Uruguay will pursue bilaterally with all member states of the Pacific Alliance without acceding to that agreement, as well as with China, Indonesia and Vietnam, R. Nario (personal communication, December 12, 2016) affirmed.

At the time when the interviews were conducted, less than three months after UCFTA was signed, the rationale behind Uruguay's Ministry of Foreign Affairs' pursuance of the agreement were still unclear for the Uruguayan society at large; in fact, there was hardly any debate around this topic then. The interviewees were thus asked what they thought were the objectives that Uruguay's Ministry of Foreign Affairs was pursuing with the cutting-edge FTA with Chile, considering that both countries were already bound by other four agreements. Several interviewees responded along similar lines:

There is a first objective of rapprochement with Chile, which is a leading country in the relations with Asia Pacific...it is sort of a first step toward Asia Pacific through the country with which we have very close relations...I believe that it [UCFTA] has various elements...that can easily be made compatible with a trans-Pacific agreement...-we have doubts whether that will prosper or not. But I think that is the other objective, to be ready to make a leap towards a more ambitious goal. (J.M. Quijano, personal communication, December 14, 2016)

It is a model treaty that in a sense seeks to generate a new negotiation modality...the so-called new generation treaties...I believe Uruguay won negotiating experience in

this agreement with Chile...[I] think the government's strategy was to negotiate a new generation agreement that would serve as a base for the potential treaty between MERCOSUR and the European Union, and now with China. (I. Posada, personal communication, December 20, 2016)

I believe there has been a change in Uruguay's foreign policy...the idea that the Chancellor expresses time and again is to vigorously pursue FTAs as a suitable path for [Uruguay's] international insertion...I presume [the idea] is to take on disciplines progressively that end up turning the signature of FTAs with whoever a fait accompli. (G. Caetano, personal communication, December 22, 2016)

Their insights were confirmed by Uruguay's Minister of Foreign Affairs, who later stated that the government's approach to the negotiation of UCFTA was to develop technical knowhow to establish a free trade negotiations' blueprint with which to pursue deals with other countries (Parlamento del Uruguay, 2017). This initiative stems from the understanding that Uruguay needs to broaden its preferential access to the global market of goods to sell its surplus food production and to integrate into value chains, a purpose for which it must pursue trade agreements (Parlamento del Uruguay, 2016b).

As stated in the introduction, preferential trade agreements are nowadays not primarily aimed at securing market access, but are mainly focused on creating the appropriate framework for the expansion of global production and supply chains, for which the adoption of common rules and the improvement of local institutions are needed (Pérez del Castillo, 2014, p. 19). The standards of regulation thereby sought serve the interests of North American, Asian and European value chains (Rosales, 2015, p. 55). For their proper operation, rules on tariffs to eliminate obstacles to trade at the borders are needed, as well as

norms to remove internal regulatory barriers, for which provisions that refer to domestic policy making on *within-the-border* issues are included (Pérez del Castillo, 2014, p. 20; Rosales, 2015, p. 35). Specifically, to secure the free flow of goods, information, and people and capital participating in the value chains, the liberalisation of transport, telecommunications and financial services is furthered, in addition to rules that advance the international mobility of capital, and the reduction or elimination of tariffs and non-tariff barriers (Rosales, 2015, p. 34). To secure the IPR of multinational companies taking part in value chains, rules on IPR protection and other safeguards for foreign investors are also touted (Rosales, 2015, p. 34).

In light of the theory of kicking away the ladder, we can infer that as the standards of regulation included in the new preferential trade agreements increase the scale and scope of liberalisation in the interest of developed countries, they can be regarded as the good policies and good institutions of the global economy organised around global value chains (GVCs). Drawing on what was previously said in this section (5.1), it seems that developing countries like Uruguay are adopting those standards in the understanding that they facilitate an international insertion that favours preferential access to diversified markets.

Regarding the negative list approach to trade in services negotiations, adopted in UCFTA and in most new preferential trade agreements, R. Nario (personal communication, December 12, 2016) said that it is advanced by developed countries and has become standard; it is an imposition in the sense that it is a “take it or leave it” norm. The reality is that we are too small a country to impose rules at an international level, so if we want to negotiate with third countries, we need to adjust to the new negotiation modalities, we can no longer negotiate with a positive list approach, R. Nario (personal communication, December 12, 2016) affirmed. Similarly, I. Posada (personal communication, December 20, 2016) said:

What we ought to understand is that we do not make the rules, we are recipients of rules crafted by others. A country like Uruguay, with a small economy... is a recipient of international regulations. So, insofar you are a recipient of international regulations, you have to prepare yourself to be as professional as possible, knowing that those are the rules of the game.

J.M. Quijano (personal communication, December 14, 2016) problematised the former interviewees' point of view:

It is a gross mistake to change the WTO's modality of negotiation for this one that originates in US FTAs, where it began to be imposed. By way of imposition it is now becoming an extended practise. Chileans adopt it and pass it on... In previous negotiations it was argued that *Yankees* demanded it. But why would you adopt it in a negotiation between equals? Because you are convinced that it is good. Because it is the new modality. Well, it is the new modality insofar you endorse it, otherwise it is not the new modality.

Chang (2003, pp. 135–136) affirms that developed countries indeed exert tremendous pressure on developing countries to adopt good policies and good institutions, and that developing countries need to adjust to the *new rules* of the world economy as defined by developed countries and the IPDE, if they want to participate in it. Reality dictates that it is “the strong calling the shots and the weak following orders” (Chang, 2003, p. 135). However, Chang (2003, pp. 136–137) argues that efforts should be directed at changing those new rules and the good policies and good institutions that they prescribe, because it has been proven that many of them are not needed for developing countries' development, or are even detrimental to that purpose. Policies and institutions should be advanced provided they can

trigger internal development, not just please demands from external forces, because this does not guarantee economic growth (Chang, 2003, p. 137).

With regards to developing countries' implementation of good policies and good institutions to attract foreign investment, Chang (2003, pp. 136–137) argues that these are much less important determinants of investors' decisions than market size and growth. Furthermore, even when good policies and good institutions do result in increased foreign investment flows, it is likely that in most countries foreign investment is not the major driving force for economic growth (Chang, 2003, p. 137).

At a glance, drawing on the purposes behind Uruguay's negotiation of UCFTA and its cutting-edge nature, it appears as if the dominant discourse on the relationship between institutions and economic development had influence on Uruguay's decision. One strand of thought in Uruguay places the cause of the country's poor long-term growth dynamics and its volatility in the existence of *bad institutions* (Bértola & Lara, 2017, p. 415). According to these views, good institutions would result in more investments, the attraction of capital and best business and market practices, and greater predictability -all of which would lead to higher and more stable growth rates (Bértola & Lara, 2017, p. 415). Another strand of thought places the problem in Uruguay's production structure and the concentration of its exports in a poorly-diversified group of commodities (Bértola & Lara, 2017, p. 416).

Since 2005, Uruguay's governments' predominant view in terms of industrial and productive development policy has been to support industry transversally, through the promotion of an investment-friendly environment that aims to attract foreign capital (Bértola & Lara, 2017, pp. 421–424). This has been complemented with the promotion of extra-region FTAs -to diversify markets, but not necessarily exported goods-, and the support to already existing economic sectors (Bértola & Lara, 2017, p. 421). The current pattern of productive specialisation is not a major problem for development according to this paradigm, because it

believes that structural transformation is an *ex-post* result of economic growth, rather than an *ex-ante* requisite (Bértola & Lara, 2017, p. 421).

Uruguay's governments' predominant view thus ties the country's structural transformation to economic growth, which is in turn dependent on increased foreign investment, the attraction of which is contingent on the implementation of good institutions (Bértola & Lara, 2017). This is at odds with Chang's (2003, pp. 136–137) policy and institutional advice described above, which is based on the understanding that good policies and good institutions do not necessarily attract more foreign investment, and foreign investment might not result in significant economic growth. By making structural transformation secondary to economic growth, it seems that governments' policies aligned with the predominant view are and will not be capable of changing Uruguay's integration into the unequal world economic system, as it was described by structuralists. In fact, Pittaluga (2017) affirms that as in every other technological and industrial revolution, Uruguay is marginally participating in the current digital or 4th technological revolution, a fact that is contributing to reproduce the country's structural heterogeneity and technological exogeneity (Pittaluga, 2017).

Whilst this prevailing view within Uruguay's governments since 2005 has determined the course and management of the country's economy, it has failed in its goal to conclude extra-region FTAs, and the *de facto* reality has been of strong compliance with the collective strategies of MERCOSUR (Bértola & Lara, 2017, pp. 421–422). Despite the predominant view, a bilateral FTA with the US was dismissed and Uruguay walked away from the Trade in Services Agreement (TISA) negotiations (Bértola & Lara, 2017, p. 421), due to opposing ideas within the governing party. With regards to UCFTA, G. Caetano (personal communication, December 22, 2016) affirmed that:

The government camouflaged it as an agreement within the region and introduced it at a time when MERCOSUR was at its worst. And that [the ill functioning of MERCOSUR] creates a sense of weariness amongst the public opinion towards MERCOSUR's issues, and forges an enabling environment where anything can sneak in.

According to Uruguay's Minister of Foreign Affairs, the existing agreement on trade in goods between MERCOSUR and Chile -the ACE 35- provided an appropriate framework to advance a cutting-edge agreement (Parlamento del Uruguay, 2017). Since it does not innovate with respect to trade in goods, UCFTA does not collide with MERCOSUR's rules¹⁸ (Parlamento del Uruguay, 2017). In a conference on UCFTA -held at Uruguay's national university UDELAR-, one of the speakers said that this agreement was a way to open doors by further deepening an existing economic complementation agreement (ACE 35), without infringing MERCOSUR's rules. For his part, J.M. Quijano (personal communication, December 14, 2016) affirmed that:

I believe the geopolitical objective [of UCFTA]...is to slightly extricate Uruguay from MERCOSUR's Decision [CMC N°] 32/00...MERCOSUR has an agreement with Chile, but we have further deepened it...just as we did with Mexico, these are ways to pursue paths to flexibilisation. So I think the geopolitical objective is to keep on deepening the flexibilisation of an agreement like MERCOSUR and Decision [CMC N°] 32/00, without forcing the issue because...the agreement with Chile is not

¹⁸ As stated in the background, MERCOSUR's Decision CMC N° 32/00 does not allow for unilateral negotiations with third countries when agreements include tariff preferences, but it does for agreements on trade in services, investment, and public procurement, amongst other issues (Ons, 2010, p. 70; Pérez del Castillo, 2014, p. 12).

controversial for Argentina and Brazil... Thus, it is a leap towards what is now being announced, an agreement between Uruguay and China, which has totally different characteristics and is much more ambitious because it certainly implies the flexibilisation of MERCOSUR, though it would build on these two precedents, the deepening of the agreements with Mexico and with Chile.

5.2 Impact of UCFTA on Uruguay's future development prospects

For answering *How does UCFTA impact on Uruguay's future development prospects?*, we build upon the theoretical framework, and Hamwey's (2005) concept of national policy space for development in particular. As previously explained, countries' development prospects are limited by their effective national policy space, which in turn is determined by their exogenous policy space and endogenous policy space (Hamwey, 2005). The exogenous policy space shrinks every time a country commits to a new exogenous constraint, that is, when the number and scope of its international agreements expands (Hamwey, 2005, p. 5).

The impact UCFTA would have on Uruguay's exogenous policy space will be analysed here as the basis to determine the resulting effective national policy space, assuming -for the sake of simplicity- that the country's endogenous policy space would remain unchanged under this agreement. To shed light on its possible impact on the country's future development prospects, the chapters that introduce innovations with respect to older agreements concluded by Uruguay, or that incorporate new policy areas to which Uruguay is committing for the first time under a trade agreement, will be those exclusively looked at. Of those chapters, for reasons of focus and scope, only the most controversial for UCFTA's ratification by the Uruguayan Parliament will be considered. The chapters on trade in

services, intellectual property (IP) and e-commerce are those that meet these two-tier criteria. They will be studied from the perspective of Ha-Joon Chang's kicking away the ladder theory, to evaluate how they relate to Uruguay's effective national policy space for development and to the centre-periphery structural divide, when applicable.

5.2.1 Trade in services

Uruguay is Party to four international agreements on trade in services, namely: General Agreement on Trade in Services (GATS), MERCOSUR's Montevideo Protocol signed in 1997, MERCOSUR-Chile Protocol on Trade in Services, and the FTA between Uruguay and Mexico¹⁹ (Ons, 2010, p. 59; Uruguay XXI, 2017a). GATS and both MERCOSUR's Protocols have a *positive list approach*, while the FTA between Uruguay and Mexico was negotiated with a *negative list approach* (Uruguay XXI, 2017a). The negative list approach implies that everything that is not explicitly excluded through countries' list of reservations in the agreement is committed to be opened, in contrast to the positive list approach in which services sectors and sub-sectors committed are only those included in countries' schedules to the extent specified²⁰ (Khor, 2008, p. 11; SICE, n.d.-a).

Although the FTA between Uruguay and Mexico is in force since 2004, the negotiation of the Parties' lists of reservations or non-conforming measures with the basic principles of the cross-border trade in services chapter, which is at the core of a negative list approach, is yet to be finished (Ons, 2010, p. 60; Uruguay XXI, 2017a). UCFTA is thus

¹⁹ The FTA between Uruguay and Mexico is a broader trade liberalisation agreement with a trade in services chapter.

²⁰ For a detailed explanation of both approaches see: http://www.sice.oas.org/dictionary/SV_e.asp

Uruguay's first agreement including a trade in services chapter with a negative list approach, the negotiation of which has been concluded.

According to Chang (2005, p. 3), GATS and other agreements of the GATT Uruguay Round introduced new issues into multilateral trade politics that shrunk countries' policy space. As they ban the use of policy instruments that newly and older developed countries used in order to develop, these agreements are a modern version of what List conceptualised as kicking away the ladder, aimed at and likely to lock-in developed countries appropriation of technological rents and greater power (Wade, 2003, pp. 621–622). Multilateral trade liberalisation has been shaped in the interest of developed countries, which compelled developing countries in the Uruguay Round to open up their markets to their comparative advantages without reciprocating (Stiglitz, 2006, pp. 2–4). As Wade (2003) puts it, “all this...ties the hands of developing country governments ‘forever’ to *the North's interpretation* of a market opening agenda” (p. 622), which is advanced through a “rhetorical commitment to universal liberalisation and privatisation” (p. 622), and promises of better access to developed countries' markets, which are largely unfulfilled.

Nonetheless, the multilateral arena affords countries some wiggle room, which developed countries are now trying to curtail through the conclusion of FTAs and investment agreements outside the WTO, where they can impose deeper liberalisation standards and further restrict developing countries' policy choices (Chang, 2005, pp. 3–4). One of the vehicles developed countries have designed to that end is the negative list approach to the negotiation of trade in services, which serves their interest of further services liberalisation (Khor, 2008, p. 12). Considering that all that is not explicitly excluded is liberalised, the negative list approach advances liberalisation more easily, because it is likely that a country commits beyond what serves its development interests, due to lack of knowledge of all existing services sectors and sub-sectors, and the difficulty to predict which sectors or sub-

sectors will be important for the country to promote in the future and which new services may emerge (Khor, 2008, pp. 12–13). The negative list approach thus shrinks countries' policy space beyond the positive list approach included in GATS (Khor, 2008, p. 12).

UCFTA deviates from GATS-like agreements to resemble NAFTA-like agreements²¹. Drawing on Hamwey (2005, p. 4), we can affirm that UCFTA would shrink Uruguay's exogenous policy space for development because it is the first time the country concludes a negotiation on trade in services with a negative list approach, including the corresponding list of reservations or non-conforming measures to the rules on national treatment, MFN and local presence. Even if the negotiation of those lists of exceptions were concluded, UCFTA would still go beyond the FTA with Mexico, because the former also includes rules on market access, for which reservations are introduced in the annexes on a negative list basis ("Acuerdo de Libre Comercio entre la República de Chile y la República Oriental del Uruguay," 2016; SICE, n.d.-b). The fact that reservations to these rules are negotiated in negative lists, means that new services sectors or sub-sectors that may emerge will be automatically liberalised and committed to rules on national treatment, MFN, market access and local presence (Kelsey, 2017b).

In addition to expanding the number and scope of Uruguay's international commitments, UCFTA also sets precedent on the modality of trade in services negotiations that Uruguay is ready to adopt from now on, and on the services sectors and sub-sectors it is willing to commit to liberalisation, given that the benefits granted to Chile through UCFTA could also be requested from Uruguay by other countries that enter into agreements with it (Uval, 2017). Drawing on Kelsey's (2017b) explanation of negative list trade in services

²¹ Ons (2010, p. 45) classifies trade in services agreements or chapters into two large groups: those that follow GATS model (in that they take a positive list approach), and those that follow NAFTA model (in that they take a negative list approach).

agreements in general, it is not even clear which are the sectors and sub-sectors committed: all are included except those explicitly excluded in the countries' lists of reservations, but the meaning of *all* remains unclear because the agreement does not make reference to an inventory of existing services.²²

This precedent is being established without Uruguay having adopted a general negotiating mandate that clearly outlines the country's sectoral offensive and defensive interests, as was stated by one of the speakers on the international insertion panel organised by the Economics Thematic Unit of the governing party in October 2017. Critics of the agreement affirm that some of its provisions could compromise the viability of existing key sectors for development or the creation of new strategic ones (Uval, 2017). They further warn that its impacts would not be circumscribed to those related to trade in services liberalisation with Chile, but would be compounded by the consequences of other agreements that Uruguay could conclude using this blueprint (Uval, 2017). Uruguay would thereby future-proof its commitments undertaken in UCFTA –an effect that is consolidated by the *standstill* and *ratchet* clauses, explained hereunder.

The structure of the countries' schedules in UCFTA resembles those of US FTAs with developing countries -as described by Khor (2008)- and TPP and CETA schedules -as explained by Kelsey (2017b). Uruguay's and Chile's schedules are detailed in Annexes I and

²² GATS schedules use W/120, which is a list of service sub-sectors developed by the WTO in 1991. To indicate exactly what falls within a sub-sector, W/120 refers to the UN CPC system -more specifically, to the Provisional CPC from 1991 (Kelsey, 2017b). For further details see:

https://www.google.se/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=2ahUKEwjBqfKTgtPaAhVGkJAKHTABDlcQFjABegQIABAx&url=https%3A%2F%2Fwww.wto.org%2Fenglish%2Ftratop_e%2Fserv_e%2Fmntn_gns_w_120_e.doc&usg=AOvVaw0iLKlmNbl-CdM2uaPqmTr7 and

<https://unstats.un.org/unsd/cr/registry/regcst.asp?Cl=9&Lg=1>

II for each country. Annex I includes the list of existing measures that a Party will maintain and are non-conforming to the rules on national treatment, MFN, market access and local presence (“Acuerdo de Libre Comercio entre la República de Chile y la República Oriental del Uruguay,” 2016). It incorporates standstill and ratchet mechanisms. Standstill means that the degree of liberalisation in each country at the time of signature of the agreement is locked-in, so no new exceptions to the rules can be applied in the future; ratchet implies that the future amendment of non-conforming measures can only be made for greater conformity with the treaty, and that liberalisation cannot be reversed (Office of the United States Trade Representative, n.d.; Sinclair, 2017, p. 15; Wilhelm, 2017). Annex II functions as a policy space reservation because the countries’ non-conforming measures listed there, in contrast to those listed in Annex I, can be amended in the future to be made less conforming to the rules on national treatment, MFN, market access and local presence (“Acuerdo de Libre Comercio entre la República de Chile y la República Oriental del Uruguay,” 2016).

The FTA between Uruguay and Mexico includes standstill and ratchet, which are in force and tightly restrict countries’ policy space, even though they do not apply to existing non-conforming measures to the rules on market access (Ons, 2010, p. 60). As explained earlier, negotiations on the lists of exceptions to which standstill and ratchet apply have not yet been concluded. Hence, UCFTA goes beyond the only agreement where Uruguay had previously included these mechanisms, further reducing the country’s exogenous policy space.

Since UCFTA would shrink Uruguay’s exogenous policy space for development, it can at this stage be concluded -on the basis of the theoretical framework- that by adopting a negative list approach and the related standstill and ratchet mechanisms, Uruguay is letting its ladder to be kicked away, deferring to developed countries’ interests for further services’ liberalisation.

Although the negative list approach allows for reservations, two remarks are relevant on that regard. First, drawing a parallel with Chang's (2005, pp. 16–17) observations concerning WTO's Non-Agricultural Market Access (NAMA) negotiations, it can be argued that the flexibility afforded to UCFTA's Parties to introduce reservations is sketchy, for once a sector is committed under Annex I, there is no going back. As Chang (2005, p. 17) argues, if disinterested, flexibility would imply that Parties be allowed to introduce new reservations whenever needed for their development. Second, although Annex II allows for this kind of deeper flexibility, the services sectors and sub-sectors and measures included in countries' lists of reservations were subject to negotiation and contingent on the interests of the counterparty.

In addition, the total exclusion of entire sectors –such as financial services, services supplied in the exercise of governmental authority, and telecommunications in UCFTA- from preferential trade agreements is also subject to negotiation and contingent on the interests and power of the Parties involved. As J. Piaggio (personal communication, February 10, 2017) said:

I think excluding telecommunications from the [UCFTA's] negotiation must have left the Chancellery [of Uruguay] in a weak position. Chile is probably interested in protecting something else and therefore said well, let's make trade-offs. [The negotiation with] Mexico was different...Mexico was very tough because it has very strong interests in the telecommunications business. Chile does not.

The total exclusion of financial services, services supplied in the exercise of governmental authority, and telecommunications from the scope of UCFTA's trade in services chapter, nonetheless gives us grounds to believe that although advancing liberalisation, Uruguay's current government does not intend to radically adhere to the

dominant discourse on the relationship between good institutions and economic development, at least insofar as negotiations permit. The reduction of the country's exogenous policy space for development is countered by limiting the exogenous constraints included in UCFTA, via the exclusion of the above-mentioned services sectors. Thus, UCFTA's kicking away the ladder effect is partially mitigated.

The exclusion of services supplied in the exercise of governmental authority from the scope of the agreement nonetheless does not fully protect the activities of SOEs or public services more generally. The services at issue are those that are not supplied on a commercial basis and for which there is no competing supplier ("Acuerdo de Libre Comercio entre la República de Chile y la República Oriental del Uruguay," 2016). This narrow definition excludes most activities of SOEs and other public services from its coverage, because many of them are paid for by the users and are provided under conditions of competition (Kelsey, 2017b; Khor, 2008, p. 14). To be exempted from the terms of the agreement, public services must be explicitly excluded (Kelsey, 2017b; Khor, 2008, p. 14).

5.2.2 Intellectual property

Strong protection of private property rights, and more specifically of IPR, is one of the good institutions currently imposed on developing countries through various bilateral and multilateral instruments (Chang, 2003, pp. 69, 129–130). This institution is part of the good governance package, set forth by the IDPE in the understanding that it leads to institutional development and thereby to economic growth (Chang, 2003, p. 69). Such understanding is built on the dominant discourse regarding the relationship between good institutions and economic development, which the IPDE promotes (Chang, 2003, p. 69). However, as explained in the theoretical framework, history shows that good institutions were the result, rather than the cause, of NDCs economic development (Chang, 2003, p. 129, 2011, p. 476).

Notably, strong IPR standards came after the innovative capacities of NDCs were mature enough to boost local R&D and innovation (Sercovich, 2008, p. 9). Before that, NDCs' IPR regimes were significantly less demanding than they are now for developing countries (Chang, 2003, p. 85). Besides, even the most advanced NDCs regularly infringed the international IPR regime well into the twentieth century (Chang, 2003, p. 85). In developing countries, conversely, commitments to IPR standards predate their achievement of the necessary levels of local innovative capacities for such standards to be advantageous and catalyst for innovation (Sercovich, 2008, pp. 9, 31). Hence, an asymmetry emerges, in which IPR primarily benefit developed countries' innovative activities, and it is thus in their interest to advance them (Sercovich, 2008, pp. 9–10). These standards restrict and delay knowledge and technology dissemination, as well as technological learning and competition in developing countries, thereby affecting their potential for development and for bridging the gap with developed countries, which were not subject to these constraints while developing (Sercovich, 2008, pp. 15, 30, 34).

GATT has been one of the instruments used to forge IPR standards responsive to the interests of developed countries and to impose them on developing countries (Chang, 2011, p. 474). TRIPS has compelled developing countries to commit to IPR rules that did not exist in the times when NDCs were themselves developing (Sercovich, 2008, p. 5). In 1995, it laid down restrictions on developing countries' economic development, beyond what they were ready to undertake at that point in history (Sercovich, 2008, pp. 5, 7). Wade (2003, pp. 621–622) says that TRIPS functions as an instrument for kicking away the ladder to development for developing countries; Chang (2005, p. 3) affirms that it is restrictive of countries' policy space. Both arguments can be seconded building upon Hamwey (2005, pp. 11–12), who affirms that when exogenous constraints are introduced before countries' economies are

sufficiently developed, their effective national policy space shrinks and their future development prospects are jeopardised.

Although it is increasingly understood that TRIPS promotes IPR standards that are detrimental to developing countries' development (Khor, 2008, p. 44), such agreement is less harmful than those concluded outside the WTO (Chang, 2005, pp. 3–4; Sercovich, 2008, pp. 5, 38). Agreements outside the WTO have consistently strengthened IPR standards, further reducing developing countries' policy space for development and hindering their innovative capacities (Chang, 2005, pp. 3–4; Sercovich, 2008, pp. 5, 13, 33, 38). Even though designed by and for developed countries' interests -only protecting the IP generated by them (Stiglitz, 2006, pp. 2–4)-, TRIPS allows for flexibilities to the application of its rules (Khor, 2008, p. 45).

Consequently, developed countries have sought to further their interests beyond what they already got in TRIPS, imposing higher standards of IPR globally through the World Intellectual Property Organization (WIPO) and the conclusion of FTAs (Khor, 2008, pp. 44–45). Both instruments introduce, consolidate and harmonise the new strengthened rules on IPR (Roffe & Santa Cruz, 2006, p. 47). The US, EU and EFTA now require their counterparties in FTAs to adhere to various international IP treaties (Khor, 2008, p. 50; Roffe & Santa Cruz, 2006, p. 48). Among them is the Patent Cooperation Treaty (PCT), administered by WIPO (Khor, 2008, p. 50; Roffe & Santa Cruz, 2006, p. 48). As WIPO is mostly financed by patent applicants, it responds to their interests, promoting further commitments in IP protection in developing countries (Khor, 2008, p. 50).

In the same line, UCFTA states that by the date the agreement enters into force, the Parties shall have made their best efforts to ratify or accede to the PCT (“Acuerdo de Libre Comercio entre la República de Chile y la República Oriental del Uruguay,” 2016). This is the first time such a request is included in a treaty signed by Uruguay. In fact, the statement

itself is directed to Uruguay, because Chile is Party to the PCT since June 2009 (WIPO, n.d.-a). In March 2017, Uruguay's Administration submitted the draft legislation to approve the country's accession to the PCT for consideration by Parliament (Casa Grande, 2017). By the time this thesis was finished, the legislation had not been passed.

PCT facilitates the procedure for patents applications by standardising it across all countries Party to the treaty (Khor, 2008, p. 55). Easier procedures translate into larger numbers of patent applications in countries that accede to the PCT (Khor, 2008, p. 55). Parties having higher numbers of inventors willing to have their inventions protected in other countries benefit the most (Khor, 2008, p. 55). They are primarily developed countries (CAF, 2017). Even those Latin American countries that have the regional highest numbers of patent applications under the PCT (Chile is third), stand well below the biggest economies in the global ranking (CAF, 2017). Hence, in developing countries, the PCT benefits foreign applicants more than locals, for the former hold most patents (Khor, 2008, p. 55). It thereby consolidates an unequal global structure in which a few countries and companies own most of the IP worldwide (Casa Grande, 2017) .

Holding a patent means having exclusive domain over the knowledge subject to that patent, until it expires (WIPO, n.d.-b). Since knowledge is currently considered to be the basis for economic development (Sercovich, 2008, p. 35), patents seem to exclude non-holders from that process, or to delay it at least. Even in countries where no application is filed, the information relating to the invention does not enter the public realm and cannot be exploited until 30 months have passed after the initial patent application was filed in a national (of another PCT signatory country), regional or international receiving office (Casa Grande, 2017; Roffe & Santa Cruz, 2006, p. 34; WIPO, n.d.-c).

As stated above, under the PCT much less patent applications have been filed by nationals from developing countries than from developed countries (CAF, 2017). Building on

Sercovich (2008, p. 35), this treaty thus shrinks developing countries' prospects for bridging the productivity and income gap with developed countries. This gap has widened overtime due to increasing restrictions to developing countries' room for manoeuvre to develop scientific, technological and innovative capacities (Sercovich, 2008, p. 33). Drawing on the structuralist approach -as explained by Kay (1991, p. 35)- it seems that PCT thus cements the centre-periphery divide and the uneven distribution of technical progress. It provides the framework for structural inequalities to be perpetuated, securing central countries' continued exclusive domain over technical progress and peripheral countries' continued role as importers of technologies.

In a seminar about IP rules in FTAs convened by Uruguay's Parliament in November 2016, many speakers flagged concerns about the country's potential accession to the PCT ("Propiedad intelectual en el marco de los TLC," 2016). The President of Uruguay's consortium of national laboratories argued it would affect the local pharmaceutical industry that produces 90% of the medicines that are consumed in the country ("Propiedad intelectual en el marco de los TLC," 2016). The PCT would represent a challenge for Uruguay's public health, for it would lead to more medicines being patented, monopolies and higher prices, he had previously explained ("Patentes son el tema más sensible del TLC con Chile," 2016). A George Town University IP expert argued that Uruguay should not accede to the PCT because the commitments under it are fixed, and since patents are used to avoid competence, it would affect the development of local industries ("Propiedad intelectual en el marco de los TLC," 2016). The Vice-President of the National Chamber of Fertilisers and Phytosanitary Products argued that accession to the PCT would imply deepening Uruguay's technological dependence, because the production of high technology industrial goods would be hindered ("Propiedad intelectual en el marco de los TLC," 2016).

Within the governing party, some believe that Uruguay must adhere to the new rules on IP to avoid being excluded from international trade and investment flows (Bottinelli, 2018). Since Uruguay does not have many applicants for patents, critics argue that the PCT would not be advantageous for the country (Ferrere, 2017). Already now, most patent applications in Uruguay are filed by foreigners, especially non-resident pharmaceutical companies (Dartayete, 2017). The main countries of origin of applicants are the US, Germany, France, Sweden, Switzerland and the UK, which account for 74% of all patent applications and 84% of pharmaceutical patent applications in Uruguay (Dartayete, 2017). These figures are indicative of the existing gap between developed and developing countries when it comes to patenting, and serves as an example to show why developed countries are especially interested in creating stronger standards of IP protection worldwide.

Drawing on the theories of kicking away the ladder and national policy space for development, and the use that has been made of them to critically examine TRIPS, it can be argued that the PCT is a modern instrument for kicking away the ladder for developing countries, and for reducing their national policy space for development. It deepens Parties' commitments on IP protection -in administrative rather than substantive terms (Roffe & Santa Cruz, 2006, p. 48). It thereby expands the scope of the good institution that developed countries promote to their benefit, according to Chang (2003), and the exogenous constraints Parties face.

PCT would thus shrink Uruguay's exogenous policy space and its effective national policy space for development, for it would entail committing to new rules guiding IP protection before the country's innovative capacities are sufficiently developed to benefit from standardised patent application procedures. That is, Uruguay would be bound by new exogenous constraints prior to overcoming endogenous constraints, which in this case are materialised in its deficient innovative capacities. Since PCT does not respond to the needs

of a developing country like Uruguay, but rather benefits developed countries' exclusive domain over knowledge, it would have a kicking away the ladder effect for Uruguay's development. It would also make it harder for Uruguay to bridge the structural divide with developed countries, as was explained earlier, building on the structuralist approach.

5.2.3 E-commerce

On occasion of the 48th Annual Meeting of the World Economic Forum, in January 2018, Angela Merkel affirmed that data are the natural resource of the twenty-first century (as cited in González, 2018). Cross-border data flows are needed for all digital trade transactions; while some countries restrict them for security and privacy reasons, others advance new rules for their liberalisation through different trade agreements outside the WTO (Burri, 2017, p. 408). Among others, e-commerce rules are part of that push, for they comprise standards on digital trade and cross-border data flows (Burri, 2017).

WTO launched a Work Programme on E-commerce in 1998, but no agreement has yet been reached (Burri, 2017, pp. 416–418). The multilateral organisation has so far failed to keep up with transformations brought about by the internet, and to adjust to the current reality of digital trade, which is now much more relevant for economic development and policy-making than it used to be in the nineties (Burri, 2017, pp. 410, 416–417). This has led developed countries to *forum shopping*, trying to advance rules on digital trade through bilateral, regional and plurilateral trade agreements (Burri, 2017, p. 417). In the first category are various FTAs negotiated by the US and the EU with third countries; the last category comprises the mega-regional agreements like TISA, TPP and TTIP (Burri, 2017).

Industrialised countries' corporations that dominate information, media, retail and technology are also promoters of establishing comprehensive binding rules on digital trade (James, 2017a). More specifically, they are US-based corporations, namely: Google,

Facebook, Amazon, Apple and Microsoft (James, 2017a). These standards would guarantee their unregulated control over technology, digital platforms, search engines and big data, hence, the infrastructure on which the global economy is based (Kelsey, 2017a, p. 13). Particularly, rules on e-commerce liberalise cross-border data transfers and are designed to future-proof their dominance and profit interests (James, 2017a). When a field is dominated by a corporation, such company has access to a vast amount of data that can be transformed into intelligence, securing its continued dominance over competitors and resulting in increased profits if the intelligence created is sold or rented out to other companies (James, 2017a).

By banning controls over data -countries' most valuable resource-, rules on e-commerce would jeopardise countries' future development (James, 2017a). Free flow of data benefits developed countries' corporations at the expense of developing countries, which would waive their data resources without any economic return (James, 2017a). These corporations' business model is based on deregulation, flexibilisation of labour and tax optimisation or evasion (James, 2017b). To cut their costs, they outsource their activities and subcontract (Kelsey, 2017a, p. 31). Developing countries' producers and workers are pushed to participate in the low tiers of the global value and supply chains, reproducing underdevelopment (Kelsey, 2017a, p. 31). E-commerce rules would accelerate and cement these trends (James, 2017b; Kelsey, 2017a, p. 31). Parminder Jeet Singh affirms that developing countries' structural dependency will be further deepened in the digitised society (as cited in James, 2017a).

So far, drawing on the structuralist centre-periphery paradigm and Kay's (1991) explanation of it, it can be argued that just as the 1st Industrial revolution led to an unequal world economic system in which central and peripheral countries participated unevenly of the distribution of technical progress, the 4th technological revolution will perpetuate this divide.

Peripheral economies have always marginally participated of these and other industrial and technological revolutions (Pittaluga, 2017). Uruguay's economy is being inserted in this latest 4th technological revolution in a way that replicates the historical productivity gaps between economic sectors -perpetuating its structural heterogeneity- and an exogenous technological development model that relies on imports of capital goods and technologies instead of building absorptive capabilities and generating local knowledge (Pittaluga, 2017). Building on James' (2017a) observations on a recent Report on the 4th Industrial revolution and developing countries, it can be inferred that although the nature of Uruguay's insertion into the world economy and the referred revolution unfolds irrespective of e-commerce rules, if commitments were undertaken on this regard, they would exacerbate the structural gap and afford the government very little wiggle room to palliate the burden.

UCFTA includes a chapter on e-commerce with so-called twenty-first century rules.²³ It is the first trade agreement incorporating rules on e-commerce that Uruguay has ever negotiated and signed (Ministerio de Relaciones Exteriores. República Oriental del Uruguay, 2016). Building on Hamwey (2005), it would thus shrink Uruguay's exogenous policy space for development if enforced. It would also mean that Uruguay agrees on rules that seem to be instruments for kicking away the ladder to developing countries' development in the framework of a digital economy. First, they are being furthered globally by developed countries and their high-tech corporations to secure their interest; second, they were not implemented when NDCs were themselves developing, because they are the result of fairly recent changes triggered by the internet in the global economy. For reasons of space and scope, only those articles in UCFTA's chapter on e-commerce that are most relevant to this thesis' purposes will be analysed here.

²³ TPP is the first concluded trade agreement that includes twenty-first century regulations of digital trade (James, 2017a).

Article 8.2.3, referring to the scope of application of the e-commerce chapter, establishes a dialogue between that chapter's commitments and the ones made under all other chapters and annexes of the agreement. It states that e-commerce rules are subject to relevant provisions, exceptions or non-conforming measures introduced in other chapters or annexes of UCFTA ("Acuerdo de Libre Comercio entre la República de Chile y la República Oriental del Uruguay," 2016). The depth of e-commerce rules is thus contingent on countries' actual commitments across the whole agreement (Burri, 2017). Regarding trade in services, for example, all services sectors or sub-sectors that are liberalised under UCFTA are subject to the whole set of e-commerce standards that it contains. Since services' liberalisation follows a negative list approach, the agreement further guarantees the full application of e-commerce rules to all future digital services (Burri, 2017, p. 420). This curtails Uruguay's capacity to regulate for development and bridge the structural divide with central countries.

Article 8.2.7 establishes that Parties recognise the importance of avoiding unnecessary barriers to trade conducted by electronic means; considering its national policy objectives, each Party shall seek to avoid measures that hinder e-commerce or give it a more restrictive treatment than that granted to trade done by other means ("Acuerdo de Libre Comercio entre la República de Chile y la República Oriental del Uruguay," 2016). As Kelsey (2017b) explained for TISA, policy-making is hence subject to a so-called *necessity test* or least-trade-restrictive test, meaning that measures taken to achieve policy objectives must be the least disruptive of e-commerce as possible. What are *unnecessary barriers* is not defined, so it could be anything that affects the interests of the other Party and tech corporations established in its territory. Any public policy could be challenged under this article if the other Party considers that it went beyond what is necessary for the policy's purpose.

Article 8.3, paragraph 1 states that Parties shall not impose customs duties on electronic transmissions -nor on content transmitted electronically- between persons of one and other Party (“Acuerdo de Libre Comercio entre la República de Chile y la República Oriental del Uruguay,” 2016). Paragraph 2 says that Parties can impose internal taxes, fees or other charges on content transmitted electronically, insofar they are enforced in a manner consistent with the agreement (“Acuerdo de Libre Comercio entre la República de Chile y la República Oriental del Uruguay,” 2016).

Adopting the commitment in paragraph 1 means going beyond WTO obligations, according to what Kelsey (2017a, p. 104) explains for TISA. In the WTO, countries are currently banned from imposing customs duties on electronic transmissions, as per a temporary moratorium that has nonetheless been repeatedly renewed (Kelsey, 2017a, p. 104). Incorporating this prohibition to trade agreements outside the WTO means permanently committing to it (Kelsey, 2017b, p. 104). As content transmitted electronically falls within the scope of such prohibition, a large number of digitised products would be exempted from customs duties (Kelsey, 2017a, pp. 104–105). That would presumably trigger consequences for content development, for it would be difficult for smaller developers to compete with content developed or exported by big corporations. States’ revenues would also be affected, which proves to be a heavy burden for developing countries that depend much more on tariff collection for public spending than developed countries (James, 2017a). Hindering developing countries public investment, this provision would hamper their future development (James, 2017a).

Paragraph 2 seems to be a safeguard for development, because it allows applying internal taxes, fees or other charges on content transmitted electronically (“Acuerdo de Libre Comercio entre la República de Chile y la República Oriental del Uruguay,” 2016). However, the coverage of such safeguard is narrowed down, actually restricting what Parties are

allowed to do, for it establishes that those instruments can only be implemented insofar they are not inconsistent with other provisions in the agreement (“Acuerdo de Libre Comercio entre la República de Chile y la República Oriental del Uruguay,” 2016). Uruguay and Chile would not be allowed, for example, to impose internal taxes, fees or other charges that amount to unnecessary barriers to e-commerce, for they would be at odds with article 8.2.7 of UCFTA (“Acuerdo de Libre Comercio entre la República de Chile y la República Oriental del Uruguay,” 2016).

Article 8.10 introduces standards on cross-border transfer of information by electronic means (“Acuerdo de Libre Comercio entre la República de Chile y la República Oriental del Uruguay,” 2016). Article 8.11 introduces standards on the location of computing facilities (“Acuerdo de Libre Comercio entre la República de Chile y la República Oriental del Uruguay,” 2016). The latter topic was regulated for the first time in TPP, going beyond all previous trade agreements with rules on digital trade, expanding the areas subject to e-commerce regulation (Burri, 2017, p. 432). The inclusion of both such standards in TISA is being pushed for by the tech industry (Kelsey, 2017a, pp. 42–43). As stated in previous paragraphs, big tech corporations are trying to advance rules to secure the free flow of data across borders, and these two articles do so. They limit countries’ possibilities to deploy data localisation measures (Burri, 2017, p. 432).

Article 8.10.1 establishes that Parties shall allow the cross-border transfer of information by electronic means, including personal information, when it is for conducting a covered person’s business (“Acuerdo de Libre Comercio entre la República de Chile y la República Oriental del Uruguay,” 2016). The rule’s scope is broad, hence, most data would likely be subject to it, despite the fact that a causal relation between the transfer and the business concerned might need to be established (Burri, 2017, p. 433). Article 8.11.2 states that Parties shall not require covered persons to use or locate computing facilities in their

territories as a condition for conducting business there (“Acuerdo de Libre Comercio entre la República de Chile y la República Oriental del Uruguay,” 2016).

These standards have two general consequences attached to them. First, they pose a threat to privacy and data protection; since companies can store data in servers where they wish, data will most likely be kept in the US, where most servers are, and where there are no safe legal protections on data (James, 2017b). Second, considering that data is the natural resource of the twenty-first century (González, 2018; James, 2017a, 2017b), it seems that restricting countries’ use of policy instruments to hold data in their territories is detrimental to their development.

Articles 8.10.1 and 8.11.2 imply that Uruguay and Chile would waive valuable data originating in their territories for free, which, according to James (2017a), goes against any digital industrialisation strategy. Countries should instead build data centers, either nationally or regionally, where to store data (James, 2017a). These centers would function as instruments for data-based industries’ startup, resulting in economic gains for the host countries or regions (James, 2017a). However, this effort would lose its sense, at least partially, if the respective countries have committed to rules that restrict data and computing facilities’ localisation requirements. These rules would hinder the creation of infant industries and countries’ progress in moving up on the development ladder (James, 2017a).

Uruguay, through ANTEL, invested US\$50 million in building a data center that is expected to be a regional technological hub, providing data services and promoting the knowledge society (ANTEL, n.d.; “Nuevo ‘data center’ de Antel atenderá a la región,” 2016a). Before it was inaugurated in May 2016, Uruguay had already begun negotiations with Chile to conclude a cutting-edge FTA which would include a chapter on e-commerce. Article 8.11.2 of UCFTA may compromise ANTEL’s data center full potential for Uruguay’s

development, because under it, the country would not be able to require companies operating in its territory to store their data there.

Articles 8.11.3 and 8.10.2 add an exception allowing localisation requirements and restrictions to digital flows of data, respectively, only when the measures are aimed at reaching a legitimate public policy objective and provided they do not result in arbitrary or unjustifiable discrimination or a disguised restriction on trade (“Acuerdo de Libre Comercio entre la República de Chile y la República Oriental del Uruguay,” 2016). The exact meaning of *legitimate*, *arbitrary*, *unjustifiable* and *disguised* is not specified in the agreement, which may lead to legal uncertainty and could have a chilling effect on regulation and policy-making (Burri, 2017, p. 433; Kelsey, 2017a, p. 97).

Article 8.10.2 further establishes that each Party can have in its normative framework its own regulatory requirements regarding the transfer of data by electronic means (“Acuerdo de Libre Comercio entre la República de Chile y la República Oriental del Uruguay,” 2016). This seems to be a provision to safeguard ANTEL’s monopoly in the provision of telecommunication services in Uruguay, because the transmission of information by electronic means falls within the definition of telecommunications contained in Uruguay’s Law n° 19.307²⁴ on Audiovisual Communication Services.

²⁴ To access Uruguay’s Law n° 19.307, see:

<https://legislativo.parlamento.gub.uy/temporales/leytemp5223174.htm>

6. General discussion

This thesis aimed to investigate the bearing of the International System on Uruguay's international economic and trade insertion strategy, on the instruments the country pursues to further it, and on its resulting future development prospects, testing the application of theories extensively used for the study of multilateral, north-south and south-south trade agreements to the analysis of a cutting-edge south-south trade agreement. The researcher found that the theories selected were useful for their application to this thesis' case study. The reasons for signing UCFTA and its impacts on Uruguay's future development prospects could be explained by their use.

UCFTA incorporates the standards of regulation that are included in new preferential trade agreements and negotiations led by developed countries –standards which as argued in this thesis can be regarded as the good policies and good institutions of the global economy organised around GVCs, for they advance developed countries' interest of further liberalisation in key areas beyond tariffs. Uruguay assessed their inclusion as necessary for the country's possibility to participate in additional new preferential trade agreements with other countries in order to improve and broaden its market access.

Interestingly, Uruguay seeks to broaden its market access through a model of agreement that does not have as its primary aim to achieve market access, but to improve the local institutions and harmonise the rules that create the appropriate framework for the expansion of global production and supply chains (Pérez del Castillo, 2014, p. 19). These rules serve the interests of developed countries and refer to domestic policy making on within-the-border issues (Pérez del Castillo, 2014, p. 20; Rosales, 2015, pp. 35, 55). Hence, they shrink developing countries' national policy space for development. As Wade (2003, p. 639) states, instead of looking to improve or safeguard their policy space for development, developing countries' aim in trade negotiations is to obtain better market access.

The International System thus influenced Uruguay's decision to negotiate and sign UCFTA, not as an end in itself, but as an exercise to develop a free trade negotiations' blueprint that, by incorporating the rules commanded by developed countries, would prepare Uruguay to participate in other cutting-edge free trade arrangements in the future. The dominant discourse on the relationship between good institutions and economic development also appeared to have had influence on Uruguay's decision, although with some nuances. The predominant view in Uruguay governments' since 2005 -which has determined the management of the country's economy- is that economic growth is contingent on the implementation of good institutions (Bértola & Lara, 2017, pp. 415, 421). The total exclusion of financial services, services supplied in the exercise of governmental authority and telecommunications from the scope of UCFTA's trade in services chapter nevertheless shows that while Uruguay's current government is advancing liberalisation, it does not radically adhere to the dominant discourse on the relationship between good institutions and economic development, because it has sought to protect sectors that are sensitive for the country's development.

Despite these exclusions and annexes of non-conforming measures, UCFTA would reduce Uruguay's effective national policy space for development imposing exogenous constraints on various fronts. Hence, it would have a kicking away the ladder effect -at least as far as the chapters studied here is concerned. As exogenous constraints affect countries' effective national policy space differently depending on their economic development, the timing in which international agreements are concluded is determinant of their future development prospects (Hamwey, 2005, pp. 11–12). Under UCFTA Uruguay would abide to rules that would restrict its effective national policy space to an extent beyond what is convenient considering its current economic development and material capabilities. The country would waive its possibility to implement development policies of various kinds in the

future, when they may be necessary.

On trade in services, by adopting a negative list approach and the related standstill and ratchet clauses, Uruguay is responsive to developed countries' interest for further liberalisation. That approach and those mechanisms would lock-in the country's liberalisation commitments under UCFTA. If new services sectors or sub-sectors emerge, they would be automatically liberalised and committed to the rules of the agreement, regardless of their importance for the country's development. UCFTA would thus kick away the ladder to Uruguay's development, although that effect would be partially mitigated via the reservations included in the country's schedules and the total exclusion of financial services, services supplied in the exercise of governmental authority, and telecommunications from the scope of UCFTA's trade in services chapter. The agreement would also shrink the country's exogenous policy space for development, because the scope of this chapter goes beyond Uruguay's previous international commitments on trade in services.

Regarding IPR, UCFTA calls for Uruguay to accede to the PCT, just as is required by the US, EU and EFTA from its counterparties in FTAs (Khor, 2008, p. 50; Roffe & Santa Cruz, 2006, p. 48). The PCT would shrink Uruguay's effective national policy space for development, for the country would be bound by new exogenous constraints prior to overcoming endogenous constraints related to its deficient innovative capacities, hence preventing it from taking advantage of easier patent application procedures to trigger innovation. It would also have a kicking away the ladder effect for the country's development, because rather than advancing the interests of developing countries, the PCT responds to those of industrialised economies, securing their continued exclusive domain over knowledge and technical progress, and peripheral countries' role as importers of technologies. Commitments on the prevailing trend of IPR standards in the developed world

shrink developing countries possibilities for bridging the gap with developed countries, because as Sercovich (2008, p. 15) states, these rules hinder developing countries' knowledge and technology creation and dissemination, and their technological learning and competence.

Regarding e-commerce, UCFTA's rules would deepen Uruguay's structural dependency -as inferred from James (2017a, 2017b) and Kelsey (2017a, p. 31). Uruguay's economy is already being inserted into the 4th technological revolution in a way that perpetuates its structural heterogeneity and technological exogeneity, relying on imports of capital goods and technologies instead of building absorptive capabilities and generating local knowledge (Pittaluga, 2017). Because UCFTA is the first trade agreement with e-commerce rules in which Uruguay participates (Ministerio de Relaciones Exteriores. República Oriental del Uruguay, 2016), it would shrink the country's exogenous policy space for development. It would also mean that Uruguay agrees on rules that function as modern instruments for kicking away the ladder to developing countries' development. They are being furthered globally by developed countries and their high-tech corporations to secure their interest, but they were not implemented when NDCs were themselves developing.

7. Conclusion

Even though the International System's most powerful states do not take part in UCFTA, this thesis' findings suggest that they indirectly determine the rules according to which its Parties interact. This is backed by the definition of the International System and the explanation of its workings provided by Barbé (as cited in Fernández Luzuriaga, 2010, p. 103) and detailed in this thesis' introduction. It is also supported by what Cox (as cited in O'Brien & Williams, 2013) affirms about hegemonic states:

to maintain their dominance, they promote their interests as universal norms, convincing others that the objectives they pursue are the same as theirs, and using international organisations to influence others' conduct. (p. 20)

NDCs indeed use international organisations and trade and investment agreements to pressure other states to adopt good policies and good institutions, promoting them as necessary tools for countries' economic development (Chang, 2003, 2011).

The findings from the study of UCFTA in this thesis cast doubts on the idea conveyed in previous investigations of south-south trade agreements as being the least restrictive of developing countries' national policy space for development. This research provided evidence that UCFTA -as a cutting-edge south-south trade agreement- is different from conventional south-south trade arrangements.

The literature, which so far has ignored the distinct nature of these kind of south-south treaties in studies of trade agreements' links to development, should start exploring it, because the assessment of conventional south-south trade agreements may not be extendable to those of a cutting-edge nature.

Although this thesis did not analyse UCFTA's impact on Uruguay's national policy space for development as compared to that of north-south, conventional south-south or

multilateral trade treaties in which Uruguay participates, it showed that UCFTA includes standards of regulation now required by developed countries in trade agreements they pursue.

This thesis could serve to kickstart further studies comparing UCFTA's impact on Uruguay's development in contrast to that of other trade agreements. An UCFTA's comparison with multilateral, north-south and conventional south-south trade agreements in which Uruguay takes part could enable assessments on which type is most convenient for the country's development and provide input for informed decision-making on Uruguay's international insertion.

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