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Foreword

The *Investment Policy Review of Uruguay* assesses the investment climate in Uruguay and discusses the challenges and opportunities faced by the government. Capitalising on the OECD *Policy Framework for Investment*, the Review takes a broad approach to investment climate reforms in Uruguay and its continuous transition towards higher levels of development and well-being. Individual chapters are devoted to the overall economic performance and foreign investment trends, the reform of the state and state-owned enterprises, foreign investment regulations, the legal and institutional framework for investment protection, tax policy, investment promotion and facilitation, and policies to promote and enable responsible business conduct (RBC).

The *Investment Policy Review of Uruguay* was undertaken under the aegis of the OECD Investment Committee. The Ministry of Economy and Finance led the process within the Uruguayan government and established and convened an ad hoc inter-ministerial task force to assist in the process. This publication draws on the report supporting the assessment by the Investment Committee of Uruguay's ability to comply with the principles of openness, transparency and non-discrimination and RBC practices and its policy convergence with the OECD Declaration on International Investment and Multinational Enterprises, with the aim to adhere to this instrument. The Investment Committee meeting took place in July 2020 via virtual means in the presence of a delegation from Uruguay led by the Ministry of Economy and Finance. The Review has been completed thanks to the engagement of two successive governments of Uruguay, showing the country's commitment to the reform process.

The Review was prepared by a team led by Andrea Goldstein and Monika Sztajerowska and comprising Fernando Mistura, Joachim Pohl and Nicolas Rousselot from the Investment Division at the OECD Directorate for Financial and Enterprises Affairs; Marie Bouchard, Nicolas Hachez, Coralie Martin and Germán Zarama from the OECD RBC Centre; as well as Gioia de Mello and Luisa Dressler from the OECD Centre for Tax Policy and Administration. Ana Novik, Head of the Investment Division, provided overall guidance and Stephen Thomsen and Frédéric Wehrlé from the Investment Division and Froukje Boele from the OECD RBC Centre, provided additional guidance and comments. At various stages of preparation, the *Review* benefitted from inputs, comments and suggestions from other parts of the OECD Secretariat, including the Global Relations Secretariat (GRS) as well as colleagues at the Inter-American Development Bank (IDB), in particular Federica Gómez Decker and Christian Volpe Martincus from the Integration and Trade Sector and Tomás Serebrisky from the Infrastructure and Environment Department, and at the World Bank, in particular Eduardo Olaberria from the Macroeconomics and Fiscal Management Global Practice.

The Review was prepared with the financial support of the European Commission, through the Transition in Development Facility (TDF). This support and the engagement of the European Commission's Directorate-General for International Cooperation and Development (DEVCO) and the European Union (EU) Delegation in Montevideo are gratefully acknowledged.

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Abbreviations and acronyms

ANCAP	Administración Nacional de Combustibles, Alcohol y Portland
ANTEL	Administración Nacional de Telecomunicaciones
ARD	Alternative dispute resolution
BCU	Banco Central del Uruguay (Central Bank of Uruguay)
BIAC	Business and Industry Advisory Committee to the OECD
BIT	Bilateral Investment Treaty
CEOs	Chief executive officers
CIT	Corporate Income Tax
Conaprole	National milk producers cooperative
CPI	Corruption Perception Index
CSR	Corporate Social Responsibility
DB	Doing Business
ECI	Economic Complexity Index
EU	European Union
EUR	Euro
FDI	Foreign direct investment
FET	Fair and equitable treatment
G20	Group of 20
GAFI	Groupe d'Action Financière
GATS	General Agreement on Trade in Services
GCR	Global Competitiveness Report
GDP	Gross Domestic Product
GFCF	Gross Fixed Capital Formation
GPA	Agreement on Government Procurement
GVCs	Global value chains
IADB	Inter-American Development Bank
ICMS	Integrated Case Management System
ICS	Investment Court System
ICSID	International Centre for the Settlement of Investment Disputes
IFC	International Finance Corporation
IIA	International investment agreement
ILO	International Labour Organisation
IMF	International Monetary Fund
IPA	Investment Promotion Agency
IP	Intellectual Property
IPR	Investment Policy Review
ISA	Investor-state arbitration
ISO	International Organisation for Standardisation

ISDS	Investor-state dispute settlement
ICT	Information & Telecommunications Technology
JUTEP	Office for Transparency and Public Ethics
KBEs	Knowledge-based economies
M&A	Mergers and Acquisitions
MEAT	Most Economically Advantageous Tender
MEF	Ministry of Economy and Finance
Mercosur	Southern Cone Common Market
MFN	Most-Favoured Nation
MNEs	Multinational Enterprises
MRREE	Ministry of Foreign Affairs
MTSS	Ministry of Labour and Social Security
MVOTMA	Ministry of Housing, Territorial Planning and Environment
NCP	National Contact Point for the OECD Guidelines for Multinational Enterprises
NGO	Non-Governmental Organisation
NT	National treatment
OAS	Organisation of American States
OECD	Organisation for Economic Co-operation and Development
OG	Official Gazette (*Diario Oficial*)
OPP	Office of Planning and Budget
OSS	One-Stop Shop
PFI	Policy Framework for Investment (OECD)
PPP	Public-Private Partnership
PTA	Preferential Trade Agreement
RBC	Responsible Business Conduct
R&D	Research and development
RIA	Regulatory Impact Assessment
SEZs	Special Economic Zones
SMEs	Small and Medium-Sized Enterprises
SOEs	State-Owned Enterprises
SPE	Special Purpose Entity
SWFs	Sovereign Wealth Funds
TiVA	Trade in value added
TUAC	Trade Union Advisory Committee to the OECD
TNCs	Transnational Corporations
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UN-ECLAC	United Nations Economic Commission for Latin America and the Caribbean
USD	US dollar
UTE	National Administration for Electricity Plants and Transmissions
UYU	Uruguayan peso
WBG	World Bank Group
WEF	World Economic Forum
WGIPR	Working Group for the OECD Investment Policy Review (Uruguay)
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

Executive summary

In the past three decades, successive governments of Uruguay have declared and proven their long-term commitment to political and economic stability, in a regional environment characterised by strong volatility. The country has consistently scored highly on metrics of quality of democratic processes, transparency and control of corruption. Building on these achievements, Uruguay has also led a stable and prudent macroeconomic policy, and maintained high trade and investment openness.

Supported by favourable external conditions, the period 2004- 2014 was marked by high pace of economic growth, poverty reduction and elevated rates of investment in Uruguay. Yet, more recent years have brought economic deceleration. The country's GDP and gross capital formation grew more slowly as have the inflows of foreign direct investment (FDI). Uruguay is also grappling with some structural challenges, related to demographic changes, skill gaps and the need to facilitate innovation and strengthen its position in global value chains. The COVID-19 pandemic may accentuate these challenges as the competition for FDI is likely to increase. As such, Uruguay is currently at cross-roads where further reforms are required to facilitate its transition towards innovation, higher levels of wellbeing and sustainable socio-economic development. Several of these challenges can be supported through investment policy reforms and changes to the country's business climate that are highlighted in this *Review*.

Uruguay's regime is open to FDI and retains very few formal restrictions on entry or operations of multinational enterprises. There are currently also no pre-establishment screening requirements for foreign investment in Uruguay. As such, Uruguay scores as one of the most open countries on the OECD FDI *Regulatory Restrictiveness Index*, not only among emerging but also OECD economies. Uruguay's domestic legal framework provides protection guarantees for investors consistent with a modern policy regime for investment. The performance of the domestic justice system has also improved significantly over time. As is the case in many other economies, Uruguay also offers foreign investors additional layer of protection through a network of its international investment agreements. As the extent of protection afforded through such agreements is rather extensive, the government of Uruguay could enhance its efforts to clarify, update and otherwise reform existing treaties to manage the associated exposure.

Uruguay also provides generous investment incentives. Free Economic Zones (FEZs) offer a full tax holiday to users for the duration of their contracts. In addition, the use of the COMAP regime, a specific tax incentive scheme under the Law on Investment, has significantly increased since 2007. Yet, the support that an investor may receive in Uruguay depends on the exact timing, location and scheme used at the time of the application for investment support. As such, while transparency of the regime has increased, the government could further increase its regulatory coherence, notably by inscribing investment incentives in the underlying tax laws, and rationalising and phasing-out some of them. Improving monitoring and evaluation of existing incentives can also assist the process of their optimisation and enhance transparency.

The recent exercise in consensus-building around priority activities and investment climate reforms conducted as part of the national strategic planning may help better define the approach towards investment promotion and facilitation. Specifically, identifying key horizontal investment climate reforms has helped clarify responsibilities , set objectives and fix timelines. Regardless of the final institutional set-

up to accompany this process, which is currently being articulated, the identification and execution of key crosscutting projects in this area – such as the creation of a Single Window for Investment – should continue. In addition, greater attention needs to be paid to investment facilitation and improving the overall regulatory quality. Business surveys suggest that burdensome administrative procedures– e.g. for obtaining construction permits and registering property – are still an obstacle to doing business in Uruguay. While the country generally shows high levels of transparency and access to information, it lacks an overarching legal basis and institutional solution to enforce uniformly regulatory practices. Hence, besides continuing with the ongoing administrative simplification and digitisation efforts, the government could build on the available international best practices – as highlighted in OECD *Recommendation on Regulatory Policy and Governance* – to improve its performance in this area.

State-owned enterprises (SOEs) continue to play an important role in the Uruguayan economy and reflect the societal preference, expressed in referenda in mid-1990s. To a large extent, SOEs have managed to break away from political interference, improve governance and management, and boost efficiency. Still, their record in reaching management goals is mixed and there is no hard evidence that it has improved over time. Further reforms are needed to improve their corporate governance, encourage professionalization of boards and increase transparency in the use of resources. Given the dominant role of SOEs in Uruguay's economy and their influence over the country's competitiveness, there is value in adopting best-practice models of financial transparency and managerial professionalism, as those identified in the OECD *Guidelines on Corporate Governance of State-Owned Enterprises*.

Promoting and enabling responsible business conduct (RBC) is also vital to attract and retain quality investment and sustainable development. To a large extent Uruguay has already subscribed to most multilateral instruments underpinning RBC principles and standards embodied in the OECD *Guidelines for Multinational Enterprises*. Nonetheless, RBC as such is a relatively new concept in Uruguay. There is no comprehensive national strategy on RBC or public policies targeting RBC in specific sectors. RBC-related activities so far have mostly been undertaken by the private sector and civil society. For example, in regards to corporate governance reforms, the government could clarify the requirements on disclosure, including disclosure of non-financial information. Uruguay has also set out the plans for establishing the NCP as required under the OECD Guidelines. It envisions establishing an NCP consisting of an inter-ministerial commission and an Executive Secretariat based in the Ministry of Economy and Finance, assisted by a multi-stakeholder advisory body, by end of 2020. The OECD Secretariat can assist in ensuring its operationalisation.

1 Assessment and recommendations

This chapter documents the overall development context in Uruguay, describing the current economic situation and the main investment policy reform efforts, and identifies specific challenges that hinder investment, economic growth, and well-being. It summarises the key findings in each policy area covered by the Review and provides tailored recommendations.

Assessment

With a small (3.4 million), long-living, yet aging, population, a gross domestic product (GDP) per capita of USD 17 278 in 2018, and some of the brightest social indicators in Latin America, Uruguay faces similar challenges to those of many OECD countries. How to achieve economic growth that is driven by innovation, sustainable, and inclusive – i.e. is distributed fairly across society and creates opportunities for all? How to ensure that economic growth actually improves lives, preserves the Planet, and let people earn the wages they need to thrive? How to create a business environment that attracts new firms and boosts communities, while also making the tax system fairer and more effective? How to maintain competitiveness in the face of a shrinking population (projected to fall to 3.2 million in 2100)?

Investment is a critical component in finding relevant policy answers to this riddle. The OECD *Investment Policy Review* of Uruguay*,* based on the action-oriented analytical foundations of the PFI aims to provide a roadmap for further improvements and reforms in support of the country's strategic objectives. The IPR identifies key aspects in different areas of public policy that impact on investment outcomes that the government has deemed important to achieve its long-term vision and that need to be addressed in order to translate business investment into inclusive growth.

The Policy Framework for Investment

The Policy Framework for Investment (PFI) helps governments mobilise private investment in support of sustainable development, thus contributing to the prosperity of countries and their citizens. It offers a list of key questions to be examined by any government seeking to create a favourable investment climate. The PFI was first developed in 2006 by representatives of 60 OECD and non-OECD governments in association with business, labour, civil society and other international organisations and endorsed by OECD ministers. Designed by governments to support international investment policy dialogue, co-operation, and reform, it has been extensively used by over 25 countries as well as regional bodies to assess and reform the investment climate. The PFI was updated in 2015 to take into account this experience and changes in the global economic landscape.

The PFI is a flexible instrument that allows countries to evaluate their progress and to identify priorities for action in 12 policy areas: investment policy; investment promotion and facilitation; trade; competition; tax; corporate governance; promoting responsible business conduct; human resource development; infrastructure; financing investment; public governance; and investment in support of green growth. Three principles apply throughout the PFI: policy coherence, transparency in policy formulation and implementation, and regular evaluation of the impact of existing and proposed policies.

The value added of the PFI is in bringing together the different policy strands and stressing the overarching issue of governance. The aim is not to break new ground in individual policy areas but to tie them together to ensure policy coherence. It does not provide ready-made reform agendas but rather helps to improve the effectiveness of any reforms that are ultimately undertaken. By encouraging a structured process for formulating and implementing policies at all levels of government, the PFI can be used in various ways and for various purposes by different constituencies, including for self-evaluation and reform design by governments and for peer reviews in regional or multilateral discussions.

The PFI looks at the investment climate from a broad perspective. It is not just about increasing investment but about maximising the economic and social returns. Quality matters as much as the quantity as far as investment in concerned. It also recognises that a good investment climate should be

good for all firms – foreign and domestic, large and small. The objective of a good investment climate is also to improve the flexibility of the economy to respond to new opportunities as they arise – allowing productive firms to expand and uncompetitive ones (including state-owned enterprises) to close. The government needs to be nimble: responsive to the needs of firms and other stakeholders through systematic public consultation and able to change course quickly when a given policy fails to meet its objectives. It should also create a champion for reform within the government itself. Most importantly, it needs to ensure that the investment climate supports sustainable and inclusive development.

The PFI was created in response to this complexity, fostering a flexible, whole-of government approach, which recognises that investment climate improvements require not just policy reform but also changes in the way governments go about their business.

For more information on the Policy Framework for Investment, see: www.oecd.org/investment/pfi.htm

A democracy, capable of reforming and with strong economic fundamentals

Any analysis of Uruguay's achievements and challenges must start from acknowledging the solidity and resilience of its institutions, as well as overall macroeconomic and political stability. For example, in its 2018 edition, the Economist Intelligence Unit's *Democracy Index* ranked it 15th out of 167 countries, as one of only two "full democracies" in Latin America. Similarly, recent progressive social reforms (such as the legalisation of same-sex marriage and the approval of the law that regulates the cannabis market) have received wide praise. The World Bank's World *Governance Indicators*, the Transparency International's *Corruption Perception Index*, and other authoritative sources also point in the same direction. Another positive indication is that, in the age of popular scepticism towards representative democracy, Uruguay is among the Latin American countries with the highest public trust in the political system and belief that the population on the whole benefits from public policies (Latinobarómetro, 2017). These institutional achievements underpin the recognition of the capital city, Montevideo, as the Latin American city with the highest quality of living (Mercer, 2019).

In the past three decades, successive governments have declared and proven their long-term commitment to political and economic stability, in a regional environment characterised by strong volatility. Between 2004 and 2014, GDP per capita grew at an average annual rate of 5.4% in real terms, before decelerating markedly when the external environment turned sour. This 'golden decade' also saw gross fixed capital formation reach unprecedented levels (19.6% of GDP on average) and grow almost twice as fast as GDP. The country's main economic sector is services, accounting for 61% of GDP in 2018. While agriculture is considered of strategic importance to the country, and does indeed form part of the national identity and a lion's share of the country's exports, it only accounts for 5.1% of GDP (more if beef processing and wood pulp are also included).

The last few years have been less impressive in terms of economic performance. The end of the commodity boom has brought a sharp correction. Mirroring their mutually-reinforcing dynamics in the boom years, since 2014 GDP growth and capital formation have moderated in tandem. External forces, such as progressively tighter global financial market conditions and the slowdown of the Chinese market for animal proteins, of which Uruguay is an important supplier, have played an important role in this respect. Currently, the macroeconomic situation is relatively sound, with single-digit inflation levels since 1998 and prudent monetary and debt management, but vulnerabilities persist on the fiscal side and decelerating growth may also be related to factors endogenous to policies such as low productivity and rigid regulation, and hence requires government's attention. The demographic bonus, which was reaped as the number of young people joining the workforce increased, is now mostly spent and the working-age population will start shrinking in the 2030s. Nonetheless, even as the economy has faltered, poverty has continued to edge down (from 11.5% in 2013 to 8.1% in 2018).

Against this background, the government needs to undertake several in-depth structural reforms to revive growth and mobilise investment, domestic and foreign. The capacity of an economy to attract investment depends on a number of factors, including market size, macroeconomic stability, the regulatory environment, the skills base, the quality of infrastructure and the business climate. Due to its limited market size relative to industrial powerhouses of Brazil and Argentina, Uruguay has positioned itself as a service-based economy that relied on relative economic stability as well as developed financial services to attract capital flows from its unstable neighbours and European investors. While it has proven a winning strategy in the past, investment in the financial industry targeted at non-residents has been more timid recently. In addition, over-dependence on few sectors may have increased the vulnerability of Uruguay to external shocks, as evidenced by the impact of the Argentine crisis in 2002-2003. In the aftermath of the global crisis, pressure also mounted to better fight harmful tax competition and money laundering. Thanks to strong political commitment, credible actions have been taken both to reduce the risks of contagion and to align the country to the best global standards and practices. Against this background, Uruguay is currently at crossroads rethinking its approach towards most effective and sustainable strategy to attract and retain investment in the economy.

The role of FDI in the economy of Uruguay

Traditionally foreign investment has been a critical element in Uruguay's economic development. Despite the small size of the domestic market and higher production costs than in the two much larger neighbours (Brazil and Argentina), fast GDP growth and the absence, or at least marginal incidence, of most *de jure* and *de facto* hurdles to foreign investment also attracted the interest of multinationals.

As a result, foreign direct investment (FDI) accounts for a large share of the economy. The FDI liabilities reached USD 48.8 billion (or about 82% of GDP) and FDI assets USD 26.7 billion (or 45% of GDP) in 2018, the latest available year. In relative terms, Uruguay is one of the most open economies in the LAC region, having some of the highest shares of inward FDI stock to GDP. The recent announcement of a second mega paper and pulp project by a Finnish company (UPM) signals investors' confidence and interest in remaining and growing their business in Uruguay to serve global markets. The general attractiveness of Uruguay as a location for foreign investment is also reflected in relatively strong FDI inflows. Inward FDI flows reached, on average, 4.4% of GDP since 2012, and have generally been above the LAC average. In addition, since the mid-2000s, a few Uruguayan companies have begun to invest abroad, although so-called *multilatinas* from Uruguay are far less numerous than foreign-owned companies operating in the local economy, continuous internationalisation support can help domestic firms establish and expand presence abroad. In terms of their composition, services have attracted the bulk of new foreign investment, in particular in special economic zones (SEZs). Uruguay has also managed to attract a few resource-based greenfield FDI projects of considerable size in certain sectors, and has seen a progressive increase in the M&A activity over time.

Evidence on the effects of FDI on the economy is scarce, but largely positive. Multinational enterprises account for the lion's share of Uruguay's exports (Uruguay XXI, 2019) and have contributed to diversify the trade potential in terms of products and markets, and create quality jobs, both in the traditional resource-based sectors, such as agriculture and forestry, and in non-traditional commercial services (e.g., Carballo et al., 2019, Carbajal et al., 2014). For example, involvement of foreign investors has contributed to the expansion of the renewable energy, tourism and agro-food sectors. Multinational firms also benefit from size and labour productivity "premia" relative to domestic firms (IDB, 2019), and have been found to increase wages in (Peluffo, 2015) as well as export probability of local domestic-owned firms (Carballo et al., 2019). Still, the effects on innovation and productivity of local firms have been more mixed (e.g., De Elejalde et al. 2018; Peluffo, 2015; Carbajal et al., 2014); and there is an ongoing debate about changes in investment attraction and facilitation policies, and to their specific instruments, required to support growth and productive transformation.

Privatisation, which in other emerging economies has been a popular mode of entry and led to considerable FDI inflows, has been very limited in Uruguay, following popular concerns expressed through referenda in the 1990s. Recent opinion polls show continuous support for public ownership. Still, in telecommunications and finance, the entry of foreign investors has stimulated competition with the state-owned incumbents and contributed to modernisation, in particular leading to more diffuse provision of these services and improvements in their supply, price and quality.

Uruguay's investment regime and the OECD National Treatment instrument

Uruguay is open to foreign investment, with relatively few formal ownership restrictions, and the key standards of investor treatment and protection are guaranteed under the Constitution and other laws. With a view to enhancing FDI inflows and remain competitive in a very competitive global landscape, continuous efforts have been made to reform the regulatory framework under fair terms in line with international experiences and standards. Using the methodology of the OECD FDI Regulatory Restrictiveness Index, which is based on statutory measures, Uruguay is found to be substantially more open to FDI than the averages for both emerging markets and the LAC region.

All enterprises have the right to organise and develop their activities under the form they deem appropriate. There are no pre-establishment screenings of foreign investment and very few restrictions on foreign investment (see list of exceptions to national treatment in Annex A). They are limited to a handful of sectors (i.e. media, domestic transport, and commercial fishing in territorial waters). In addition, the only provision currently in place for national security reasons concerns foreign governments and sovereign wealth funds (SWFs), which are not allowed to own any rural land and cannot own more than 49% of the shares in agricultural companies.

National treatment of foreign investors in the post-establishment phase is guaranteed, which means that foreign investors, when incorporated in Uruguay, are subject to the same rights and obligations that are applied to domestic investors.

The government also does not impose performance requirements or mandate employment requirements on foreign-owned established investors, nor are senior management or board of directors positions mandated in private companies, while there may be a local incorporation- or licensing requirement in some sectors.

The Uruguayan authorities have also indicated that they accept the commitments under the other two elements of the Declaration: the Decision on International Investment Incentives and Disincentives by which adhering countries recognise the need to give due weight to the interest of other adhering countries affected by laws and practices in this field and endeavour to make measures as transparent as possible; and the Decision on Conflicting Requirements, by which adhering countries shall co-operate so as to avoid or minimise imposition of conflicting requirements on multinational enterprises.

The domestic framework provides investor protection aligned with international standards

The protection of investors from improper treatment, combined with effective enforcement mechanisms, is an important pillar of a sound investment climate and can lower the perception of risk for new investments. The quality and efficiency of the justice system is a key determinant in this respect. A well-functioning judiciary ensures stable conditions for business activities; its efficient functioning is also necessary for the competiveness and development of the economy.

Uruguay has pursued a comprehensive reform agenda encompassing protection of ownership and other rights. Property rights and regulations on acquisition, benefits, and use of property are well defined. Expropriation of property has been rare in Uruguay. Steps to streamline the workings of the judicial system

include rationalising the courts' network, making capital investment and deploying modern information technologies, developing tools for ensuring the integrity of the judiciary, and promoting mediation as an alternative method of dispute resolution. Of particular importance has been the 1989 General Procedural Code (CGP) that introduced the principles of orality and immediacy (*i.e.*, all evidence shall be produced directly before the court) in civil, commercial and labour proceedings, the right to bail, instead of the courts remanding individuals into custody to await trial, and opened up hearings to the public. In December 2014, Uruguay passed a new criminal procedural code (Law No. 19.293) that transformed the process, granting more protection to the accused.

Overall, the judicial system in Uruguay is generally well-functioning: courts are relatively faster in processing cases and judicial procedures are easier, on average, than in other LAC economies. For example, according to the World Justice Project (WJP) *Rule of Law Index*, Uruguay's civil justice (as measured through a survey to more than 120 000 citizens and 3,800 experts in 126 countries) is the best in Latin America (and the 16th-best in the world), while for criminal justice the rankings are tenth and 40th, respectively. Individual components of the WJP index paint a diverse picture, with good marks in those that measure civil justice and less flattering marks in those of criminal justice.

Uruguay is also implementing changes to reinforce judiciary independence. Building on recent reforms, further improvements in the capacity of the courts to deal with commercial disputes can boost confidence of businesses and the general public in the judiciary. Further digitalisation of court procedures, promotion of out-of-court settlement, and continuous training for judges in emerging areas of law, such as the digital economy, may be useful in this regard.

Uruguay has also a modern system of intellectual property rights (IPRs) protection that is aligned with the best global norms and standards. There have been substantial improvements in the application of the laws, albeit there are still some concerns of trading partners relating to enforcement. There is however still scope for further strengthening the country's attractiveness by better protecting IPRs and combatting counterfeiting and piracy, including of digital products.

A selective network of investment treaties adds protection for investors

As many other countries, Uruguay grants additional and preferential protections based on investment treaties to foreign investors from a number of countries. The 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) entered into force in 1983 and the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) in 2000. The country has signed 31 international investment agreements (bilateral investment treaties and investment provisions in preferential trade agreements) with most North and South American nations and a number of European and Asian countries, covering a large share of Uruguay's inward and outward FDI stock. As member of Mercosur, Uruguay also engaged in negotiations with other regional groupings (in particular with the EU and the European Free Trade Association, EFTA, concluded in June and August 2019, respectively).[1]

Most of the investment treaties that Uruguay has concluded so far bear the hallmarks of agreements concluded at a time when belief in benefits of treaties was greater than it is today, treaty-based claims were few, and overall awareness of implications of certain treaty provisions was low. Although only three concluded treaty-based claims against Uruguay are known – all three won by the state, two additional cases have been opened more recently. In addition, authorities have sharpened their understanding of the implications of such treaties, including the risks associated with often loose drafting and generous provisions, the potential restrictions of policy space, and the fiscal costs associated with effective defence against such claims.

The review of the investment provisions suggests that Uruguay should consider – to the extent possible given objectives of both negotiating parties – updating its international investment agreements with a view to ensuring that they fully reflect government intent and emerging trends in investment treaty policy. While

Uruguay remains committed to its treaties, it also endeavours to better balance investor protection and the right to regulate in the public interest through renegotiation. Recently-renegotiated or under-negotiation treaties (in particular with Australia and China, respectively) reflect these goals.

Investment incentives remain generous and the framework has become more transparent but requires further monitoring and evaluation

Uruguay provides generous corporate tax incentives that differ significantly across sectors. Free Economic Zones (FEZs) offer a full tax holiday to users for the duration of their contracts. In addition, since 2007 the use of the COMAP regime, a specific tax incentive scheme under the Law on Investment, has significantly increased.

In order to enhance investment in certain targeted activities and in line with Uruguay's broader socio-economic objectives, efforts have been made in recent years to better define eligibility criteria for investment incentives. In particular, those for the COMAP regime were clarified and have been amended twice since then. Upon request from the Forum on Harmful Tax Practices, the FEZ regime was amended in 2017 and 2018 and substantial activities requirements (i.e. definition of core income generating activities, adequate number of full-time skilled employees, adequate amount of operating expenditures and monitoring and enforcement mechanisms) are now in place. In addition, since June 2019 goods entering a FEZ from a MERCOSUR country retain their regional origin and are therefore exempt from the Common External Tariff (*Decisión* N° 33/2015).

Overall, investment incentives offered to investors remain generous and have multiplied. The approach of exempting profits from the corporate income tax has proved less effective in promoting investment than reducing the cost of capital (i.e. cost-based incentives such as the COMAP regime).

As such, several areas of improvement exist in this area, including in particular further consolidation of the various incentives in the underlying laws (e.g. income tax, VAT law, customs code). Furthermore, in order to enable adequate parliamentary scrutiny, tax incentives should be provided exclusively by law. More broadly, the focus of tax incentives policy should shift towards reducing the cost of capital, while phasing out tax holidays.

The OECD instrument on International Investment Incentives and Disincentives encourages Adherents to make incentives and disincentives measures as transparent as possible so that their scale and purpose can be easily determined. While Uruguay has made strides towards enhancing the transparency of its tax incentives system, monitoring and reporting of tax incentives for investment should be strengthened to improve accountability.

The overall approach to investment attraction has been strengthened but will require continuity...

Since the mid-1990s, attracting investment has been a top priority of successive governments, as evidenced by Uruguay's strategic plans and the use of various investment attraction instruments – not least that of FEZs and the COMAP regime. For example, the current Plan on Productive Transformation and Competitiveness (2017-2019) and the recently-developed National Development Strategy (*Visión Uruguay 050*) explicitly acknowledge the role of investment in economic development, identify priority sectors and outline the goals of public policies in this domain.

By involving several institutions and proposing a number of horizontal projects, the Plan on Productive Transformation and Competitiveness can help improve the level of intra-governmental coordination in the area of investment promotion and facilitation. Stakeholders consulted for this *Review* note that Transforma Uruguay – the agency set up in 2016 in charge of strategic planning– has played a useful role in this regard. In addition, by proposing projects in the area of investment facilitation and streamlining of administrative procedures, it can help broaden the scope of investment attraction policy that relied

predominantly on the provision of investment incentives. For example, a pilot project mapping out relevant regulations and the establishment of a Single Window for Investment (VUI) can be an important step in the right direction.

Going forward, it will be important to ensure that projects conceived under the current Plan are implemented and the planning exercises continued in the future. In order to play effectively its role, Transforma Uruguay will also require adequate resource and political support. Considering the specific needs of investment promotion and facilitation policies and their horizontal nature, continuity in the government's focus and support will be critical to reap tangible benefits. The identification of key priority sectors as part of the process should also be capitalised on to ensure greater coherence in the activities of various institutions, and a more defined approach towards prioritisation.

One example of continuous reform momentum of relevance to investment and trade policy has been the creation and expansion of the single window for trade (VUCE), currently operated by Uruguay XXI (i.e. the national trade, investment and country brand promotion agency). The lessons from a successful VUCE implementation could inspire the ongoing reflection on the design of a single window for investment. The growth in the capacity of VUCE, and the accompanying shorter time spent at the border by traders, mentioned earlier, have accompanied the progressive growth in activities and resources of Uruguay XXI itself. The overall budget of the agency increased and over time it has added a wider set of activities and services to its portfolio. For example, the recent absorption of the Global Services Programme by Uruguay XXI (within the newly-established aftercare unit) is a step in the right direction that can help the agency provide more tailored assistance to firms. In addition, the ongoing improvements in the agency's monitoring and evaluation systems as well as better prioritisation can also help yield positive results (see Volpe Martincus and Sztajerowska, 2019 for a benchmarking of OECD and LAC agencies).

The gradual improvements in these various dimensions could be built on while the government also rethinks and reforms its approach towards investment incentives.

…and greater focus on investment facilitation and a wider regulatory reform

The quality of public governance has a significant influence on the climate for business and investment. Poorly designed or loosely applied regulations can slow business responsiveness to shocks, divert resources away from productive investments, hamper or delay entry into markets, reduce job creation, and generally discourage entrepreneurship and risk-taking. Nothing contributes more to investor confidence in regulation than predictability and evidence that rules achieve their stated objectives. In this context, addressing the underlying regulatory bottlenecks will become increasingly important as the traditional armour of investment attraction policies (i.e. investment incentives) is being progressively reformed in Uruguay.

Existing business surveys, including those conducted by Uruguay XXI (Uruguay XXI, 2018), point to a relatively important level of investors' dissatisfaction with the administrative procedures. Timid progress is also reflected in the available international rankings. For example, Uruguay was ranked at the 76th place (out of some 141 economies) on the WEF's *Global Competitiveness Index* and 95th (out of 190 economies) on the World Bank's *Doing Business.* In particular, the number of procedures and the time it takes to obtain construction permits and registering property remain above the OECD and LAC averages, and will require government's action. The important progress in speedy business establishment as well as improving the efficiency of border procedures could meanwhile be built on when addressing other bottlenecks that may hinder the establishment and expansion of business activity more generally. The pilot project, mapping out regulations affecting a selected sector and those issued by one Ministry, conducted by Transforma Uruguay, as well as the work towards the establishment of the single window for investment (VUI), led by Uruguay XXI, can be positive steps in this regard.

Going forward, the government need to pay more attention both to a systematic reduction of the administrative burden and to improvements in the quality of new regulations. In view of other institutional and policy features of the country, there is room for rendering administrative procedures speedier, more transparent and effective, and for improving the overall quality of public governance. While Uruguay shows high levels of transparency and access to information on the applicable laws and regulations, it lacks an overarching legal basis and institutional solution to ensure regulatory practices are respected across different institutions (e.g., provisions on prior stakeholder consultation and regulatory impact assessment). Awareness regarding good regulatory practices is also low and no single institution has an oversight role in this regard. Conducting a dedicated OECD *Regulatory Policy Review* could help the government outline possible reform options.

Accelerating state-owned enterprises reform may increase competiveness

Uruguay has made a societal choice, in the mid-1990s, not to pursue an ambitious privatisation campaign. State-owned enterprises (SOEs) are a very significant part of Uruguay's economy. SOEs provide most essential services such as electricity (which is distributed by UTE), water and sanitation services (provided by OSE), oil and gas (supplied by ANCAP and its subsidiary DUCSA), and telecommunications (a *de facto* State monopoly in fixed lines through ANTEL). The retail banking sector is dominated by the two state-owned banks, BHU and BROU; and Banco de Seguros del Estado (BSE) enjoys a quasi-monopoly in insurance activities.

The reform agenda for SOEs has emphasised improvements in corporate results (financial and operational alike) through "programmecontracts" that establish the intentions and reciprocal commitments of the State and the enterprises management. The ultimate goal is to set out a framework for the SOEs consistent with national development plans and to provide full management autonomy to the companies within these rules of the game.

To a large extent, SOEs have managed to break away from political interference, improve governance and management, and boost efficiency. Still, to the extent that SOEs use public resources and provide critical services, they influence the quality of growth and competitiveness. Their record in reaching the goals set in management contracts is mixed and there is no hard evidence that it is improving over time. Major reforms require changes to the Constitution and this makes it difficult to raise private investment as an important economic stimulator and source of capital for Uruguay's innovation, job growth, and competitiveness. Given the dominant role of SOEs in Uruguay's economy, there is value in adopting best-practice models of financial transparency and managerial professionalism, as those identified in the OECD Guidelines on Corporate Governance of State-Owned Enterprises. Indeed, better SOE governance could also prove a catalyst for improving the governance of private companies and boosting underdeveloped local financial markets.

Building on strong performance on public integrity and fight against corruption

Public integrity is another crucial determinant of a favourable investment climate. Mechanisms are, in this regard, important to reduce potential and existing obstacles faced by companies, either when they decide to invest or in their day-to-day operations, and this includes the risk of corruption when interacting with government officials.

Uruguay is constantly ranked among the least corrupt countries in Latin America and indeed across the universe of emerging economies. The country has made significant progress in strengthening its fight against corruption and can claim a good success rate in bringing many reforms into concrete results. The cornerstone of the anti-bribery fight is Law 17.060, also known as Ley Cristal, approved in 1998, two years after the signing of the Convención Interamericana contra la Corrupción (Caracas, 29 March 1996). Criminal law against corruption is largely in place, meeting the standards of the Organisation of American States and UN.

The Office for Transparency and Public Ethics *(Junta de Transparencia y Ética Pública,* JUTEP was established in 2015. More recently, in response to calls by public opinion and the international community, national authorities have developed a wide-ranging strategy (National Strategy for the Fight against Money Laundering, Terrorism Financing and Proliferation of Massive Destruction Weapons, now in its third version). The legislation governing public procurement has been amended substantially on several occasions, with each version making the process more rigorous, better controlled, more transparent and overall more business friendly.

Investors have acknowledged these achievements. There may be value in strengthening the involvement by the private sector in the implementation and monitoring of efforts to promote business integrity. The further development of eGovernment services and other approaches that reduce opportunities for corruption and limit discretion in public decision-making is progressing, and this includes public procurement. On the other hand, in Uruguay lobbying activities have not yet been regulated and whistle-blowers' protection is relatively underdeveloped.

Cementing progress in promoting responsible business conduct and the OECD Guidelines for Multinational Enterprises

Promoting and enabling responsible business conduct (RBC) is vital to attract and retain quality investment and ensure that business activity contributes to broader value creation and sustainable development. The *OECD Guidelines for Multinational Enterprises* (*Guidelines*), which form a part of the OECD Declaration, are recommendations on RBC addressed by adhering governments to businesses operating in or from their jurisdictions. The *Guidelines* set out principles and standards in all major areas related to good business practices, including information disclosure, human rights, employment and industrial relations, environment, bribery and corruption, consumer interests, science and technology, competition, and taxation.

To a large extent Uruguay has already subscribed to most multilateral instruments underpinning RBC principles and standards embodied in the *Guidelines*. It has undertaken concrete steps toward improving the human rights situation. It has ratified all the major pertinent international instruments, as expressed in the International Bill of Human Rights and has established the *Institución Nacional de Derechos Humanos y Defensoría del Pueblo* (INDDHH) as part of the Parliament.

Uruguay has also ratified 98 ILO International Labour Standards (Technical Conventions), all eight Fundamental Conventions and the four Governance Conventions. The labour market is characterised by comprehensive regulations that promote equality and inclusiveness, but also introduce some rigidities that may unwillingly discourage hiring, and at times cause disruptions in the production process. Against this background, there may be value in bringing about reforms that could reinforce non-conflictual consultation mechanism between social partners.

The environmental performance is also relatively satisfactory, as measured in the 2018 Yale Environmental Performance Index which ranks Uruguay second in South America (after Colombia), 17th outside the OECD, and 47th globally. Environmental and social criteria are given adequate prominence in public procurement.

As mentioned above, significant efforts have also been made to combat corruption. Moreover, reforms have been undertaken in the area of consumer protection since Law 17.250 was issued in 2000, thus joining the other three Mercosur members where such provisions were already in place. The Ministry of Economy and Finance, through the Directorate for Consumer Protection (*Dirección del Area de Defensa del Consumidor*, is responsible for checking consumer protection compliance and imposing penalties in case of violations of businesses, as well as to control advertising compliance. In 2009, Law 18.507 introduced a streamlined procedure to allow justices of the peace to receive and process consumer complaints for low-value goods. Future activities could involve supporting and promoting consumer

education and information programmes in order to increase the capacity of civil society to mainstream consumer rights in the public debate, to monitor government policy, and to promote effective defence of consumer rights.

Nonetheless, RBC as such is a relatively new concept in Uruguay. There is no comprehensive national strategy on RBC or public policies targeting responsible business conduct in specific sectors. RBC-related activities so far have mostly been undertaken by the private sector and civil society. The business sector, however, has engaged in activities that are close to the spirit of RBC, without using this distinctive label.

In specific areas covered by the OECD *Guidelines*, corporate governance requirements in Uruguay, including on disclosure and reporting, are still evolving. The existing legislation mainly requires disclosure of financial information. Disclosure is an integral part of RBC and corporate governance. Clear and complete information on the corporation is important to a variety of users, from shareholders to workers, local communities, governments and the society at large. The government has a leading role to play in enhancing transparency and accountability in the overall market and would benefit from clarifying the requirements on disclosure, including disclosure of non-financial information.

All Adherents to the OECD Declaration have an obligation to establish a NCP, in accordance with the Decision of the OECD Council on the Guidelines for Multinational Enterprises. Uruguay has set out and consulted on the plans for establishing the NCP, both with Uruguayan stakeholders as well as OECD institutional stakeholders. Uruguay envisions an NCP consisting of an inter-ministerial commission and an Executive Secretariat based in the Ministry of Economy and Finance, assisted by a multi-stakeholder advisory body. The Government plans to establish the NCP by Executive Decree in the last semester of 2020. While this timeline is ambitious, the Government foresees a longer time frame to operationalise the NCP after its creation through elaborate consultation processes to develop the terms of reference for the multi-stakeholder advisory body and the rules of procedure for handling specific instances. This would result in the NCP not being able to handle cases until approximately one year after its creation. With the support of the Secretariat, these processes could be expedited so as to ensure that the NCP is able to fully function as quickly as possible after its creation.

Overall recommendations

Overall, Uruguay has traversed an impressive journey over the last few decades towards an economy characterised by strong democratic values, macroeconomic stability, high levels of public sector transparency and respect for civic engagement and sustainable development. Provided that political, economic, social, and public governance reforms are continued by the new administration, Uruguay has a great opportunity to successfully solidify its transition by fortifying its competitiveness, accelerating growth and prosperity and approaching the realisation of sustainable development goals (SDGs). Specific priorities are presented in Box 1.1.

As the government seeks to solidify growth and make it less dependent on the China-driven global commodity super-cycle, efforts should be made to further stimulate productive investment and attract foreign investment as well as support the expansion of Uruguayan firms abroad, including through proactive government support (e.g. in obtaining information about foreign markets, matching with potential buyers and capacity support). In this task, the government will increasingly need to balance the views of business, civil society and other stakeholders, as well as the twin goals of market-friendly liberalisation reforms and promotion of responsible business conduct.

While there are no significant formal restrictions on FDI, administrative burdens and incomplete corporate governance frameworks for state-owned enterprises present in several key sectors can negatively affect the attractiveness of Uruguay as an investment location. As such, further progress in SOE reform, aiming

at improving their overall performance and accountability as well as gradual reduction of remaining administrative burdens, can help reduce costs for both foreign and domestic firms.

Uruguay should build on its efforts to update its international investment agreements with a view to ensuring that they fully reflect government intent and emerging trends in investment treaty policy. As part of this strategy, Uruguay and its treaty partners should consider specifying the language of key investment protection provisions, such as on expropriation, fair and equitable, and most favoured-nation treatment. While recognising that due to its limited size, Uruguay may often be a "rules-taker" in the field, to the extent possible, renegotiation of old treaties and more precise and consistent language in new treaties should be sought to limit the country's exposure to new investors' claims.

More generally, Uruguay faces the challenge of progressively moving away from promoting investment through special regimes for selected investors – notably the special economic zones – and towards an agenda of improving the overall investment climate. This will involve broadening investment facilitation efforts, i.e. reducing the costs of establishing and operating a business, continuously updating the policy and institutional framework for investment and trade promotion, making the best use of new technologies, and better targeting investment promotion efforts through continuous monitoring and *ex post* evaluations of public interventions.

In addition, well-targeted policy reforms can increase the quality and quantity of private investment, especially in infrastructure where it can be a significant complement to public investment. Last but not least, the authorities can face a challenge in transiting from an approach to FDI attraction based on removal of restrictions to FDI to the use of active investment policies that aim not only to maximise the investment value but also to promote sustainable development. These efforts will have greater chances of succeeding if Uruguay continued developing a coherent view on the role of foreign investment its development and productive transformation strategies and then applies it consistently and convincingly. In this context, it would be important to ensure that recent advances in strategic planning are built on and continued and organisations such as Uruguay XXI and OPP strengthened.

It is also important to maintain the momentum of anti-corruption policies. The relatively high level of integrity, in the public sector as in the corporate world, has been critical for attracting investors and for reaping the development benefits of international investment. Nonetheless, in the global economy no country can consider itself immune from this scourge. Progress in setting up a legal and institutional framework to combat corruption, including in the area of lobbying and whistle-blowers' protection, must be matched by adequate political and financial support and accompanied by strong enforcement as well as educational efforts.

Finally, Uruguay's newly-established NCP could serve as a valuable vehicle for ensuring policy coherence on a wide range of issues that affect the quality of the investment environment, including, for example, industrial relations and corporate governance. A robust NCP, one that has adequate human and financial resources to operate effectively and enjoys stakeholder confidence, also has the potential to shape the quality of incoming investments, contributing to a more stable and predictable investment environment based on a level-playing field. In addition, a partnership between the NCP and Uruguay XXI could be considered for the purpose of fully informing investors of Uruguay's RBC-related expectations.

Box 1.1. Policy recommendations

Investment protection and regulation

- Consider removing remaining restrictions on FDI in the area of transport, fisheries and media.
- Define the strategic sectors in which foreign investment is prohibited or subject to specific authorisation procedures, observing the guiding principles of non-discrimination, proportionality, transparency and accountability, as expressed in the 2009 OECD Guidelines for Recipient Country Investment Policies relating to National Security.
- Manage existing international investment agreements, including those subject to unwanted interpretations in the investor-state dispute settlement (ISDS) system, and associated exposure, in order to update them to current standards by amendments and clarifications – or, if appropriate, terminate them by consent or unilateral action.
- Engage in international efforts to balance treaty-based investor protection and the right to regulate in the public interest.

Investment attraction

- Ensure continuity in, and the necessary political support for, the implementation of strategic plans and reforms for investment promotion and facilitation.
- Strengthen action to support firms' internationalisation
- Continue strengthening the activities of the national investment and trade promotion agency.
- Adequately reflect the expectations on responsible business conduct, as outlined in the OECD Guidelines for Multinational Enterprises, in these efforts.

Investment facilitation for better public governance

- Focus government efforts to reduce the administrative burden, including by effectively streamlining administrative procedures and addressing specific regulatory bottlenecks.
- Consider a wider reform to improve the overall regulatory quality, including by better oversight of implementing agencies and the introduction of *ex ante* and *ex post* regulatory impact assessment.
- Consider carrying out an *OECD Regulatory Reform Review*.

Investment incentives and disincentives

- Enhance the transparency and coherence of the framework for tax incentives, including through further streamlining of existing schemes and consider phasing out some of them.
- Given the numerous disadvantages of enticing investors through income-based incentives, phase out future opportunities for tax holidays.
- Continue ongoing efforts to protect the domestic tax base from cross-border tax minimisation strategies and carefully monitor the effectiveness of measures recently implemented
- Establish clear and uniformly applied requirements for receiving a Free Zone tax holiday until tax holidays are removed.
- Monitor the operations and the outcome of the tax incentive frameworks to verify the integrity of the tax system, to review, analyse and adjust policy or practice where misalignments occur and to minimise distortions.
- Use reporting tools to highlight revenue costs associated with tax incentives by providing comparable estimates of tax expenditures.

State-owned enterprises and infrastructures

- Strengthen the corporate governance framework for state-owned enterprises to improve their integrity, transparency and professionalism, and broaden the use of performance indicators.
- Fill future managerial and board vacancies through merit-based open competitions.
- Update implementing regulations to accelerate effective application of the law on PPPs (Public-Private partnerships).
- Ensure that the PPP regulatory framework is equally capable of ensuring an adequate return to private investors and maintaining fiscal discipline.
- Promote and implement RBC principles and standards within SOEs, thereby setting an example for their uptake by businesses at large.

Integrity

- Keep the momentum of reforms to combat corruption and promote integrity in the private sector.
- Confirm the political commitment to fight corruption and bribery solicitation, in particular by introducing legislation to regulate lobbying activities and protect whistle-blowers.
- Strengthen existing control mechanisms with respect to public procurement.

Responsible business conduct

- Establish an NCP in accordance with the Decision of the Council on the OECD Guidelines for Multinational Enterprises, and ensure that it is fully functional as soon as possible after the issuance of the Executive Decree
- Promote the use of the OECD Due Diligence Guidances by enterprises operating in or from Uruguay, actively support the use of due diligence by these enterprises, and ensure the widest possible dissemination of the various sector guidance and their use by various stakeholders.
- Undertake a capacity building exercise for the NCP within one year after adherence and, in that context, report back to the WPRBC on the progress made in implementing the recommendations made to improve the effective functioning of the NCP.
- Promote policy coherence and improve coordination on RBC-related policies within the government.

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Notes

[1] Although those negotiations do not cover investment protection, they do include provisions relevant for investment.

2 Economic trends and the role of investment

Uruguay is a relatively small, high-income and fast-growing economy. Policy-makers have worked toward the objective of gradually integrating Uruguay into the global economy, strengthening and cementing democratic institutions and improving the overall well-being of the local population. This policy coupled with lack of formal restrictions on activities of foreign enterprises have led to high levels of foreign direct investment (FDI) in the economy. This chapter presents Uruguay’s situation in terms of its overall economic performance and FDI trends over the past two decades to provide key insights on the role – and evolution – of foreign investment in the Uruguayan economy.

Introduction

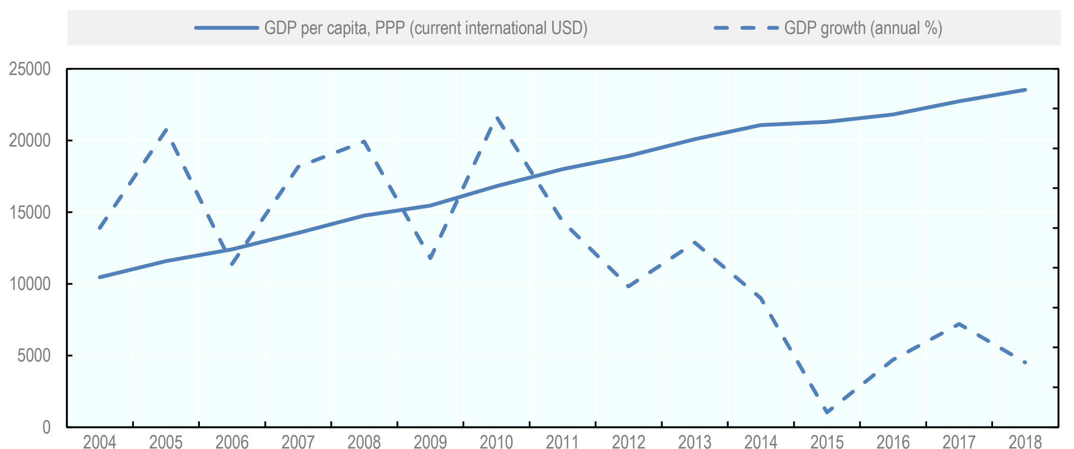
Uruguay is a relatively small, high-income and fast-growing economy. With a fast-aging population of 3.4 million (projected to fall to 3.2 million in 2100), it is South America's smallest country (except for Suriname and the two Guyanas) and the most urbanised – 40 % of Uruguayans live in the capital city of Montevideo alone (INE, 2011). Since the late 1980s, Uruguay has made a successful transition to a stable market economy and achieved notable progress on institutional and policy reforms. Policy-makers have worked toward the objective of gradually inserting and integrating Uruguay into the global economy, with a profound impact on the institutional framework, not least in the area of investment policies. Democratic institutions have also taken progressively deeper roots, removing any legacy of the 1970s dictatorship.

This chapter presents Uruguay's situation in terms of its overall economic performance and FDI trends over the past two decades to provide key insights on the role – and evolution – of foreign investment in the Uruguayan economy.

Uruguay's economic development

From an economic standpoint, Uruguay suffered from the 1982 debt crisis, lived tumultuous times in the 1980s (the so-called "lost decade") and only partially recovered in the 1990s. In the aftermath of the 2001-02 recession, ignited by the severe crisis in neighbouring Argentina, GDP per capita grew at a dynamic pace, of around 5.4% per annum between 2004 and 2014, twice as fast as in the 1990s. This expansion was somewhat stymied by the 2008-09 global financial and economic crisis, but resumed with renewed vigour, supported by an appropriate policy mix (IMF, 2017). Year-on-year GDP growth in the second quarter of 2019 was 0.3% (BCU, 2019b).

Figure 2.1. GDP growth and GDP per capita in Uruguay, 2004-2018



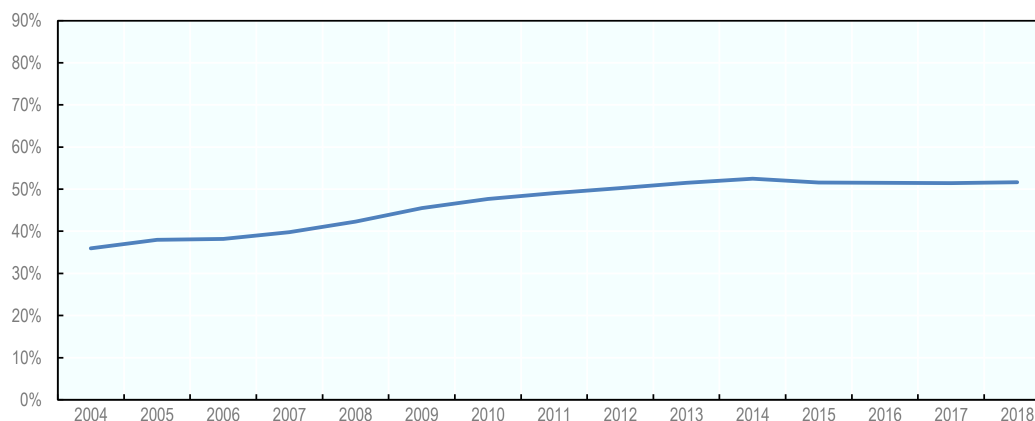
Source*:* World Bank's *World Development Indicators*

Macroeconomics growth has been characterised by substantial improvements in several dimensions of material and human well-being. In PPP terms (current international USD), GDP per capita more than doubled, from USD 10 4471 in 2004 to USD 23 572 in 2018 and in the process went from about 36% of the OECD average level to 52%. Most Millennium Development Goals were reached by 2015 (Presidency of the Republic of Uruguay, 2017). Life expectancy at birth, a key well-being indicator, reached 70 years

in 1980, 75 in 2001 and 77 in 2018. Labour market conditions, however, have worsened in the most recent past: unemployment has slightly edged up (although it remains lower than in Argentina and Brazil), youth finds fewer job opportunities (especially in the private sector), and weekly hours worked have also declined (Bafico and Michelin, 2019).

Figure 2.2. GDP per capita in Uruguay as a share of the OECD GDP per capita level, 2004-2018

In %



Source: World Bank's *World Development Indicators*

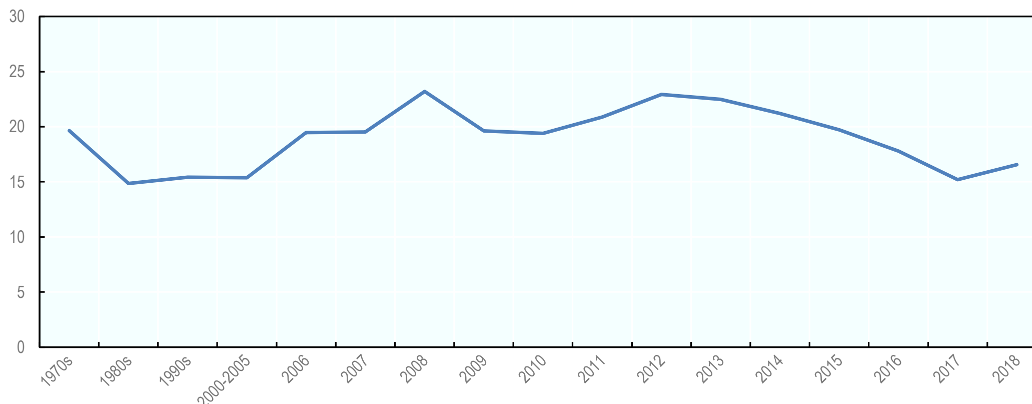
There has also been signs of some, albeit modest, structural transformation. The composition of GDP has changed between 1997 and 2018, with the share of the primary sector (agriculture and mining) dropping from 9% of GDP to 7% and that of manufacturing from 16% to 14%, and that of services increasing from 74% to 79%, according to the data by the Central Bank of Uruguay (2019).

The acceleration of investment outlays has been a crucial feature of the recent boom. As a percentage of GDP, gross fixed capital formation (GFCF) in 2006 was at roughly the same level (19.5%) prevailing in the 1970s, when the previous record was set. It grew to 23% in 2008, fell during the global recession before hitting a new peak in 2012. Nonetheless, since 2012 there has seen a worrisome decline in GFCF that has brought the indicator back to 16.5% of GDP in 2018, i.e. the level prevailing during the "lost decade". In terms of composition of investment by institutional sector, over the 2006-2017 period the private sector has accounted for the bulk and the state for one fifth, according to the Central Bank of Uruguay. The major exceptions were the years 2008 and 2009, which saw the public sector increase its contribution in an anti-cyclical fashion. From the perspective of the type of assets, buildings are slightly more important than capital goods, with no clear trend emerging.

The unprecedented 14-year expansion resulted in a considerable reduction in external risks. The central government debt was trimmed from 73% of GDP in 2005 to 51% in the first quarter of 2019, with the share corresponding to foreign-denominated instruments going down from 88% to 55% and the average time to maturity extending from 7.9 years to 13.8 years (MEF, 2019d). At February 2019, Uruguay was rated BBB (with stable outlook) by S&P and Baa2 (with stable outlook) by Moody's. In addition, following a period of high inflation, culminating at 28.5% in March 2003, inflation has overall been declining to a minimum of 3.4% in August 2005; it then begun rising until May 2016 and has subsequently fluctuated between 5.2% and 8.3%; in December 2019, the rate was 8.8%, according to the Central Bank of Uruguay.

Figure 2.3. Gross Fixed Capital Formation as a share of GDP, 1970s-2018

In %



Note*:* Gross capital formation consists of outlays on additions to the fixed assets of the economy plus net changes in the level of inventories. Fixed assets include land improvements (fences, ditches, drains, and so on); plant, machinery, and equipment purchases; and the construction of roads, railways, and the like, including schools, offices, hospitals, private residential dwellings, and commercial and industrial buildings. Inventories are stocks of goods held by firms to meet temporary or unexpected fluctuations in production or sales, and "work in progress." Net acquisitions of valuables are also considered capital formation.
Source*:* World Bank's *World Development Indicators*

Near-term prospects are favourable overall, unexpected events notwithstanding. Although the IMF and the World Bank project growth to slow to 0.4% in 2019, mainly reflecting weakness in demand from both global and regional partners, GDP is projected to recover in 2020 to more than 2% (IMF, 2019 and World Bank, 2019). Nonetheless, the relatively low level of investment and indications from business surveys (CIU, 2019) suggest that the economy is operating close to potential at the current level of economic structure. Despite prudent debt management, pre-financing of external financing needs, lower banking sector vulnerabilities, and ample reserves, in the medium run there is a risk of growth deceleration unless long-standing structural constraints – and in particular insufficient education achievements – are not addressed. The external environment for trade and finance is also becoming less supportive.

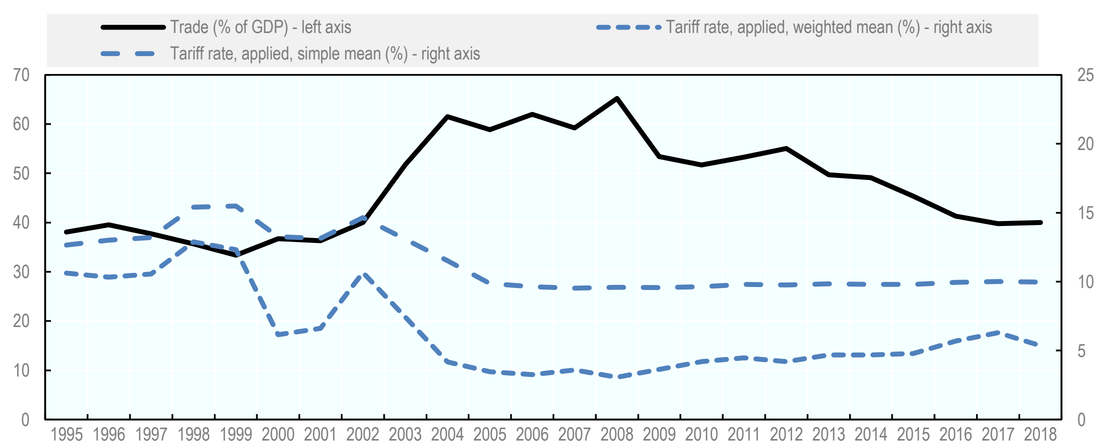
Foreign trade has followed broad trends consistent with Uruguay's WTO membership (of which it was a founding member), its web of preferential trade agreements signed over the years, and the updating of trade-related legislation to maintain it in line with global norms. The simple average MFN tariff has fallen from 13.3% in 2000 to 10.3% in 2018 (Figure 2.5). While the degree of openness of the economy (measured as the ratio of merchandise trade to GDP) rose between 2000 and 2009, it has been on a downward slope since then, reaching 28% in 2018. The trade balance for goods has been negative since 2012 (when a change occurred in the balance of payments methodology); while exports of services have registered dynamic growth, and the balance has been positive most of the time. This period has also seen commercial services gaining a conspicuous place in Uruguay's export basket. All in all, the trade balance has improved, registering a surplus in 2017 and a small deficit in 2018.

Uruguay's integration intro regional and global value chains (GVC) has also evolved. As shown in OECD (2016), Uruguay's GVC participation takes place predominantly through strong backward linkages, i.e. the use of foreign value added in country's exports. In 2011, foreign value added accounted for 28% of total value added, up from 11% in 1995, signalling growing GVC integration The more recent indicators confirm that while backward integration has increased particularly intensely in the early 2000s, coinciding with the commodities boom, it has been tamed since then (see Casella, et al., 2019). In addition, if the metrics of GVC participation accounted for the origin of the capital of exporting firms, the share of foreign value-added in Uruguayan exports could be even higher, given the important contribution of foreign-owned firms in the

country's exports In particular, while in 2003 foreign-owned firms accounted for 24 of goods trade in Uruguay, this figure reached 70% by 2018 (Uruguay XX, 2019a).

In terms of product structure, well over half of Uruguayan exports are raw materials – more than in Chile and almost twice as high as in Costa Rica – while the share of capital goods is negligible (Table A.C.1 in Annex C). While there has been some churning, agri-business, in particular cellulose, meat, dairy, soya beans, remain the top export products. Meanwhile, the geographical make-up of Uruguay's trade basket has changed dramatically. The falling share of exports to Latin America, including MERCOSUR, was accompanied by an explosion of trade with Asia, which almost tripled from 8% of the total in 1999 to 22% in 2017 (see Table A.C.2 in Annex C). In fact, in 2013 China became the single largest export destination for Uruguay, absorbing 30% of exports in 2019, followed by the European Union (17%); while Latin America remains the main source of imports (Uruguay XXI, 2019b).

Figure 2.4. The share of trade to GDP and the level of average applied import tariffs in Uruguay



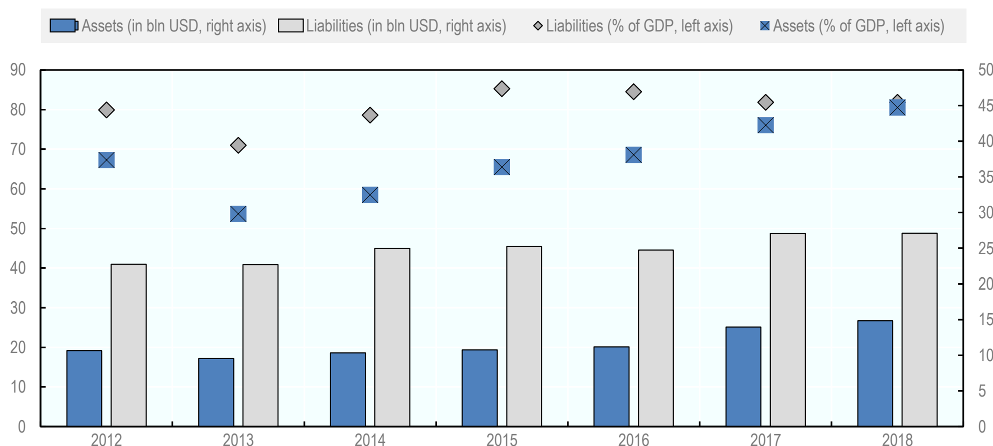
Source*:* WITS data, OECD National Accounts data, World Bank national accounts

Foreign investment trends

FDI plays an important role in Uruguay's economy…

As discussed in Chapter 4, Uruguay has very few *de iure* restrictions to foreign direct investment (FDI). Meanwhile, reduced barriers to FDI are, on average, associated with higher levels of inward FDI stocks (Mistura and Roulet, 2019).[1] In this context, and considering the government's continued effort to attract investment, it is not surprising that FDI plays a prominent role in the Uruguayan economy: FDI liabilities reached USD 48.8 billion (about 82% of GDP) and FDI assets USD26.7 billion (45% of GDP) in 2018.[2] FDI liabilities have increased progressively over the years, outpacing the growth in FDI assets (Figure 2.5).[3] Overall, locally established foreign-owned firms continue playing a relatively more important role in the local economy than Uruguayan firms established abroad, as reflected in the fact that FDI liabilities continue to be greater than assets.

Figure 2.5. FDI stock in Uruguay, 2011-2018

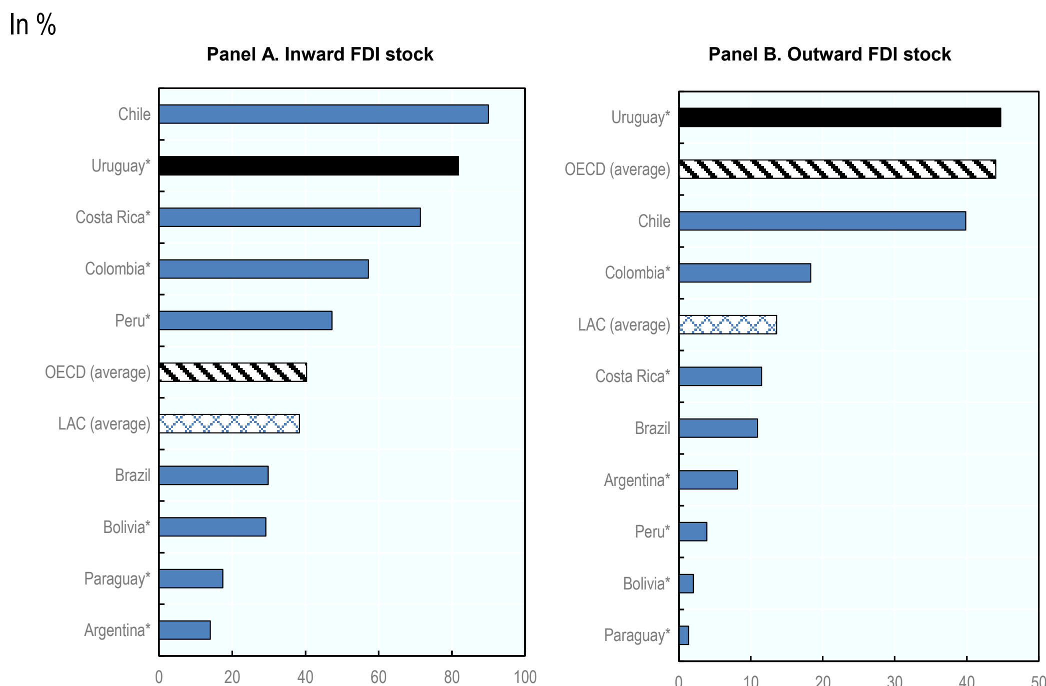


Note: In 2012, the Central Bank of Uruguay changed its methodology for compiling FDI statistics, aligning it with the sixth edition of the Balance of Payments and International Investment Position Manual (BPM6) and improving the coverage. As such, data for prior periods are not directly comparable.
Source: Central Bank of Uruguay (BCU)

In relative terms, Uruguay is one of the most open economies in the LAC region, as measured by the share of FDI liabilities in GDP, and has sustained such openness for a number of years (Figures 2.6-8). The share of FDI assets to GDP is lower, and according to the statistics provided by the Central Bank of Uruguay, 20 firms account for the majority of the country's FDI assets, 98% of which is generated by resident foreign-owned firms.[4] From this perspective, Uruguay has a potential of further increasing internationalisation of domestic-owned firms; building on several examples of Uruguayan companies operating abroad (see Box 2.1).

Figure 2.6. Inward and outward FDI stock as a share of GDP in Uruguay and selected LAC countries, 2018

In %

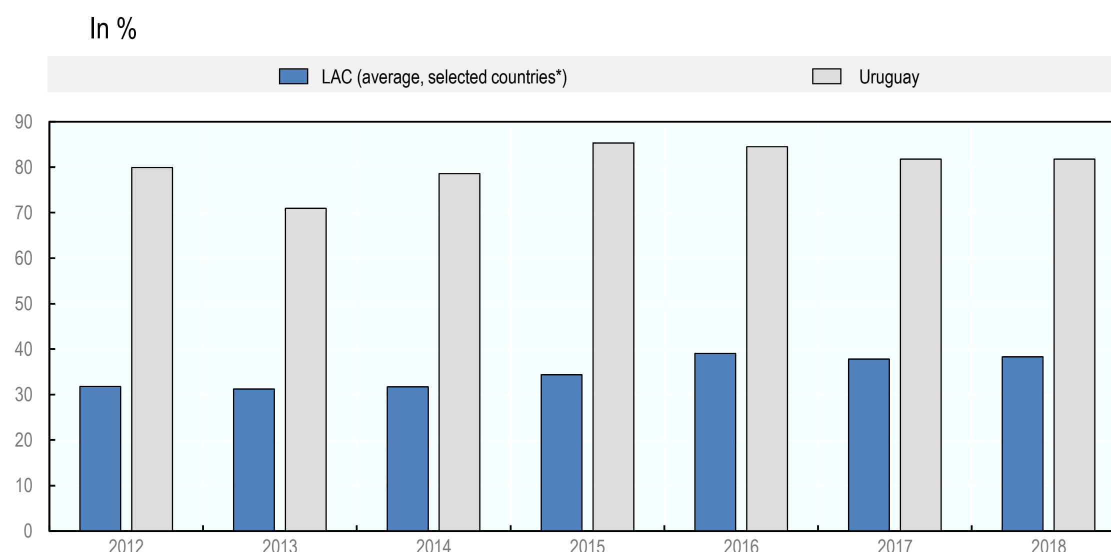


Note: *Countries using asset/liability method of compilation of FDI statistics. Data is for 2018 or the latest available year.
Source: OECD International Direct Investment Statistics and IMF Balance of Payment databases

In addition, complementary business statistics show that foreign-owned firms play an important role in the economy terms of their contribution to exports and other socio-economic metrics. For example, according to data of the National Statistical Office (INE), majority-foreign owned firms accounted for one third of total value added and of gross fixed capital formation.[5] Existing studies for Uruguay also show that FDI has contributed to increases in productivity and wages in the period 1997–2005, in particular for skilled labour (Peluffo, 2015). Most recently, it has also been shown that selling to a local MNE increases export probability of domestic firms (Carballo, Marra de Artiñano and Volpe Martincus, 2019). Coupled with other business support and trade and investment promotion programmes, such linkages can, hence, facilitate internationalisation of local firms.

Figure 2.7. FDI assets and liabilities as a share of GDP in Uruguay and selected LAC countries, 2012-2018.

In %



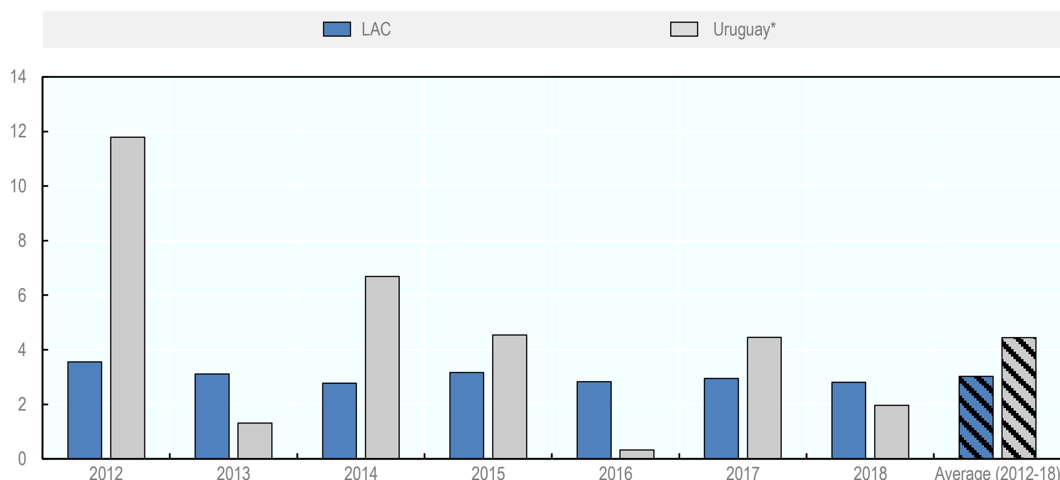
Note: *LAC average presented above covers the following countries: Argentina, Bolivia Brazil, Chile, Colombia, Costa Rica, Paraguay, Peru, and Uruguay. All LAC countries covered in the calculation of the average (besides Chile and Brazil), including Uruguay, report the data using asset/liability method of compilation of FDI statistics.
Source: OECD International Direct Investment Statistics and IMF Balance of Payment databases

… and FDI inflows have been strong overall

The general attractiveness of Uruguay as a location for foreign investment is also reflected in relatively strong FDI inflows. On average, inward FDI flows have been equal to 4.4% of GDP since 2012 and have generally been above the LAC average, except 2013 and 2016 (Figure 2.8). Yet, Uruguay has performed below Costa Rica and Chile, while fairing ahead of some other regional peers (Figure 2.9). More generally, from a historical perspective, the total amount of FDI and its share in the country's GDP increased significantly in the 1990s and 2000s, and both indicators are among the highest seen in the country in the last fifty years (Uruguay XXI, 2019; de Castillo and García, 2012). The question remains, however, as to whether this dynamism can be sustained in the future, in particular in the context of decreasing FDI flows worldwide and instability in the LAC region, including in one of the important source of the country's FDI – Argentina.

Figure 2.8. Share of inward FDI flows as a share of GDP in Uruguay and LAC, 2012-2018.

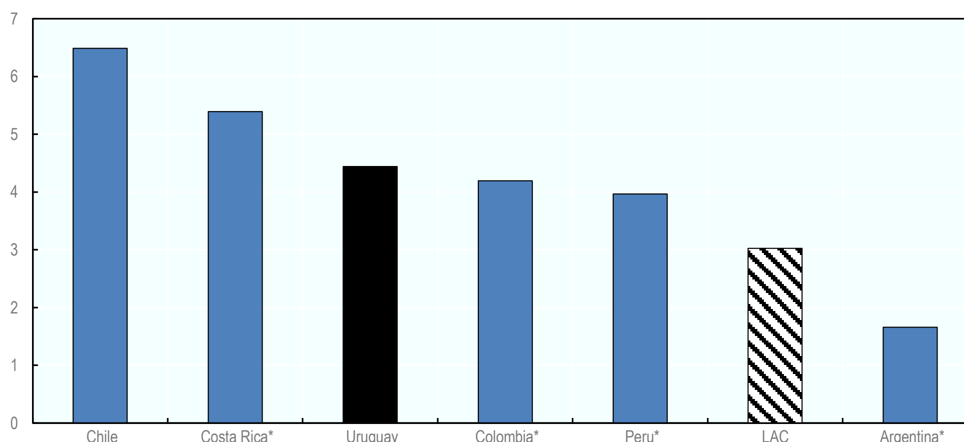
In %



Note: *Uruguay uses a directional method of compilation of statistics on FDI flows.
Source: OECD International Direct Investment Statistics and IMF Balance of Payment databases

Figure 2.9. Share of inward FDI flows as a share of GDP in Uruguay and selected LAC countries, 2012-2018

In %



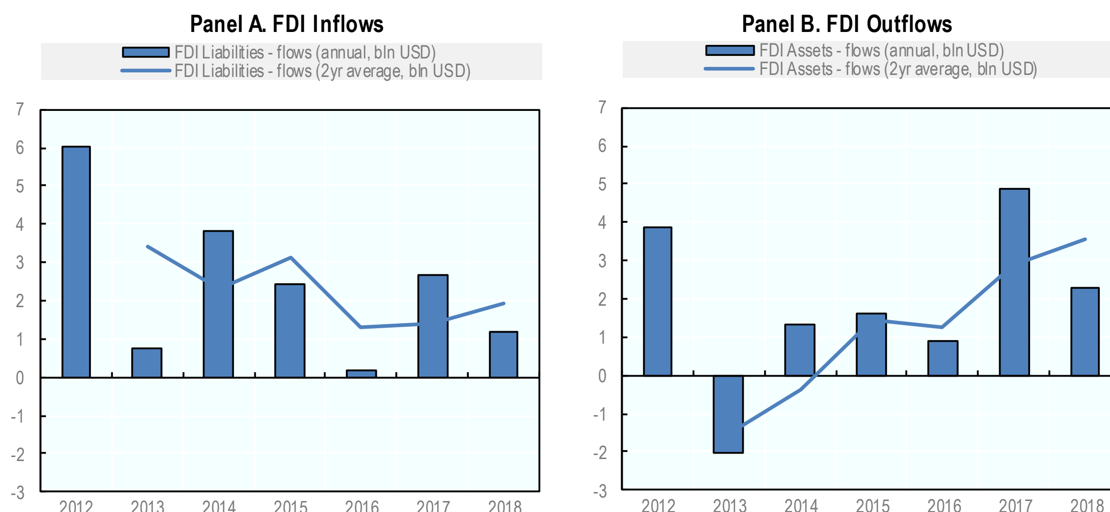
Note: *Countries using asset/liability basis method of compilation of FDI statistics. Uruguay uses a directional method of compilation of statistics on FDI flows.
Source: OECD International Direct Investment Statistics and IMF Balance of Payment databases

…but may require monitoring in the future.

Indeed, FDI inflows appear to have been decreasing in recent years, while FDI outflows have shown the opposite trend (Figure 2.10). In particular, quarterly data reveal that FDI inflows in the first quarter of 2019 were lower than the corresponding figures in 2017 and 2018 (Figure 2.11), at levels similar to the lowest point in 2016. Still, the recent decision (announced in July 2019)[6] by the Finnish-owned forest industry company UPM – the largest foreign investor in the country – to construct a USD 2.7 billion pulp mill in central Uruguay, as well as invest in port operations in Montevideo and local facilities in Paso de los Toros, may help in stimulating investment in the economy, and may contribute to increases in inward FDI in the future, including through its potential signalling effect.

Figure 2.10. Annual FDI flows in Uruguay, 2012-2018

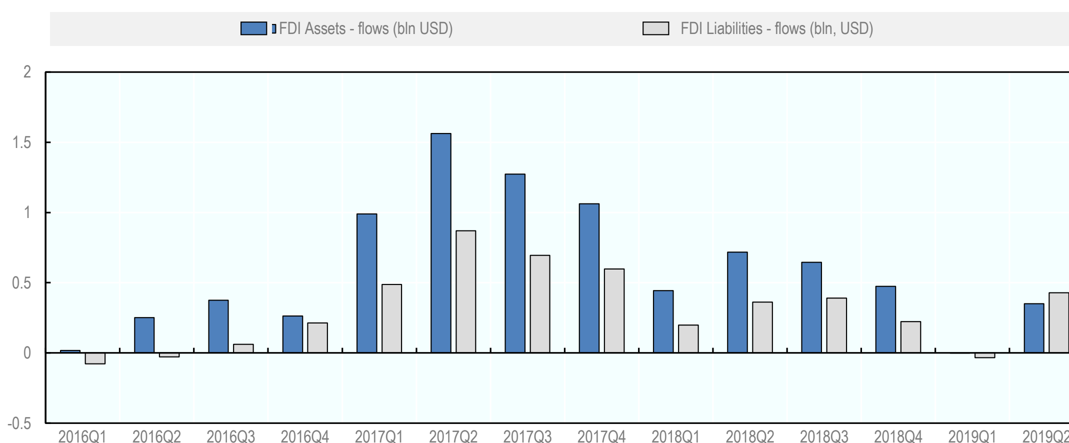
In bln USD



Note: Uruguay uses a directional method of compilation of statistics on FDI flows.
Source: Central Bank of Uruguay (BCU)

Figure 2.11. Quarterly FDI flows in Uruguay, 2016-2019

In mln USD



Note: Uruguay uses a directional method of compilation of statistics on FDI flows.
Source: Central Bank of Uruguay (BCU)

Equity share of FDI flows has remained positive…

It is worth noting that the decrease in FDI inflows in Uruguay has been mostly driven by debt – one element of FDI in the official statistics (see Box 2.1) – and specifically increases in lending by local affiliates to foreign parents, resulting in negative debt in 2013 and 2016 (Figure 2.12). The equity portion of FDI inflows has been more stable but also decreased in 2017 and 2018, suggesting that new capital injections have been a challenge. Still, Uruguay has not experienced any divestments thus far – the equity portion of FDI inflows has remained positive since 2012. The FDI outflows, meanwhile, are mostly comprised of debt, potentially pointing to financial considerations. These trends are also confirmed by the most recent data for the second quarter of 2019 (BCU, 2019).

Box 2.1. Key concepts and definitions in FDI statistics

Definition of FDI: Direct investment is a category of cross-border investment made by a resident in one economy (the direct investor or parent) with the objective of establishing a lasting interest in an enterprise (the direct investment enterprise or affiliate) that is resident in an economy other than that of the direct investor. This lasting interest is evidenced when the direct investor owns at least 10% of the voting power of the direct investment enterprise (a threshold applied in FDI statistics). The objectives of direct investment are different from those of portfolio investment whereby investors do not generally expect to influence the management of the enterprise. Direct investment statistics cover all cross-border transactions and positions between enterprises which are in a foreign direct investment relationship.

FDI statistics include:

1. direct investment positions (stocks)
    a. equity
    b. debt (intercompany loans)
2. direct investment income flows
    c. dividends and distributed branch profits
    d. reinvested earnings
    e. income on debt (interest)
3. direct investment financial flows
    f. equity
    g. b. reinvestment of earnings
    h. c. debt

Equity includes common and preferred shares (exclusive of non-participating preference shares which should be included under debt), reserves, capital contributions and reinvestment of earnings. Dividends, distributed branch earnings, reinvested earnings and undistributed branch earnings are components of FDI income on equity.

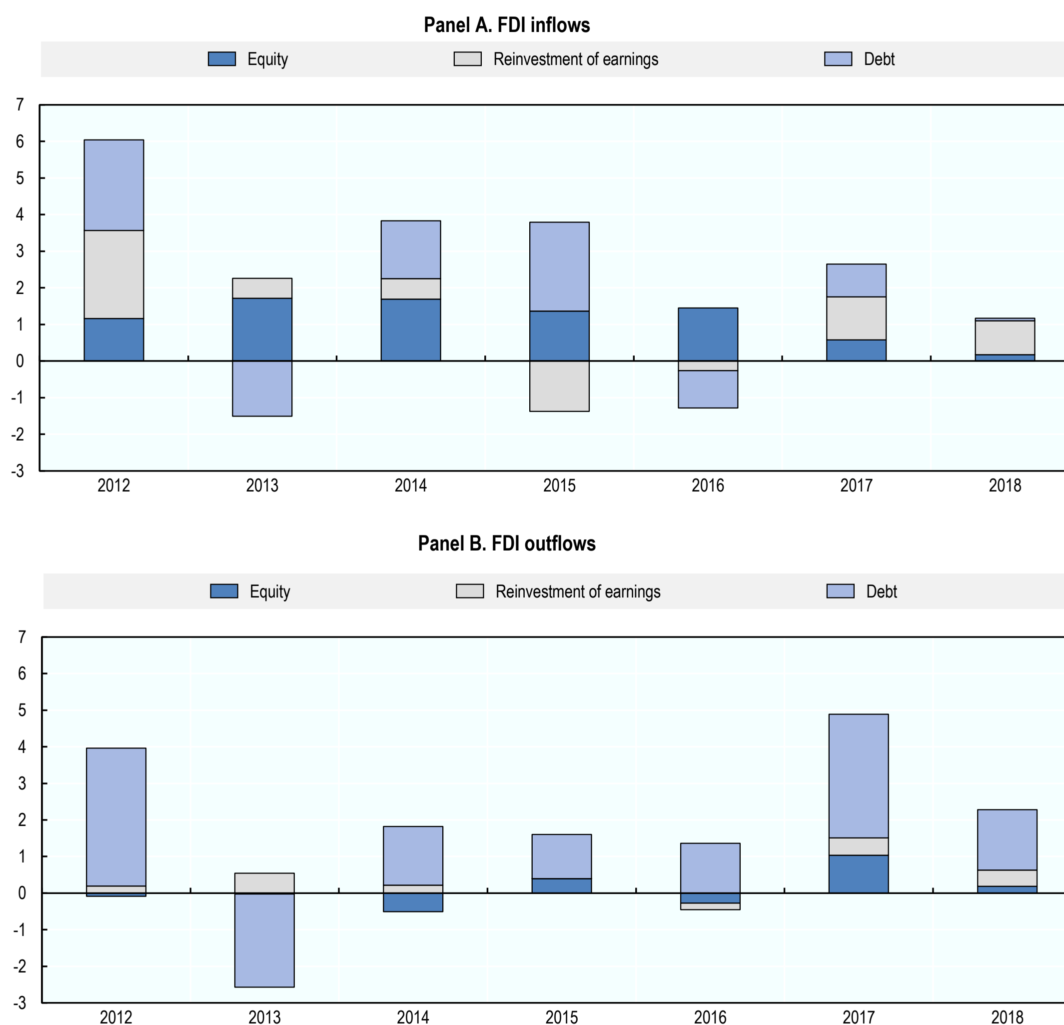
Debt instruments include marketable securities such as bonds, debentures, commercial paper, promissory notes, non-participating preference shares and other tradable non-equity securities as well as loans, deposits, trade credit and other accounts payable/receivable. The interest returns on these instruments are included in FDI income on debt.

FDI financial transactions may be negative for three reasons. First, if there is disinvestment in assets—that is, the direct investor sells its interest in a direct investment enterprise to a third party or back to the direct investment enterprise. Second, if the parent borrowed money from its affiliate or if the affiliate paid off a loan from its direct investor. Third, if reinvested earnings are negative. Reinvested earnings are negative if the affiliate loses money or if the dividends paid out to the direct investor are greater than the income recorded in that period. Negative FDI positions largely result when the loans from the affiliate to its parent exceed the loans and equity capital given by the parent to the affiliate. This is most likely to occur when FDI statistics are presented by partner country.

Source: OECD (2008)

Figure 2.12. FDI flows in Uruguay, by instrument, 2012-2018

In USD billion

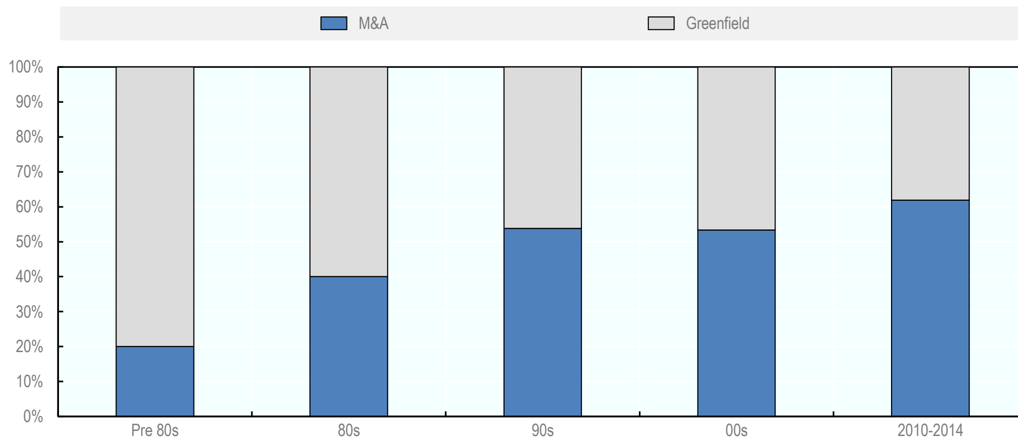


Note*:* Uruguay uses a directional method of compilation of statistics on FDI flows.
Source*:* Central Bank of Uruguay (BCU)

… and both greenfield and brownfield activity have been important.

In terms of mode of entry, greenfield FDI (i.e. construction of a new facilities) and brownfield FDI (i.e. mergers and acquisitions, M&As) appear to be equally attractive to investors when entering the Uruguayan market. While greenfield FDI was a predominant mode of entry in the 1980s and earlier periods, M&As have gained in importance over time. For example, while greenfield FDI accounted for 60% of the entries by foreign-owned exporting firms in the 1980s, the share fell to 40% in the 2010s (Figure 2.13). In addition, according to the *Greenfield FDI Performance Index,* which captures countries' relative attractiveness for greenfield investment, Uruguay has seen a larger number of announced greenfield FDI projects than predicted by the size of its economy (**Figure 2.14**). In addition, Uruguay hovered above the LAC average through most of the period for which data is available, being outperformed only by Costa Rica and Chile among its peers.

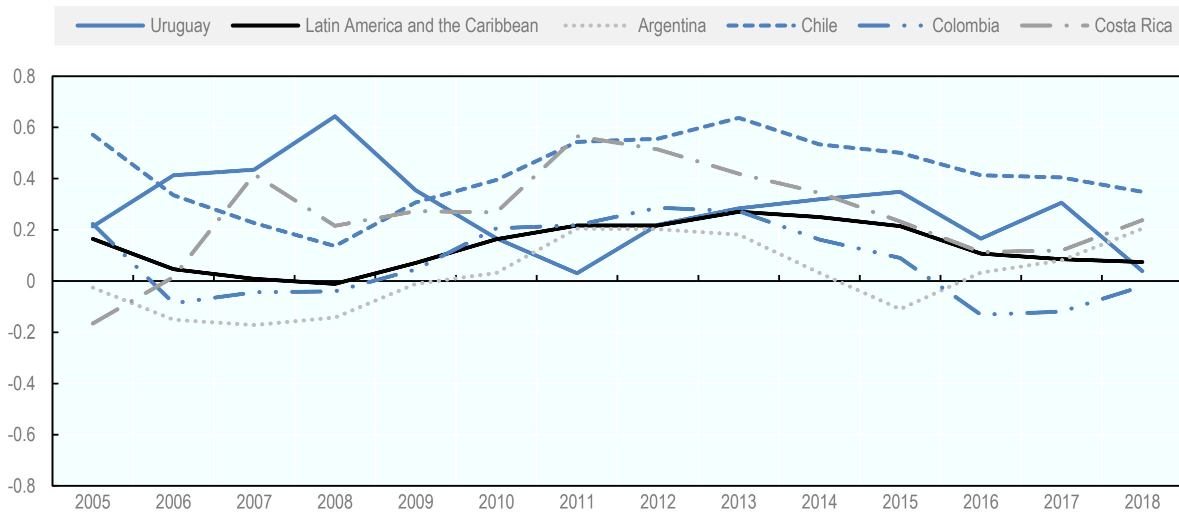
Figure 2.13. Number of entries of exporting foreign-owned firms in Uruguay by mode of entry



Source*:* Uruguay XXI

The recent announcement of the construction of a new plant in Uruguay by UPM (a greenfield project of about 3 bln USD), a company that has initially entered the market through an acquisition of an existing firm, also shows that the two modes of entry can be complementary and can result in employment creation and increases in productive capacity over time, in particular if the investor remains in the economy and expands. This also highlights the importance of retention assistance and aftercare services provided to investors by the government (see Chapter 7).

Figure 2.14. Greenfield FDI Performance Index for Uruguay and selected LAC countries, 2005-2018



Note*:* The figure shows three-year moving average. The Index is calculated as a share of the value of greenfield FDI projects announced in the country to the world's total value of greenfield FDI projects divided by the share of country's GDP in the world's GDP (normalised around 0). A value > 0 means that a country attracts more FDI than suggested by the size of its GDP.
Source*:* OECD calculations based on UNCTAD, using on information from the Financial Times Ltd, fDi Markets (www.fDimarkets.com).

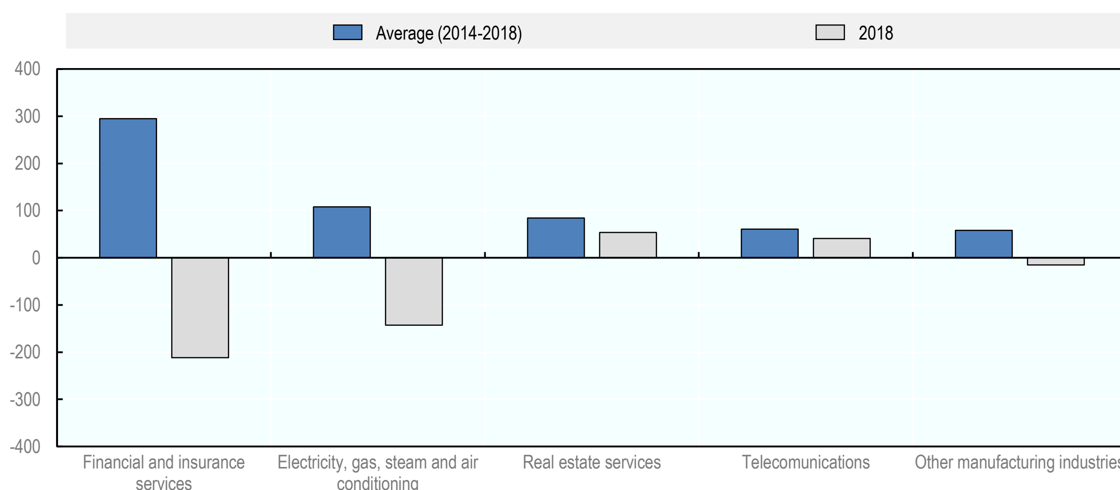
…but has primarily focused in services sectors, notably financial services…

There is still scope for further diversification of FDI in Uruguay. In particular, financial and insurance services have dominated Uruguay's inward FDI inflows, accounting for the largest share of inward FDI flows in the last five years (Figure 2.15), even after recent decreases. Considering the importance of financial sector for FDI activities in Uruguay, the authorities could consider collecting and publishing FDI statistics separately for special purpose entities (SPEs), i.e. enterprises that may be established primarily for tax and other financial management purposes without a physical activity in the economy (Box 2.2). The examples of recent investment projects, realised as greenfield or brownfield investment, also provide an insight into the character of FDI in the country (Boxes 2.3 and 2.4).

In terms of geographical distribution, Europe remains the most important source of FDI in Uruguay, accounting for over 40% of total inward FDI stock in the country, followed by South America with about 30% of the total, Figure 2.18). This reflects the important role of investors from both Spain and Argentina in the Uruguayan economy (each accounting for 17% of the total inward FDI stock in 2018, Figure 2.19). In terms of FDI inflows, Europe accounted for nearly two thirds of all FDI inflows in the last five years, with Spain being the most important foreign investor (Figure 2.16). Yet, the importance of countries that are commonly considered low-tax locations or tax havens as significant source for FDI in Uruguay (e.g., the British Virgin Islands) suggests that investment via SPEs may be affecting the distribution of FDI.

Figure 2.15. Top five sectors for FDI inward inflows, average, 2014-2018.

In USD million



Note*:* Uruguay uses a directional method of compilation of statistics on FDI flows. Average FDI inflows for 2014-2018.
Source*:* Central Bank of Uruguay (BCU)

Box 2.2. Special purpose entities: why do they matter for FDI statistics?

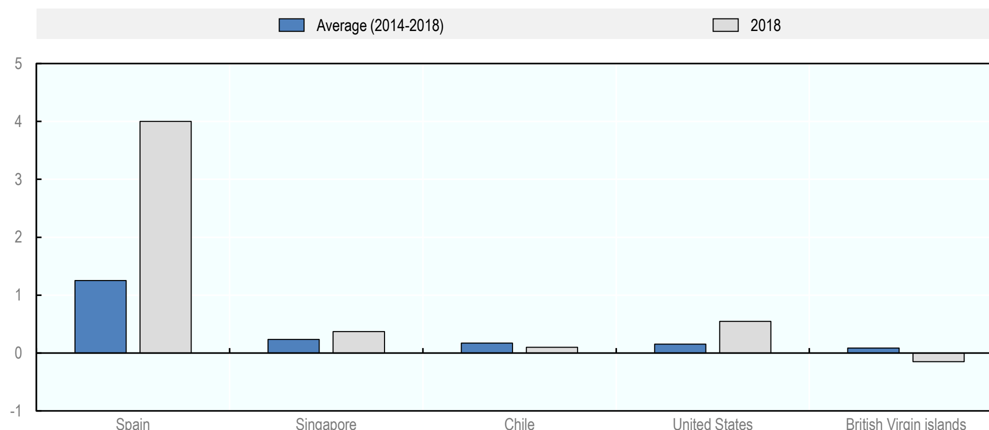
Special purpose entities (SPEs), such as shell or shelf companies, are companies that do not have substantial economic activity in the country but that are used by companies to raise capital or to hold assets and liabilities. With the proliferation of international activities and increase in intra-frim trade, including in intangibles, it has become increasingly easy for companies to shift profits across jurisdictions according to the most favourable tax environment through corporate structures built for that purpose. Just as gross trade flows may obscure the destination and origin of value-added produced in a given economy due to multiple shipments of goods across borders during the production process that spans several countries, so the passing of funds through SPEs can lead to the inflation of FDI statistics and the obscuring of the ultimate source and destination of FDI.

The OECD Revised Benchmark Definition of Foreign Direct Investment (BMD4) recommends that countries compile their FDI statistics excluding resident SPEs, and, then, separately for resident SPEs to provide a more meaningful measure of direct investment into and out of an economy (see OECD, 2008). For the country hosting the SPEs, this recommendation improves the measurement of FDI by excluding inward FDI that has little or no real impact on their economies and by excluding outward FDI that did not originate from their economies. Four countries—Austria, Hungary, Luxembourg, and the Netherlands—have reported FDI flows and positions excluding resident SPEs to the OECD for several years. With the implementation of the latest standards, 30 OECD countries currently report FDI data excluding resident SPEs. In some countries, such as Luxembourg, Netherlands or Hungary, SPEs account for a sizable share of inward FDI stock (Figure 2.18) and, if not accounted for, could distort FDI statistics. Even in countries where SPEs do not play a significant role currently, it is useful to be able to identify resident SPEs in the FDI statistics so that their role can be monitored, especially as, by their nature, SPEs are easily established and can grow rapidly and distort investment flows in particular years.

Source: OECD. For more information, see the OECD website on International Investment Statistics: www.oecd.org/daf/inv/mne/statistics.htm

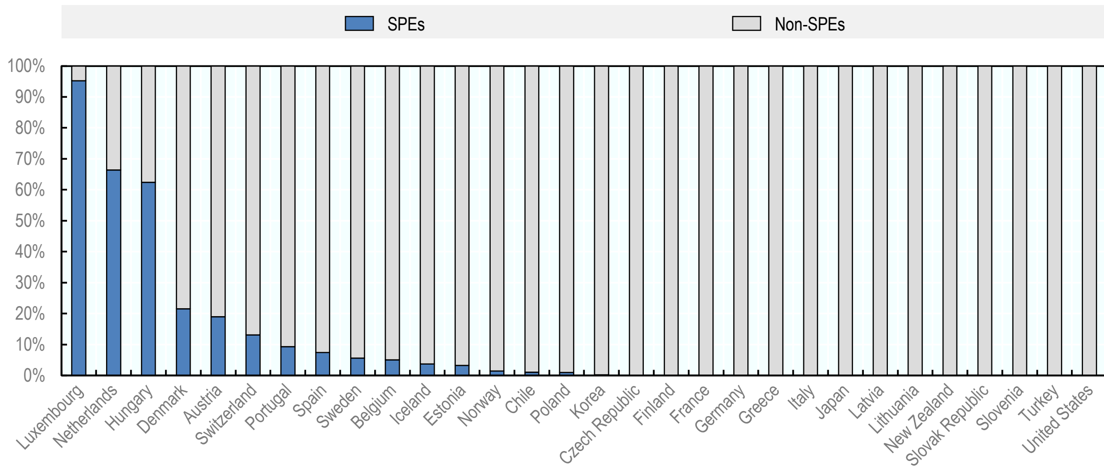
Figure 2.16. Top five source countries for FDI inward inflows, average, 2014-2018.

In bln USD



Note: Uruguay uses a directional method of compilation of statistics on FDI flows. Average FDI inflows for 2014-2018. Only equity and reinvestment portion of FDI inflows is shown in the figure above. When aggregated, average FDI inflows from Europe were USD 776 million in 2014-18 (i.e. 73% of all FDI inflows in Uruguay).
Source: Central Bank of Uruguay (BCU)

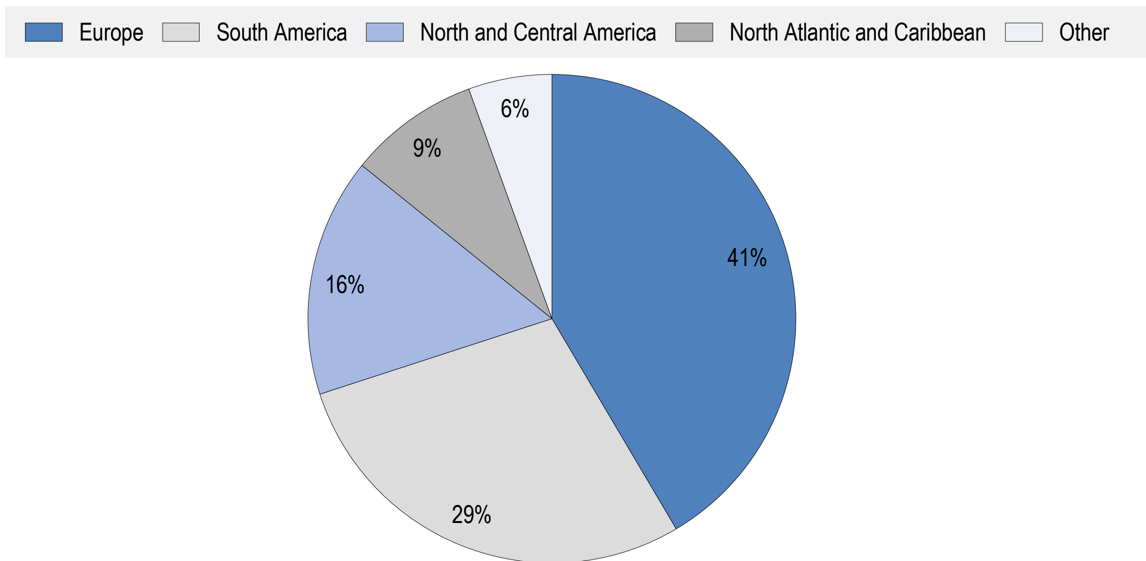
Figure 2.17. Inward FDI positions by resident SPEs and non-SPEs in selected OECD countries, 2017



Note*:* Data for Australia, Canada, Ireland, Israel, Mexico, and UK are not available with a split for SPEs and non-SPEs. Data for Denmark, Greece, Korea, Norway and Switzerland is available for 2016.
Source*:* OECD International Direct Investment Statistics

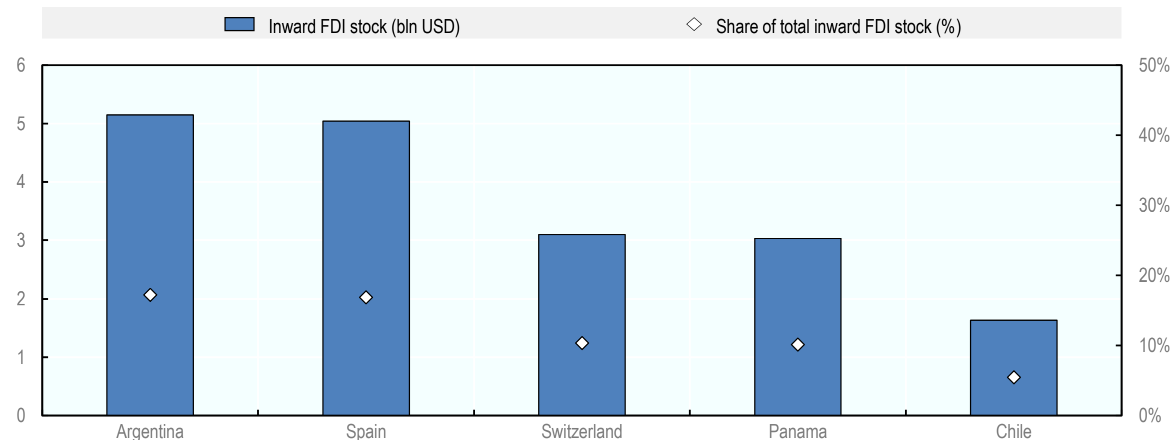
Figure 2.18. FDI stock in Uruguay, by source region, 2018

In %



Note*:* Uruguay uses a directional method of compilation of statistics on FDI stock by country of origin.
Source*:* Central Bank of Uruguay (BCU)

Figure 2.19. Inward FDI stock in Uruguay, by source country, 2018



Note*:* Uruguay uses a directional method of compilation of statistics on FDI stock by country of origin.
Source*:* Central Bank of Uruguay (BCU)

Various instruments of public support can support FDI diversification…

Public policies have a role to play in shaping the distribution of FDI as well as business activity in the country more generally. For example, investment projects supported through the Law on Investment Promotion (COMAP), discussed in detail in Chapter 6-7, are often in sectors and from home countries that otherwise do not receive high levels of FDI, aiming to support the process of economic diversification and growth. For example, most of the projects supported via COMAP were realised by investors from Mexico, Chile and France (Figure 2.20). With further improvements to the system of selecting projects to be supported by COMAP (described in Chapter 6-7), the focus on promising source countries and destination sectors with potential that do not naturally receive high levels of investment could contribute to the country's productive transformation.[7]

Free economic zones (FEZs) also play an important role in terms of the location of foreign investors in Uruguay as well as the source of country's exports. For example, in 2017, over 1 200 firms were located in FEZs, over half of which were exporters. According to the Ministry of Economy and Finance and the Central Bank, exports from FEZs in Uruguay accounted for nearly one third of total national exports (MEF, 2019a).[8] They also account for 2.3% of total investment (MEF, 2019b) and employ about 14 000 people (MEF, 2019c). Zonamerica is by far the largest FEZs in Uruguay, accounting for about 40% of exports, investment and employment generated by all the country's FEZs in 2017. Overall, about 30% of investments in FEZs are in manufacturing and 50% in services. According to the authorities, through the provision of investment incentives as well as infrastructure and tailored services within them, the zones can help support the development of various high value-added business and audio-visual services (for which a thematic FEZ has been created) as well as advanced manufacturing, such as pharmaceutical products. As discussed in Chapter 6, rigorous impact evaluations of the current incentives regime are largely limited to the COMAP regime (e.g. Llambi et al. 2018), making an overall assessment of costs and benefits of FEZs more difficult.

Continuous regulatory changes that aim to respond to global trends in certain emerging industries– as exemplified by the growing renewables sector (Box 3.2 in Chapter 3) and the market for legal cannabis in Uruguay (Box 2.4 below) – and efforts to coordinate proactive investment promotion and facilitation initiatives of various public and private actors (Chapter 6) can also help attract FDI into new market niches.

Box 2.3. Examples of recent investment projects in Uruguay

Uruguay has seen a number of greenfield and M&A project besides the two mega-deals associated with the activity of UPM-Kymmene – first an acquisition of Oy Metsa Botnia Ab´s operations in Uruguay by the Finnish forestry firm for 1.2 bln USD in 2009, and the recent announcement of the greenfield investment of 2.7 billion USD in 2019. Some recent examples are listed below.

Recent M&A projects

- Montevideo Refrescos SRL: Soft Drinks; Investor Origin: Mexico, Investment value: 251 mln USD
- ICC Labs: Pharma, Investor Origin: Canada, Investment value: 223 mln USD
- Baluma SA: Entertainment; Investor Origin: Chile, Investment value: 180 mln USD
- Weyerhaeuser: Forestry; Investor Origin: Brazil, Investment value: 402 mln USD

Recent greenfield projects:

- Hotel San Rafael: Hotels; Investor Origin: Italy, Investment value: 400 mln USD
- GLA - La Caleta: Shopping; Investor Origin: Argentina; Investment value: 150 mln USD
- Altius: Shopping and Hotel,: Investor Origin: USA; Investment value: 150 mln USD
- Alsea: Restaurants, Investor Origin: Mexico; Investment value: 49 mln USD

While less common in the manufacturing sector, there are also several notable examples:

- Grupo Marfrig of Brazil has progressively integrated three meat packers (Frigorífico Tacuarembó, La Caballada and Colonia), thus becoming Uruguay's largest processed meat exporter;
- US-based Velcro Companies, the world's largest fastener systems producer, built a new plant in 2015 –Velcro's biggest investment in recent years;
- Faurecia of France, a global leader in automotive technology, produces car seats for exports, mostly to neighbouring Mercosur countries;
- Italian dairy brand Parmalat returned to Uruguay after its controlling company, France's Lactalis, acquired two plants in Uruguay under the name Indulacsa.

Investment Promotion Agency of Uruguay, Uruguay XXI, publishes quarterly FDI monitor with information on the latest investment deals and investment opportunities in the country, which is available on the agency's website: www.uruguayxxi.gub.uy/en

Source: Dealogic, Uruguay XXI, OECD

Finally, linkage programmes connecting foreign and domestic firms can also play an important role, and can open new opportunities in the domestic and foreign markets for local firms. For example, a recent study by the IDB shows that when a domestic firm is a supplier of a multinational firm established in Uruguay, it increases the firm's probability to start exporting directly in a subsequent year by 70% (Carballo et al., 2019). In this respect, the Investment Promotion Agency, Uruguay XXI, described in Chapter 7, and other government bodies can help forge such business connections between foreign investors and local firms through matching initiatives.

Box 2.4. Foreign investment in the cannabis industry

Recreational cannabis has been legal since December 2013 (Ley Nº 19172), making Uruguay one of the first countries to legalise cannabis. The Regulatory and Control Institute for Cannabis (The Instituto de Regulación y Control de Cannabis de Uruguay, IRCCA) was also established. The latest figures on the industry's growth can be found on the regulator's website (www.ircca.gub.uy). Export of medical marijuana is permitted to countries where its use is legal.

In addition to a comprehensive cannabis law, Uruguay has attracted considerable investors' interest for three reasons. First, growing conditions are optimal, on account of easy access to low-cost and fertile land. Second, on the domestic market demand has outstripped supply, possibly due to competitive pricing to attract non-registered users (that are estimated to be at least four times as numerous as registered ones). Third, Uruguay is the only country where regulations currently permit the cultivation of certain plants on a commercial scale. Moreover, public institutions are proactively engaged in this strategy to promote investment in the industry. For instance, Uruguay XXI attends global industry events; and Institut Pasteur de Montevideo, a foundation between the Uruguayan and French governments, established a strategic partnership with Dormul, one of the companies in the sector. ICC's new CBD extraction facility is strategically located within the Science Park free trade zone. In addition, the Chamber of Medical Cannabis Companies, which groups 14 firms, was established in late 2018. Investments are strictly controlled, to prevent inter alia money laundering.

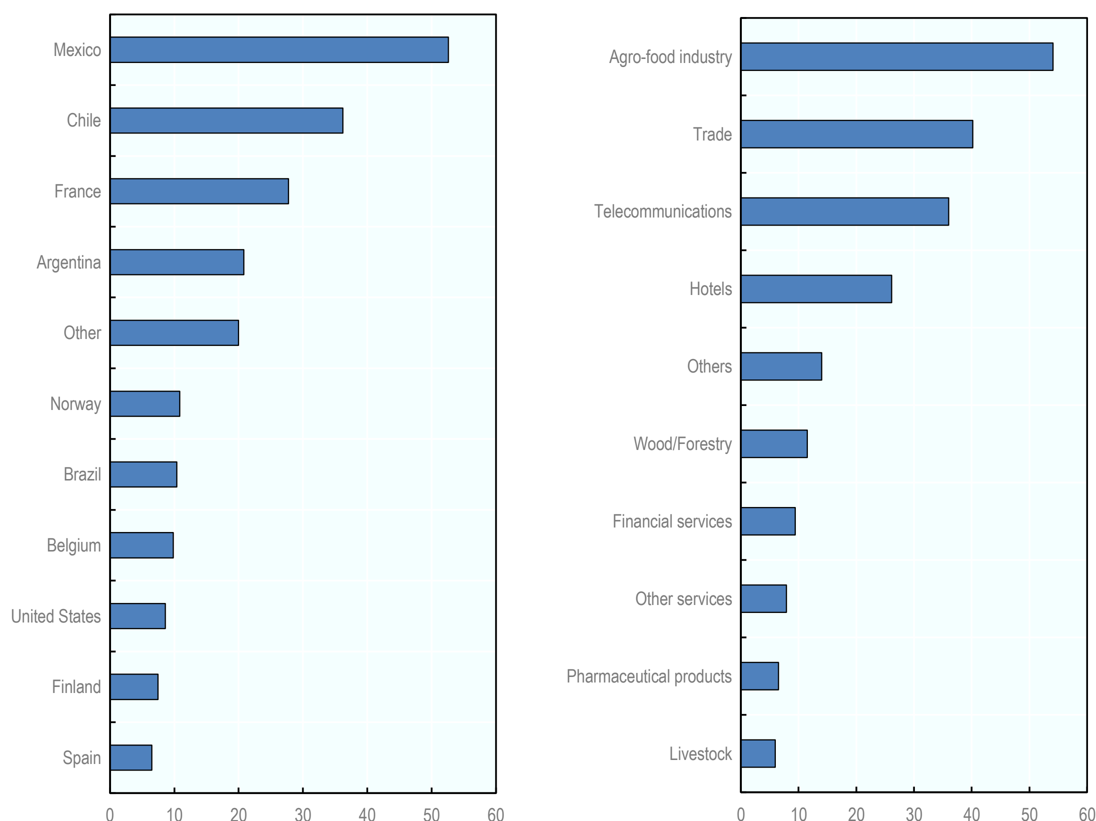
IRCCA has approved cannabis projects worth USD57 million since 2015 and is currently reviewing other permits for 21 projects worth approximately USD40 million. It plans to increase the number of licensed producers that supply recreational cannabis to pharmacies from two – ICC and Symbiosis – to as many as five. In addition, the sector has attracted foreign investment. For example, Big North American cannabis companies, some of which are listed, have started to consider Uruguay as a production, with the prospect of the country becoming the first to reach USD1 billion in annual exports of medical cannabis products by the mid-2020s.

- Fotmer, is a wholly-owned subsidiary of Silverpeak Life Sciences, one of the largest companies in Canada's medical marijuana industry. It currently employs 80 people and is investing USD7 million in 35 000 marijuana plants laboratories and 10 tons of crops. Fotmer has requested IRCCA to increase its annual production permit and it aims to quadruple production and build a larger extraction lab in 2020.
- Khiron Life Sciences bought Dormul, which has obtained the first licence to produce medical cannabis with THC for commercialisation in Uruguay. In addition, Dormul has an application pending for its extraction licence, which could allow the company to be approved for medical cannabis-based oils for both domestic and export purposes.
- In 2018, a USD12 million ICC laboratory was inaugurated, and bought in 2018 by Aurora Cannabis, also from Canada, for USD217 million.

In line with the experience elsewhere, investors have raised issue of administrative burdens. In Uruguay, the Ministry of Public Health shares responsibility with the manufacturer for any damaging side effect produced by a medicine. As a result, the approval of oils and ointments from marijuana requires standard medicinal tests, which can take up to 10 years to complete.

Figure 2.20. Value of investment supported through the Law on Investment Promotion (COMAP), by source country and sector, 2018.

In mln USD



Source*:* Uruguay XXI (2019)

… and internationalisation support can help domestic companies expand abroad

Finally, there is further scope for both understanding better and supporting foreign expansion of Uruguayan firms via FDI. As reflected in total outward and inward FDI stock, the activities of Uruguayan companies abroad remain less important than activities of foreign-owned enterprises in Uruguay. In addition, most of the outward FDI stock is generated by foreign-owned firms that are established in Uruguay rather than domestic firms (BCU, 2019).[9] As such, the government could consider understanding better the nature of activities of Uruguayan firms abroad as well as specific barriers faced by them in order to better support their internationalisation efforts.[10] To-date the information remains largely anecdotal. For example, in 2018, there were only two Uruguayan companies among the top 500 largest firms in Latin America, according to the ranking compiled by *América Economia* (2019).[11]

Considering the dynamism and relative strength of some sectors in Uruguay, there could be scope for further growth of Uruguayan firms in foreign markets, in particular in the LAC region. Several examples of successful expansions of Uruguayan companies abroad demonstrate the feasibility of the exercise (Box 2.5). Going forward, active and consistent export and investment promotion and facilitation policies, could also make a beneficial contribution in this respect (see Chapter 7) along with experience sharing among firms. The government could consider engaging in dialogue with Uruguayan firms to understand better the nature of challenges faced in foreign markets and the scope for possible government action.

Box 2.5. Multilatinas from Uruguay

Over the past two decades, a number of Latin American companies have emerged as global, or at least regional players, in a number of sectors. In some cases, the multinational enterprises from the region, or multilatinas, have been so effective as to consolidate global industries (e.g., Cemex in building materials, Vale in iron extraction, and JBS Friboi and Marfrig in meat processing). Uruguayan companies, facing limited domestic opportunities due to the small size of the local market, and growing in sophistication by the relative affluence of national consumers, started investing in neighbouring countries as early as in the 1920s. Tabacos Monte Paz, for instance, bought extensive land in Brazil and Argentina and operated purchasing branches in Salvador de Bahía and La Habana. Several examples of Uruguayan multilatinas point to feasibility of further internationalisation of local firms:

- Dairy cooperative Conaprole (Cooperativa Nacional de Productores de Leche), established in 1935, is the country's largest private company, with sales of over USD 1 billion, 1 850 employees and roughly 2 000 milk farmers (tamberos). It has a 70% market share in Uruguay and is Latin America's largest exporter of dairy products.
- Created in 1929, Frigorífico Modelo has various business lines connected to food and agriculture and is building a USD 7 million plant in Asunción, Paraguay.
- Monte Paz sells more than 20 tobacco brands and controls 90% of the local market. It remained the country's sole cigarette manufacturer after the closure of Philip Morris International's subsidiary, Abal Hermanos. It is estimated that Monte Paz has annual foreign sales in excess of USD 40 million, mostly to Paraguay.
- Union Agriculture Group (UAG) was established in 2008 to grow cranberry and rapidly became one of Uruguay's largest land holders. It concluded the first IPO on the Montevideo stock exchange in 30 years in 2012 and acquired 67 000 hectares from Argentina's El Tejar, reaching the area under exploitation of over 170 000 hectares (mostly soy). UAG has suffered from financial difficulties in recent years.
- The technology park Zonamerica, which is estimated to generate over 1.8% of the country's GDP and 1% of total investment, hosts over 600 enterprises and employs nearly 7 000 people. In partnership with Colombia's Grupo Carabajal, it is investing USD 350 million to build a zone in Cali, expected to create 20 000 jobs.
- Grupo Biotoscana — controlled by the U.S. investment fund Advent International— acquired Laboratorio DOSA in Argentina, a pharmaceutical laboratory specialising in treatment for severe lung diseases, for USD 29.9 million.
- Artech Consultores is a software producer, founded in 1988. Its most famous product is Genexus, a development tool to create, develop and maintain multi-platform apps and build customised products that is sold in over 30 countries and generated sales for more than USD 50 million in 2017. Artech moved to larger foreign markets at a very early stage, opening branches in Brazil and Mexico.
- Scanntech's technology platform connects independent retail stores with global consumer products companies, financial and telecommunications firms, and government services. The company, which is backed by Latin American venture capitals and the IADB and the first one in the Continent to be invested by Sequoia Capital, has launched in Argentina, Chile, Paraguay, Brazil, and Peru.

Outlook and policy recommendations

Uruguay has been successful in attracting FDI into the economy. Despite its small size, thanks to its political and macroeconomic stability and other factors, it has mobilised significant amount of foreign investment over the years. As such, it boasts one of the highest shares of inward and outward FDI to GDP in the region.

Yet, as the global FDI subsides and instability in the region increases, the country may find it difficult to sustain the momentum, which appears to be supported by the most recent figures. The decision of UPM, a large Finnish forest industry company, to undertake a large greenfield FDI investment and build a high-technology cellulose pulp plant, could potentially serve as an important signalling effect to investors, counterbalancing the unfavourable political and economic environment in the region.

Beyond attracting more FDI, Uruguay's governments is also increasingly conscious and interested in attracting investment that contributes to broader socio-economic goals of the country. As such, policies aimed at investment promotion and facilitation are undergoing reforms to enable the government to attract MNEs that not only would otherwise not invest in the economy, but also support the country's ongoing transition from resource-based to knowledge-based competitiveness. In addition, domestic firms may benefit from the government's proactive and consistent internationalisation support and linkages with foreign buyers to increase their footprint abroad.

Policy recommendations

Maintain macroeconomic stability and open trade and investment policies, which are pre-conditions for attracting FDI.

Build on the important signalling effect to investors of large, high-tech investment projects to build an effective upgrading strategy.

Adopt policies aimed at investment promotion and facilitation in order to accelerate the country's ongoing transition from resource-based to knowledge-based competitiveness.

Introduce proactive and consistent policies to accompany the internationalisation of domestic firms and induce linkages with foreign buyers to increase their footprint abroad.

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Notes

[1] Reducing FDI restrictions (as measured by the OECD FDI Regulatory Restrictiveness Index) by about 10% is found to increase bilateral FDI in stocks by 2.1% on average (Mistura and Roulet, 2019).

[2] These figures are based on assets/liabilities method of compiling FDI statistics. Meanwhile, the data on FDI flows as well as stocks by country and sector activity are compiled using the directional principle. In some cases, there can be differences in the value of investment reported using the directional or assets/liabilities method. For more information, see: http://www.oecd.org/daf/inv/FDI-statistics-asset-liability-vs-directional-presentation.pdf

[3] Inward FDI stock has increased by 6% and inward FDI stock by 3%, on average, in years 2012-2018. Inward FDI is called liabilities and outward FDI assets in the terminology of the asset-liabilities standard for compiling statistics (see e.g. OECD, 2014 for more information).

[4] Information shared by the Central Bank of Uruguay during a workshop on the role and the effects of FDI on the Uruguayan economy organised by Uruguay XXI: http://www.uruguayxxi.gub.uy/es/centro-informacion/articulo/jornadas-de-discusion-sobre-insercion-internacional-2019/

[5] The data is based on the Annual Survey of Economic Activity (Encuesta Anual de Actividad Económica), currently available for years 2013-2014 with (years 2015-2018 are under preparation). For more information, see www.ine.gub.uy/encuesta-anual-de-actividad-economica

[6] For more information, see the company's press release: http://www.upm.com/about-us/for-media/releases/2019/07/upm-continues-its-strategic-transformation-and-invests-in-a-world-class-pulp-mill-in-central-uruguay

[7] Considering that COMAP applies to both foreign and domestic investment, and on average 60% of supported projects in the last decade were by domestic-owned firms (Uruguay XXI, 2019), it has a potential of influencing broad investment decisions.

[8] The statistics on business activity in FEZs are available on the website of the Ministry of Economy and Finance: http://www.zonasfrancas.mef.gub.uy/18424/4/areas/estadisticas-zzff.html

[9] Information provided by the Central Bank of Uruguay during the workshop on the role and the effects of FDI organised by Uruguay XXI in December 2019.

[10] Information could be gathered through relevant institutions, including the Central Bank, Uruguay XXI, Chambers of Commerce and the network of embassies and consulates abroad. Surveys of domestic firms could also shed light on the barriers faced when expanding abroad.

[11] ANCAP is ranked 292nd and UTE 362nd.

3 Uruguay in transition – Ongoing reform of the state

Efficient management of state-owned enterprises (SOEs) and reform of the public administration can be a crucial element of future political and economic reforms in Uruguay. This chapter reviews recent reforms to increase oversight of and transparency in the use of resources by SOEs in Uruguay. It also discusses the progress in encouraging private participation in infrastructure projects. Finally, it reviews overall progress in public administration reforms, including to prevent misconduct in the public sector, fight corruption and minimise the risk of undue relations with business.

Efficient management of state-owned enterprises (SOEs) and reform of the public administration can be a crucial element of future political and economic reforms in Uruguay. In particular, addressing the socio-economic and political-administrative challenges and achieving the ambitious long-term strategic vision of a more inclusive and sustainable Uruguay for all citizens outlined in the *Estrategia Nacional de Desarrollo Uruguay 2050* require a state that is capable of steering the country's development and making it more inclusive. The 2019 electoral campaign showed there is today a broad political consensus across party lines that good public governance is key to build a better future.

In the past, reforms were implemented in response to emerging needs and/or in response to commitments assumed by the government in the context of economic and financial crises. Since the restoration of democracy more than three decades ago, there has been a genuine attempt to pursue a more pro-active approach to public governance reform (Ramos and Casa, 2018). Successive governments have committed to reform public administration in order to pursue a number of important policy objectives at the national and subnational levels. A major component of these different reforms has been nurturing a consensual whole-of-government and holistic vision for the country's public sector which is shared by all ministries, secretariats, SOEs)and decentralised agencies. The coordinating role of the Office of Planning and Public Budget (*Oficina de Planeamiento y Presupuesto,* OPP) has been very important in this respect.

SOEs play a central role in the national economy and the potential implications of their actions for national competitiveness are non-trivial. Unlike in other countries in the region, the incidence of corruption in SOEs (and in the public sector more broadly) has been low. This does not, however, diminish the importance of reducing undue administrative burdens and reforming the state apparatus, including the management of SOEs, given the opportunity cost associated with underperformance and lost opportunity to mobilise private capital for project delivery.

Enterprise reform

The importance of state-owned enterprises

As is the case of many emerging economies in Uruguay, state-owned enterprises (SOEs) have played a central role in the process of economic catch-up and productive transformation. In the early 1990s, SOEs and other government agencies had sales equivalent to 40% of GDP and were employing 20% of the country's work force. Today, SOEs continue to play a very important role in the Uruguayan economy. It is estimated that over the past 10 years, on average SOEs have accounted for 5.5% of GDP, 7.5% of total investment and 2.4% of employment (Munyo and Regent, 2015). Goods and services they supply also represent 14% of the consumption basket (Zipitría et al., 2019). Total SOE employment, which had fallen by 30% between 1995 and 2001, has remained stable since then, increasing slightly to reach 36 000 in 2018 (OPP, 2019). The efficiency of SOEs, therefore, clearly has implications for the country's overall economic performance.

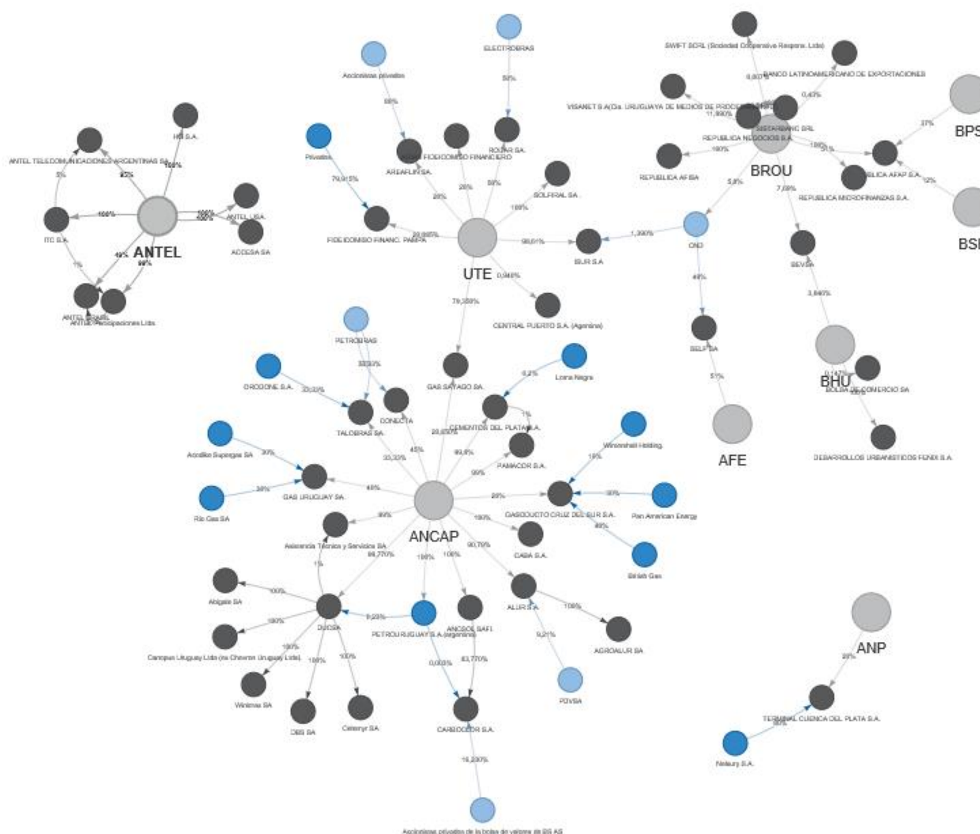
As shown in Table 3.1, state ownership is prevalent in public utilities (electricity and gas, water and sanitation, telecommunications and postal services), as well as transport, and finance (both banking and insurance). This is typically the case in developing and emerging economies, but different approaches exist in the LAC region as illustrated by the examples of Chile and Costa Rica in the table above. In manufacturing, SOEs have played a much less prominent role in Uruguay (with the exception of meat packing until the 1970s). The above-mentioned OPP, overseeing public planning and budget, publishes online relevant statistics on the corporate structure and performance of SOEs, including information on the ties among SOEs (Figure 3.1) The six largest ones include UTE in electricity; OSE in water and sanitation; ANTEL in telecommunications; ANCAP in petroleum; BROU in commercial banking; and ANP in ports.

Table 3.1. The "Leviathan reach" in Uruguay and its peers

Sector	Situation in					
	Uruguay		Chile		Costa Rica	
	Ownership	Market	Ownership	Market	Ownership	Market
Electricity	S	M	P	C	S	M
Natural gas	S	M	P		S	C
Oil (refining)	S	M	P		S	C
Telecoms	S	C	P	C	S	C
Water management	S	M	P		S	M
Air transport	L	C	P	C	P	C
Airport (capital)	P	M	P	M	P	M
Railways	S	M	P		S	M
Post office	S	C	P	C	S	

Note: ownership = S (state), P (private) or L (liquidated); market = M (monopoly) or C (competition)
Sources: OECD elaboration based on publically available information.

Figure 3.1. Overview of state-owned corporations in Uruguay, 2019



Source: OPP (2019), www.transparenciapresupuestaria.opp.gub.uy

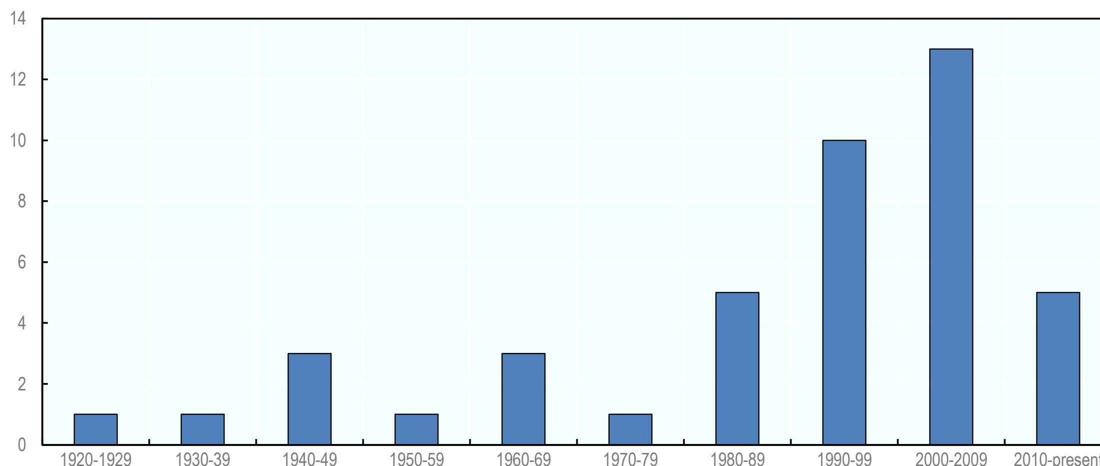
Further scope for SOE reforms

In line with the OECD *Guidelines on Corporate Governance of State-Owned Enterprises* (*SOE Guidelines*) and international experience, various steps should be taken to improve SOE governance and performance and, when appropriate, prepare companies for privatisation. In particular, greater consistency is needed with regard to ownership and control of state assets; more resources should be devoted to financial oversight; efforts should continue to professionalise SOE boards; public-private competition should be promoted; and regulators should be given enhanced powers (Böwer, 2017). As discussed in Chapter 8, the *SOE Guidelines* also recommend that SOEs observe RBC standards and publicly disclose expectations established by the government in that regard, as well as mechanisms for their implementation. Implementing RBC principles and standards in SOEs contributes to enhancing SOE governance and performance while improving the quality of the overall business environment.

Improving oversight and control

In Uruguay, the Constitution governs the establishment and functioning of SOEs. In fact, already at the start of the XX century, Uruguay's 1918 Constitution distinguished between different types of state assets.[1] The current Constitution sets forth the various provisions regarding the creation of autonomous bodies and decentralised services, appointment and removal of directors, disclosure of financial information, and other requirements (Art. 185-201). The number of such semi-autonomous public bodies has increased in Uruguay over time (Figure 3.2).

Figure 3.2. Number of semi-autonomous public bodies created in Uruguay, 1920-present



Source*:* OPP (2019), www.transparenciapresupuestaria.opp.gub.uy

Oversight functions are exercised by the Public Enterprise Department (*Departamento de Empresas Públicas* – DEP), within the Planning and Budget Office (*Oficina de Planeamiento y Presupuesto* – OPP) of the Presidency, mentioned already, and the Macroeconomic Advisory Unit, under the Ministry of Economy and Finance (MAU/MEF). OPP/DEP and MEF/UAM oversee all SOEs owned by the central government. There is a formal policy for dividend pay-outs to the executive power, which follows a specific calculation process. For commercial and industrial companies, the dividend pay-out is negotiated as part of the Financial Programme and is proportional to the profits earned in the fiscal year (OECD, 2015d). As highlighted in the section on infrastructures, some monopoly rights have been relaxed and independent regulatory bodies have been established.

Since 2015, SOEs have been given precise annual and medium-term performance targets as part of the national budget allocation. Indicators are aligned with sectoral policies and are meant to quantify management improvements, guarantee investment returns, and facilitate internal and external evaluation by outcome. These agreements also contemplate a system of results-based compensations and penalties. The targets are not strictly comparable and the aggregation of the results over this short, three-year period should therefore be interpreted with caution, but some common features can be identified. A cumulative total of 438 indicators have been set, of which 82% have been met. Although there is no clear trend in the average number of targets per company, there seems to be a decline in the success rate (from 85% in 2015 to 75% in 2018). If the indicators are to be used in the future for performance monitoring of SOEs, as well as an instrument in a potential system of results-based compensations and penalties, an in-depth evaluation of the adequacy of the currently used indicators will need to be undertaken. At any rate, this approach should be consistent with the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, which call on the state to "develop consistent reporting on SOEs and publish annually an aggregate report on SOEs" as well as publish the results online to facilitate access of the public.[2]

Improvements in corporate governance

The general contours of corporate governance in Uruguay are set by the Company Law No. 16.060 of 1989 and Regulated Financial Markets Law No. 18.627 of 2009. The former introduced new forms of guarantees for minority shareholders and raised disclosure and accounting standards. The latter included provisions on tender offers, new financial instruments (such as *fideicomiso*, a form of trust) and corporate governance – such as the obligations to treat shareholders fairly and equally (art. 81) and to publish audited financial results (art. 80 and 86). Nonetheless, the domestic stock exchange remains very small – there are only eight listed companies and, to take but one example of global best practice that has yet to prevail in Uruguay, there is not a single woman director.

As far as SOEs are concerned, Article 185 of the Constitution establishes that board members shall be appointed by the President, in consultation with the Council of Ministers, and approved by the Senate. SOE boards were previously all composed of five members, but some companies have recently modified their bylaws to reduce this number to three (and ANCAP, BROU, BSE and UTE plan to do it in the near future). Under the current legal framework, there is no separation between chair(wo)man and the CEO, and board intervention in operational issues remains frequent. In the past, political considerations shaped the appointment of SOE board members, hindering effective accountability arrangements. The level of professionalism of company chairs, as proxied by educational credentials and business expertise, has markedly increased in recent years, even if the appointment process remains relatively opaque (Zipitría et al., 2019). Also rising is the presence of women in SOE boards and executive teams. Although the gender balance remains skewed (81% of senior management positions are occupied by men, at end-2018), there are four women Secretary Generals (out of nine) and three Chairs (out of 12) (see Table 3.2)

SOEs are audited by the public sector auditor (*Auditoría Interna de la Nación*) and, most of the time, by a private audit firm, on a voluntary basis. The review of the IFRS 2003-based financial statements of the four largest SOEs (for 2004) found that the presentation of these financial statements was good, although in one case the auditors reported a number of issues that put in question the reliability of the information presented (Fortin et al., 2010). Since 2015, the Auditoría has also monitored improvements in SOE governance, notably through on-site visits, and in 2019 alignment of corporate practices with the SDGs has been added to the list of relevant criteria.

Nonetheless, there is scope for further improvements. In 1991, Parliament authorised SOEs, upon prior authorisation from the Executive, to temporarily or permanently enter into a partnership with other companies. As no reform has addressed the fact that SOEs are subject to public sector law, several of them have created subsidiaries operating under private law to achieve their objectives. Examples include the construction of a sanitation and rainwater system in Ciudad de la Costa, a regasification plant, and an

energy conversion project with Brazil. This option may seem *prima facie* effective to bypass the constraints and rigidities of the public sector, but leaves the flank open to cross-subsidies and other financial inconsistencies. The ultimate risk is that of jeopardising the accountability requirements that should be expected when public resources are at stake.

Table 3.2. SOEs in Uruguay 2018: The gender dimension

Number of employees

	Chair person		Vice Chair person		Directors		Secretary General		Managing Director		Total	
	M	F	M	F	M	F	M	F	M	F	M	F
AFE	1	0	1	0	3	0	0	1	1	0	6	1
ANC	0	1	0	1	1	2	0	1	1	0	2	5
ANCAP	0	1	1	0	3	2	1	0	1	0	6	3
ANP	1	0	1	0	3	0	1	0	0	0	6	0
ANTEL	1	0	1	0	3	0	0	0	1	0	6	0
ANV	1	0	1	0	3	0	0	1	1	0	6	1
BHU	0	1	1	0	2	1	0	0	0	0	3	2
BPS	1	0	1	0	5	2	1	0	1	0	9	2
BROU	1	0	1	0	4	1	1	0	0	1	7	2
BSE	1	0	1	0	0	0	0	1	1	0	3	1
OSE	1	0	0	1	2	1	0	0	0	0	3	2
UTE	1	0	1	0	4	1	1	0	1	0	8	1
Total	**9**	**3**	**10**	**2**	**33**	**10**	**5**	**4**	**8**	**1**	**65**	**20**

Source: OECD based on publically available data of the Government of Uruguay (www.transparenciapresupuestaria.opp.gub.uy/inicio/empresas-públicas)

A possible solution may come from transferring ownership rights from the Treasury to a separate government entity that would be responsible for coordinating all SOEs, monitoring the attainment of performance goals, appointing (and firing, if appropriate) the members of the board, and deciding upon strategic matters that exceed the sole responsibility of the management. It would also ensure that significant issues raised by auditors (internal and external) are properly and promptly addressed by SOEs. Similar institutions operate in Chile and Paraguay (Box 3.1).

Going forward, increasing board professionalisation and accountability (e.g. through the use of eligibility requirements for SOE board nomination) and better oversight will be critical elements of reform in Uruguay. Several recent publications draw on the examples of best practices from OECD countries and suggest specific options for reform open to the authorities (IDB, 2019, World Bank, 2014)

Box 3.1. Improving SOE governance: Examples from Chile and Paraguay

The desire to improve the performance and efficiency of state-owned enterprises (SOEs) without relinquishing public control of the underlying assets is not unique to Uruguay. Other countries in the region – notably Chile and Paraguay –have also experimented with institutional solutions to improve oversight and control of SOEs in their economies.

The Public Enterprises' System (Sistema de Empresas Públicas, SEP) in Chile is a committee of CORFO (Production Development Corporation). It acts as a technical advisory body, with authority to centrally oversee management of the majority of CORFO-owned SOEs (23 out of 33 SOEs). Some of them are profit-seeking entities, for others the mission is at least partly to pursue social goals. SEP over-arching task is to appoint and remove SOE directors, on the basis of the corporate governance

code, a specific code of conduct, and the annual assessment of directors' performance. SEP itself is overseen by a nine-member governing council and is managed by an Executive Director recruited from the private sector.

In Paraguay, the National Council of SOEs (Consejo Nacional de Empresas Públicas, CNEP), was created by Law 5058/201. CNEP centralises the supervision and control of SOEs and advises the President of the Republic on the nomination of CEOs (in Paraguay only a few companies have a board of directors) and their removal in case of underperformance.

Encouraging private participation in infrastructures

The current state of play

There is a broad consensus that a country's endowment with quality infrastructure represents a critical factor to sustain inclusive growth, attract FDI, and promote trade (Revoltella et al., 2016). At the global level, Agenda 2030 underscores the importance of infrastructures in delivering sustainable development through the inclusion of various specific targets. For Uruguay, with a small population (roughly a third as large as in the Czech Republic) in a relatively large surface area (roughly twice as large), the development of physical infrastructure, primarily railroads, has always been a fundamental element of national integration. This effort was particularly important in the second half of the 19th century – already in 1874 the railways network reached 205 kilometres. The 1889 law set the scene for the two major developments – the construction of a railroad that crossed the country, by-passing Montevideo, and the interconnection of the Uruguayan system with those of Argentina and Brazil. Private, and especially foreign, capital, played a crucial role in this phase, which came to an end on 31 January 1949, with the formalisation of the nationalisation of *Compañías Británicas de Ferrocarriles and Compañía del Puente del Cuareim*.[3] Private participation in infrastructure was halted for several decades.

This background may contribute to explain the relatively poor quality of infrastructure in Uruguay according to international rankings. According to the *Global Competitiveness Report* (WEF, 2019), Uruguay ranks 65th place worldwide for the quality of infrastructure, in between Kuwait and India and below both Chile and Costa Rica. The scores are relatively good for some indicators, notably seaport services (39th), but significantly poorer along other dimensions such as airport connectivity (110th) and road quality (86th). The poor state of infrastructure is similarly revealed by the 2018 World Bank's *Logistics Performance Index*, where Uruguay is ranked 85th, well beyond its regional peers that are OECD members (Chile at 34th, Mexico at 51st, and Colombia at 58th) but also less developed countries such as Ecuador (62nd) or Paraguay (74th). In fact, Uruguay has the fourth-lowest LPI score in South America.[4]

When comparisons are made at the global level, it is clear that there is still a huge gap between Uruguay and the best-performing countries. In addition to the indicators reported in Table 3.3, it is crucial to note that the average cost of a ton-kilometre transported by road is estimated at USD 0.19, at least twice as expensive compared to best performers. This a serious hindrance, considering that in Uruguay about 95% of cargo (in ton-kilometres) are transported by road and that the associated transport costs represent up to 70% of total logistic costs in some of the most relevant logistic chains (World Bank, 2017). Meanwhile, Uruguay fares better on indicators of information and communications technologies infrastructure. For example, it was ranked 42nd out of 176 economies worldwide on the *ICT Development Index* of the International Telecommunication Union, and has improved its ranking by six positions from last year (Table 3.4).

Table 3.3. Uruguay's performance on the *Logistics Performance Index*

	Ranking	Relative to best-performing (=100)
LPI score	85	64
Customs	87	61
Infrastructure	94	56
International shipments	82	68
Logistics competence	78	63
Tracking and tracing	82	64
Timeliness	109	66

Source: World Bank's *Logistics Performance Index* (2018)

Table 3.4. The state of ICT infrastructure – Uruguay in comparative perspective

	Uruguay	Relative to best performing (Best performer=100)
Fixed-telephone subscriptions per 100 inhabitants	35	58
Mobile-cellular telephone subscriptions per 100 inhabitants	20	73
International internet bandwidth per Internet user (Bit/s)	52	10
Percentage of households with computer	60	71
Percentage of households with Internet access	74	62
Percentage of individuals using the Internet	63	68
Fixed (wired)-broadband subscriptions per 100 inhabitants	39	58
Active mobile-broadband subscriptions per 100 inhabitants	20	82

Source: International Telecommunication Union's *ICT Development Index* (2017)

In telecoms, Antel, the state-owned incumbent, has a monopoly in the provision of local and fixed broadband services. Segments of the telecom market that have been opened to competition include international long-distance telephony, mobile telephony, and fixed-wireless broadband and are regulated by an independent authority (URSEC, Unidad Reguladora de Servicios de Comunicaciones). Antel dominates the mobile market (53% of total services in December 2017), ahead of Telefónica's Movistar (32%) and América Móvil's Claro (15%) (URSEC, 2017, Fig. 60). All three operators offer mobile broadband through 3G and LTE networks.

However, Uruguay is one of the few countries in the world with no broadband access via cable modem. Although cable networks are well equipped technologically, and digital cable TV is widely available, data transmission over pay TV networks is prohibited. There are ongoing discussions over the need to change regulations and permit cable TV providers to offer broadband services. Cable broadband would help strengthen the pay TV market, make bundled solutions more widely available, and give customers the freedom to choose their internet provider. Nevertheless, there is a fast developing market for OTT (over-the-top) video-streaming services. Netflix has been available since September 2011, and other providers also compete.

The examples of investment in the renewable energy and transport sectors are a testimony to potential dividends paid by reforms that combine a gradual opening of segments of the market and proactive efforts of the government to attract private investment into the sectors and promote a certain policy stance through its SOEs (Box 3.2-3). Notwithstanding these positive signals, the reform in the electricity sector are far from complete and electricity prices remain high in certain market segments relative to other countries in the region, even according to the government's own estimates.[5] Total investment in infrastructure as a percentage of GDP fell between 2008 (when it stood at 2.5%) and 2013 (2%) (Serebrisky et al., 2018). In addition, Uruguay fares poorly on most indicators of public investment management and public procurement efficiency, and has one of the lowest levels of private investment in the LAC region

(Serebrisky et al., 2018). Problems are concentrated in the pre-investment phase of the infrastructure project cycle, in particular project selection, and are probably contributing to cost overruns and delays (Alberti, 2015).

Box 3.2. An example of reforms in the electricity market in Uruguay: the boom of renewables

In electricity, Law N° 16.832 of June 1997 (so-called MMEE Law) removed the long-standing monopoly of state-owned UTE in power generation and allowed any authorised agent to operate on the electricity power wholesale market (Mercado Mayorista de Energía Eléctrica, MMEE). UTE remains the sole transmitter and distributor and under a public service obligation it is expected to offer to independent producers the same access conditions to the national interconnection system (*Sistema Interconectado Nacional*, SIN). Oversight over the sector (as well as fuel and water) is in the hands of URSEA (*Unidad Regúlatoria de Servicios de Energía y Agua*).[1] In addition, in 2010, the Ministry of Energy, Mining and Industry approved Decree 354 on the Promotion of Renewable Energies meant to increase dramatically the share of electricity generation from renewable sources.

Uruguay has received significant investment in its renewable energy sector, in particular several large wind farms were built in the early 2010s (Table 3.5) by a number of international companies. According to the Global Wind Energy Council (GWEC), Uruguay entered the exclusive 1GW-plus club in 2016, adding 365MW for a total of 1,210MW, although new installations dropped to 295MW in 2017. The first tenders for solar energy projects were issued in 2014. In January 2018, wind and solar generation reached 44%, the second-highest share worldwide after Denmark. The share of wind has grown from 2% in 2013 to 33% in 2017. Windpower Intelligence expects to see 2.3GW of capacity in place by the end of 2024 (compared to 24.2GW in Brazil and 7.1GW in Chile). These developments have allowed Uruguay to reduce its reliance on imported oil-fired thermal generation to top up hydro generation. In fact, Uruguay has now turned into a net energy exporter.[2]

The government has boosted the sector through subsidies, public-private partnerships and long-term agreements with the domestic electricity distributor. The 2008 national energy policy aimed to achieve diversification of Uruguay's energy matrix, mainly by promoting the use of indigenous renewables, and set specific renewable goals for the short, medium and long term (2015, 2020, and 2030). Decree 354 on the Promotion of Renewable Energies, issued in 2010, established aggressive 20-year power purchase agreements and tax exemptions (20-100% of income tax, depending on the project). Because wind and solar power are variable, Uruguay has allowed grid operators to participate in auctions for wind off-take contracts of up to 20 years, incentivising flexible back-up generation and using cross-border interconnection (especially with the Brazilian state of Rio Grande do Sul) to export generation surpluses. When curtailment led to the spot prices falling very low, generators in Uruguay were compensated (while this is not the case in Chile, for example).

In addition, an environmental indicator has been used to award tax benefits to corporations. Decree No. 455/007 of 26 November 2007 states that foreign investments must be consistent with the country's strategic objectives, including that of cleaner production, to be eligible for the tax benefits laid out under Law No. 16.906. Furthermore, as described in Chapter 6 and 7 of this *Review*, in 2012 the government introduced a new methodology for the evaluation of FDI projects. Among others, investors are assigned one point for every 5% of the total investment that is allocated to cleaner production and may also benefit from sector-specific support.

1. See Law 17.598 (13 December 2002), modified by Law 18.719 (20 December 2010).
2. The first export deal was signed in May 2016 between Uruguayan wind farm developer Ventus and Argentinian energy trader Saesa. Electricity produced by wind turbines in Uruguay is competitive against the mix of conventional power generation that dominates supply in Argentina.

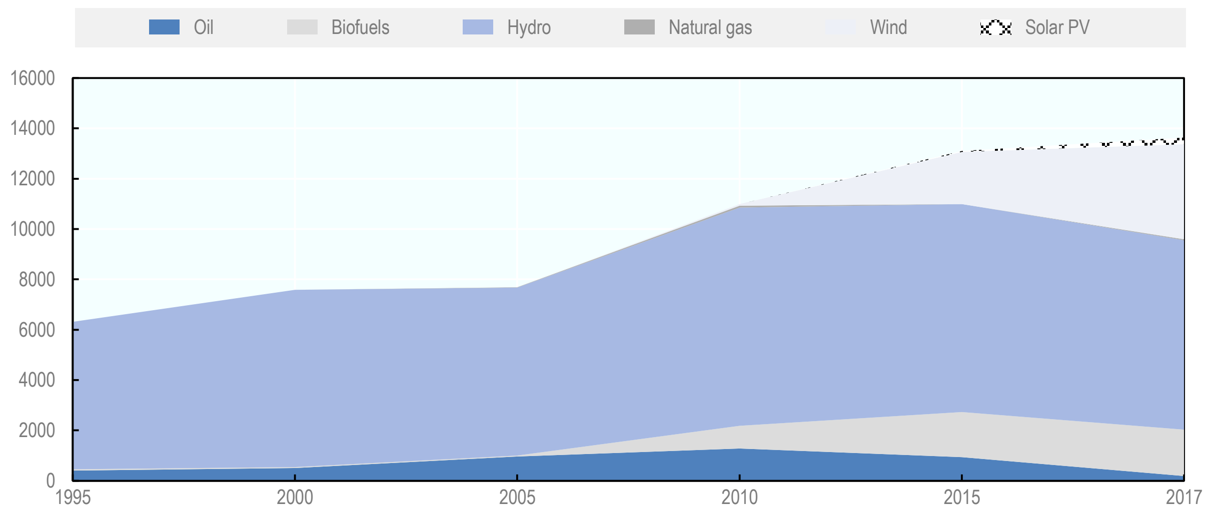
Table 3.5. Main wind power generation projects in Uruguay

Project	Commissioning	Location	Investment (USDm)	Installed capacity (MW)	Investor	Financing (main source)
Libertador I, II and III	Cancelled	Lavalleja and Maldonado	120	65	IMPSA (AR)	World Bank
Colonia Arias	2017 (TBC)	Florida	180	70	UTE	IADB
Palomas	2017	Sallo	165	70	Abengoa (ES), later sold to Invenergy Wind	
Pastorale	2017	Lavalleja		53	SOWITEC (DE)	Deutsche Bank
Carapé I and II	2015	Maldonado	220	50	Corporación América (AR)	IADB
Artilleros	2015	Colonia	107	65	UTE & Petrobras (BR)	
Melowind	2015	Cerro Largo	98	50	Enel Green Power (IT)	
Florida I and II	2014 & 2016	Florida	205	100	Akuo Energy (FR)	
Peralta	2014	Tacuarembó	150	50	Abengoa (ES)	
Kiyu	2014	San José	118	49	Cobra (ES)	IADB
Talas del Maciel II	2014	Flores	127	50	Abengoa (ES)	
Luz de Mar, Luz de Loma & Luz de Rio	2014	Florida		90	Compañia Forestal Uruguaya	

Source*:* OECD based on information from the Government of Uruguay

Figure 3.3. Electricity generation by source, Uruguay 1995-2017

In GWh



Note*:* Other sources includes generation from chemical heat and other sources. Hydro includes generation from pumped-hydro power stations. Coal also includes peat and oil shale where relevant. Gigawatt hour (GWh) is a unit of energy representing one billion (1 000 000 000) watt hours and is equivalent to one million kilowatt hours.
Source*:* IEA, Electricity Information (2019)

Box 3.3. Examples of private sector's involvement in the transport sector in Uruguay

In transport infrastructure, too, the private sector plays an increasingly extensive role:

- Puerta del Sur (controlled by Argentine airport concessionaire Aeropuertos Argentina 2000) won a 20-year contract to operate Montevideo's Carrasco international airport in 2003. The USD34 million offer was more than double the USD15 million asking price. The bidders committed to invest at least USD75 million for works such as rehabilitation of paved surfaces, a drainage system, a new passenger terminal with parking, a new cargo terminal, new airport rescue and fire fighting facilities and extension of the runway. The consortium went through a difficult phase following the collapse of the national carrier, Pluna, in July 2012. Some 60% of operations at Montevideo were ceased and Iberia temporarily cancelled its flight from Madrid because of the loss of feeder traffic. Despite losing half of its revenue, the airport operator managed to meet its obligations and continue capital spending. The concession was renewed in 2014 (until 2033) and Puerta del Sur committed to invest more than USD30 million. In 2018 Carrasco became the first airport in Latin America and the fifth worldwide to install a biometric facial recognition system for departing passengers, from customs and passport control to boarding the plane.
- Montevideo is the 17th busiest port in Latin America and the Caribbean, ranked by container throughput; it has climbed two positions since 2014 and has recorded the sixth-fastest growth rate, in particular well ahead of the two closest competitors of Buenos Aires and Paraguas in Rio Grande do Sul. This growth has been driven in part by the increase in foreign trade, but mostly by outsized growth in transit and transhipment (especially for refrigerated containers). Katoen Natie of Belgium has managed an important container handling facility (Terminal Cuenca del Plata, TCP) since 2001 and is positioning Montevideo as a regional hub in the South Atlantic. In Nueva Palmira, private investment is estimated at USD100 million for the grain terminal (the country's largest) and at least USD60 million for other purposes.

The BOT (Build Operate & Transfer) model for highways was introduced in 1995 and resulted in four concessions, of which two still exist, before its termination a few years later. In 2002 a public concessionaire – the Corporación Vial del Uruguay (CVU, Uruguay Road Corporation) – was established to manage a new programme for 1,300 kms of roads (roughly half the total network extension) was launched and. Since then, the CVU reach has been expanded, both in size (it now manages 2,600 km of highways) and in its capacity to leverage funds. Finally, 1,630 km of national roads were identified for PPP arrangements, where levels of traffic are high enough to interest private investors. Road quality, however, remains poor (Uruguay ranks 86th out of 140 countries in WEF, 2019).

Given the current state of play, the government can, on the one hand, undertake actions to make the delivery of public investment projects more efficient and, on the other, facilitate the entry of private investors into certain infrastructure markets. To assist with the latter, progressive removal of entry barriers in some sub-markets and proactive attraction of investment in selected market segments may be an optimal strategy, coupled with a more dynamic take-up of PPP projects – discussed next.

Improved efficiency of public procurement

While the take-up of PPPs is increasing in certain countries, including in Uruguay, traditional public procurement remains the predominant means of investing in public infrastructures. Sound public procurement management can lead to substantial savings, enhanced productivity and improved services. In Uruguay, general government

public procurement accounts for approximately 6.3% of GDP and 19.1% of general government expenditure, which is below the OECD average of 12% and 29% respectively (Izquierdo *et al.*, 2018).

In collaboration with multilateral development banks, the CPAR (Country Procurement Assessment Report) methodology was used in the early 2000s to design a better-functioning framework, leading to the creation of ACCE (Agencia de Compras y Contrataciones del Estado) in 2008. Law 18.834/2011 gave additional powers to ACCE, in particular as refers to assisting procurement bodies. In order to further diminish corruption risks, TOCAF (Texto Ordenado de Contabilidad y Administración Financiera) has been amended substantially on several occasions, with each version making the process more rigorous, better controlled, more transparent and overall more business friendly.6 An e-procurement system is now used by most contracting parties and there is a legal obligation to allow e-submission of tenders.

Unfair or opaque procurement processes may send negative signals to businesses cause delays, increase projects costs, and reduce business opportunities for investors. In order to minimise these risks, there may be value in using available OECD materials for training and illustration purposes. For example, Uruguay has used the *Methodology for Assessing Procurement Systems* (MAPS) to evaluate the quality and effectiveness of its public procurement systems.[7] All in all, the proportion of businesses that regard corruption as very or fairly widespread in Uruguay's public procurement is low. Yet, Uruguay is encouraged to continuously address these issues in the legislation governing public procurement and further integrate responsible business conduct (RBC) standards within SOEs.

Increasing the efficiency of PPP management

In 2015, the government announced the 2015-2019 public works plan, which entails total investments of USD12.3 billion, with the bulk directed toward the energy sector, USD 4.2 billion, while roads will account for the second biggest slice (USD 2.4 billion) and social infrastructure for USD1.9 billion (Serebrisky *et al.*, 2017). The plan opened opportunities for PPPs, that are regulated by Law 18.786 adopted in 2011 and a series of Decrees (number 17/012, 280/012, and 251/015).[8] PPPs in Uruguay can be pursued only when prior analysis has determined that no alternative form of procurement is better suited to achieve public policy goals. Besides national defense and other matters of national security, the regulatory framework explicitly prohibits PPPs in water and irrigation and restricts them to specific segments in education, health, and security and convict rehabilitation. The regulatory framework also includes a PPP Project Unit (*Unidad de Proyectos de Participación Público-Privada*) and provides for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.).[9]

At end-2018, the plan was 72% complete, and was expected to reach 87% at the end of 2019, according to the 2018 budget report to Parliament. Out of 15 PPP projects, 13 have been tendered and, of the contracts for which tenders have been launched, one is already in operation (Punta de Rieles penitentiary), one is under construction (rehabilitation of the Ruta 21 and Ruta 24 highways), five others are in the stage of financial closure, and the bidding processes still underway for other six. The energy and communications sections of the plan are the most advanced, with both having reached 73% completion. Meanwhile, port investments have progressed 72%, roadworks 63%, housing 54%, social infrastructure 53% and water and sanitation 45%. As regards financing, 66% of the funds come from public sources, like the government budget and state-owned companies, while the remaining third comes from private entities.

A frequent criticism is that PPPs take too long to achieve financial closure, hence delaying the start of works. An USD 350 million financial trust was created to support companies investing in infrastructure works over a five-year period. This instrument (that in the Americas only exists in Colombia) brings together the need for funding of companies that participate in investments in public-private partnerships with those that have the ability to put up funds. Latin American development bank CAF, through the company CAFAM, will be responsible for the structuring of the fund and following up projects during development. The resources were made available by Uruguayan investors through the stock exchange and will be administered by a CAF trust. The development bank will contribute an additional 10%. Other projects are partly

financed by Mercosur's Focem fund. The potential involvement of Uruguay's pension fund managers (AFAPs) in the financing of projects is also being discussed.

The investments required to improve infrastructures provide an opportunity to promote quality infrastructure investment projects which can have direct positive impacts on Uruguay's economy and society, including higher economic efficiency, increased safety, decreased environmental impact, more effective delivery of public goods and services, and improved well-being of the local population. From this standpoint, independent regulatory agencies can play an important role – and this has been the case of Uruguay (e.g. URSEC in telecommunications and UREE in electricity and gas). Yet, as the financial resources of those institutions and the scope of their responsibilities decline, so may their capacity to play a proactive role in this regard. Certain infrastructure projects may have negative impacts, which can range from conflicts with communities over land, water, and resettlement, to unsafe working conditions during construction or significant environmental (including climate change) impacts during operation. In line with the OECD *Guidelines for Multinational Enterprises*, enterprises should conduct due diligence with a view to identify, prevent, mitigate and account for how they address their actual and potential adverse impacts. The OECD *Due Diligence Guidance for Responsible Business Conduct* provides practical support to enterprises on the implementation of the Guidelines by providing explanations of its due diligence recommendations. In addition, the *Policy Framework for Investment* and the *Principles for Private Sector Participation in Infrastructure* (OECD, 2007) encourage governments to clearly communicate responsible business conduct expectations to their private partners.

Last but not least, besides improving the quality of public contracting via traditional means as well as the take-up in PPPs, the government can also continue pursuing proactive policies to attract private investment into certain infrastructure sectors, as has been the case with the renewable energy sector. In this context, the role of the national investment promotion agency, Uruguay XXI, which also aims to promote investment into infrastructure projects (and is described in more detail in Chapter 7) may be important. For example, Uruguay XXI provides investors interested in investment in infrastructure with information on the available investment opportunities as well as the applicable regime, including the overview of the PPP procedure.[10] In addition, investment incentives under the COMAP regime can also serve that purpose (Chapter 6).

Public governance reforms and fight against corruption

One of the most effective policies to improve the functioning of the state administration is to draw and apply clear and transparent rules. If rules are unclear, administrative procedures are opaque and procedures for hiring public officials, as well as their interaction with the public, lack transparency, the quality of public services may suffer and corruption increase.

In comparison to other emerging economies, in Latin America but also globally, in Uruguay corruption is not perceived as a major issue. According to *Latinobarómetro* 2017, only 1% of the population considers it as the gravest problem facing the country, as against 31% of Brazilians, 13% of Mexicans, and 12% of Chileans. Uruguay was ranked 23rd among 180 countries in the Transparency International's Corruption Perception Index (CPI) in 2018: when Uruguay was first included in the CPI in 1997, it ranked 35th among 52 countries. Uruguay is above all non-OECD countries that are Adherents to the OECD Declaration, as well as various OECD countries such as Chile, Israel, Poland, Italy, Turkey, or Mexico. In the 2019 *Global Competitiveness Report*, incidence of corruption is the institutional component where Uruguay has the second-best global ranking (23rd) out of 20 indicators. Similarly, foreign firms have not identified corruption and bribery solicitation as a problem for investment. Although the sum lost in illicit financial flows from 2004 through 2013 is far from insignificant, USD956 million per year on average, it is dwarfed by the estimated figures in other developing and emerging economies (GFI, 2015).

Explanations for this positive accomplishment in Uruguay are manifold. In the first place, the quality of political institutions, including parties, has mitigated clientelistic practices in politics and encroachment in

the management of state resources (Buquet and Piñeiro, 2016). The authorities have also adopted a holistic approach that recognises that corruption comes in different forms (including small bribes to perform routine services) and that fighting each of them requires a zero-tolerance approach and credible follow-up actions.

Further public sector reform

Yet, there are still other costs associated with deficiencies in the state apparatus and elevated administrative procedures. As highlighted in Chapter 6 when analysing investment promotion and facilitation policy in Uruguay, the reduction of administrative burdens can help liberate the entrepreneurial forces in the economy and remains a point of complaints of the private sector. Indeed, as indicated in all major international rankings, red tape is an issue in Uruguay and certain procedures, such as obtaining construction permits, can dissuade economic activity. The series of initiatives led by Transforma Uruguay to map out and streamline certain underlying administrative procedures is, hence, an important step forward, given the apparent lower level of attention paid by the government to this issue (see Chapter 6 for more detail), The recently approved project with the IDB that identified over 500 administrative procedures in different sectors to be reformed as well as sped-up through the use of digital means is also highly opportune in this regard.[11]

The authorities have also taken some substantial measures to improve the country's public management system, consistent with the overall objective of immunising the public administration against undue interference. One step is this direction has also been the more universal use of information technology to provide an ever-expanding number of on-line public services to the public – an approach often referred to as e-government and which aims at depersonalising administrative processes and reduce instances of close and regular public-private contacts, as they may give rise to unjustified preferential treatment and the solicitation of bribes.

Since 2007, AGESIC (Agency for the Promotion of the Electronic Government, Information and Knowledge Society) has been responsible for implementing the Digital Agenda for Uruguay (ADU), a multi-stakeholder agreement between representatives of government, academia, the private sector and civil society organisations through a National Council for the Information Society. The Action Plan for Open Government in Uruguay supplements the ADU strategy. A dedicated portal works as a gateway to every piece of information and procedure than can be found on the web pages of government offices and agencies. These initiatives have led to the integration of Uruguay in the network of the world's most advanced digital nations with a shared goal of harnessing digital technology and new ways of working to improve citizens' lives. Initially composed of Estonia, Israel, New Zealand, South Korea and the United Kingdom, the Digital 9, or D9, groups countries with a consistent track record in leading digital government, including designing services around users' needs and sharing open source solutions with other countries.

Notwithstanding such progress, Uruguay suffers from additional complications for business operations associated with the fragmentation of administrative procedures and institutions, which may hinder the delivery of public services and the provision of quality regulation. Over the past two decades, there has been an exponential increase in the number of institutions vested with public powers to perform specific tasks. Uruguay has three levels of public governance: central, regional (departments) and local level (municipalities) (see Box 3.4). At times, it is procedures that depend on the cooperation of departmental authorities that are responsible for the largest delays in the delivery of investment projects- the issue of construction permits being a case in point.

Box 3.4. Levels of government in Uruguay

Uruguay is a unitary state with three levels of government: central, regional (departments) and local (municipalities).

Structure

The administration at central level consists of 13 ministries, seven decentralised services (including ANTEL, ANP, Correos and OSE that can be considered SOEs) and 12 autonomous entities (including BROU, BSE, ANCAP, UTE, AFE, BPS, and BCU).

In addition to the central level of government, Uruguay has 19 departments and 112 municipalities (foreseen by the 1996 Constitution, Articles 262 and 287, although created only in 2009 by Law No. 18.567 on Decentralisation and Citizen Participation).

Competencies

The state administration has jurisdiction over areas such as economic affairs and management of state assets; finance, tax and customs; regional development and policy; energy and electricity; water policy and management; public transport (e.g. highways, railways, air traffic).

Departments have jurisdiction over regional affairs, including planning, economic development and tourism, and issuance of construction permits. Municipalities have jurisdiction over local affairs, such as maintenance of public roads and green spaces.

Last but not least, high-quality human resources are fundamental for establishing an administration that is focused on peoples' needs, as opposed to one where public servants believe that they are the owners of public resources. Generally, Uruguay has been moving towards a modern, merit-based, transparent recruitment system for public servants.

In particular, the creation of *Uruguay Concursa* portal, launched in April 2011 by the National Civil Service Office (*Oficina Nacional de Servicio Civil*, ONSC) (OAS, 2014) has been the step in the right direction. The portal provides centralised diffusion to all civil service vacancies within the central administration and their management from the start to the end of the selection process. The benefits have come in terms of shorter delays (reduced by 80% from 2011 to 2014), transparency (everything is made public on the portal), and privacy (applicants' names are not made available to recruiters). In the case of top positions, there has also been an attempt at reducing the incidence of political appointments and introducing a preference for career civil servants. This has coincided with the adoption of clear criteria for advertising government hiring opportunities, more transparent procedures for the selection of contractors in case of direct contracting and the implementation of electronic bidding (OAS, 2016).

However, while recognising this progress, the OAS identified priority actions, too. In particular, the country should consider taking the appropriate steps to make the National Civil Service Office competent to declare null or invalid an irregular selection process for all the hiring mechanisms covered by *Uruguay Concursa*; collect and analyse relevant information on hiring competitions being carried out by agencies not part of the central administration; periodically update the threshold for the formation of bid evaluation committees for abbreviated bids; review the provisions that require the rotation of procurement officers, in order to determine if they are beneficial or not; and establish administrative protection measures that protect the identity of public servants that must report any irregularities or corrupt practices.

Effective prosecution and sanctioning of corruption

Significant progress has been achieved over the past 20 years as regards adoption of civil and criminal legislation and establishment of agencies and law enforcement mechanisms specifically dedicated to the detection, prosecution and sanctioning of corruption. Uruguay's actions have been guided *inter alia* by its obligations under the UN Convention against Corruption and other relevant Pan-American instruments to which it is a party. Modern legislation has been in place for several years, largely meeting the standards of the Organisation of American States and the United Nations.

Various articles in the Constitution defines expectations and duties regarding civil servants.[12] In addition, Uruguay enacted a law against corruption in the public sector in 1998 (No. 17.060, better known as Ley Cristal) and made the acceptance of a bribe a felony under the penal code. Illicitly-acquired goods and assets can be seized; three new felonies were introduced (influence peddling, illicit use of insider information, and passive and active bribery); and personal enrichment was made an aggravating factor (Acosta Casco, 2014). An Ethics Code for Public Officials was introduced through Law N° 19823/2019/

At the international level, Uruguay signed and ratified the UN Anticorruption Convention, the International Convention for the Suppression of the Financing of Terrorism, and the Inter-American Convention against Corruption. The legal framework against anti-money laundering (Laws 17.835/2004 and 18.494/2009 and Decree 226/10) includes corruption as a preceding crime. Money laundering is penalised with sentences of up to ten years. Tax evasion, however, is still not considered a predicate offence of money laundering. A 2017 law against money laundering and terrorism finance (No. 19.574) brings Uruguay into compliance with OECD and UN norms and sets threshold values on the amounts of defrauded taxes.[13]

In addition, an ecosystem of anticorruption institutions has been set up. The public prosecutor's office (Fiscalía) is independent from government and is considered as one of Uruguay's most professional public institutions. It prosecuted some high-level Uruguayan officials from the executive, parliamentary, and judiciary branches for corruption in recent years. Courts have ample faculties to seize and confiscate goods or financial instruments involved in money laundering and in offenses involving this felony and the country juridical and regulatory framework against money laundering satisfies the basic requirements of the 40 GAFI recommendations.

Established in 2015 by Law No. 19.340, the Office for Transparency and Public Ethics Committee (JUTEP, by its Spanish acronym) is responsible for dealing with public sector corruption.[14] Its board is composed of three members, appointed by the President of Uruguay for one five-year term, who are assisted by 12 staff. Senior civil servants (roughly 50 000, including SOEs employees) are required to present under oath an assets ownership statement, of which JUTEP is the custodian, and may be punished for failure to do so. It is also tasked with the promotion of appropriate policies, norms and actions. A dedicated portal allows to monitor the state of advancement of public budget commitments, at a detailed level.[15] The most recent follow-up report produced as part of the OAS Anticorruption Mechanism (MESICIC) acknowledges the continuous efforts made to upgrade the fight against bribery and solicitation – such as the establishment of *Uruguay Concursa* as a portal for Central Administration hiring, mentioned earlier.

Measures to strengthen anti-corruption institutions and introduce remedies to address wrongdoing when it occurs are also important. Deterrence can take many forms beyond criminal sanctions, including administrative and civil penalties. Education is fundamental towards improving behaviours, norms, and standards needed to sustain anti-corruption efforts. In the business sector, every effort must be made to meet corruption at the gate, putting in place appropriate institutional systems and incentives to mitigate and detect potential risks. In this context, the most recent *Review of implementation of the UN Convention against Corruption* recommended that non-monetary advantage be taken into account and that it should be criminalised along with economic advantage (UN, 2014). In addition, it recommended to consider the possibility of criminalising bribery in the private sector and of adopting comprehensive legislation on the embezzlement of property in the private sector.

Actions have indeed been taken to tackle and deter corruption, including confiscation of assets, which is being carried out both permanently and temporarily. It is widely acknowledged that the confiscation of the proceeds and instrumentalities of a crime constitutes an additional deterrent that may have as great an effect as a fine or prison term; the threat of confiscation is also a preventive measure, as it makes bribes solicitation less attractive to public officials. In this regard, Uruguay has modern legislation in place, which makes it mandatary to confiscate the proceeds and instrumentalities of crime and largely complies with both the international and Western Hemisphere standards concerning the asset recovery process.

Protecting sources of information

Reporting of wrongdoings can play a role in the detection of violations of anti-corruption legislation and public integrity standards (OECD, 2015c). Hence the importance of establishing or expanding legal provisions to encourage and better protect both witnesses and whistle-blowers (public servants, but also employees and citizens, that report acts of corruption) as an important source of information leading to the detection of corruption and other forms of illegal conduct.

Law 18.494 established a witness protection regime for proceedings that fall under the competence of the Specialised Magistrates and Prosecutors on Organised Crime. JUTEP is working on a new whistle-blowing portal to improve the actual procedures. Uruguayan civil society organisations and the public in general have nevertheless been critical of the current legal framework, which has been seen as not providing adequate protection (Galeano, 2019). The overall view has been that employers can retaliate against whistle-blowers with impunity. The OAS has also found that Uruguay's whistle-blower protection system requires improvement (OAS, 2016).

Fear of retaliation is widely recognised as the main disincentive to report on other's misconduct. The effectiveness of any whistle-blower mechanism depends on public confidence that people who make *bona fide* reports about wrongdoings receive proper protection against retaliation (OECD, 2016a). Continuing efforts to improve the protection regime for whistle-blowers will not only benefit Uruguay's overall anti-corruption system but also increase pressure on companies to set-up internal compliance programmes, discussed below.

Preventing misconduct in the public sector and preventing undue relations with business

As discussed above, Uruguay has made important strides in strengthening safeguards against corruption and other forms of misconduct in the public sector and has now a fairly developed, albeit imperfect, ethics infrastructure with regards to public officials and civil servants. As observed in the section on the governance of SOEs, there is still scope for strengthening the transparency and accountability mechanisms in place, in order to manage corruption risks. The OAS, in particular, suggested to establish an online registry of interests for public officials and the need for a formal code of conduct for politicians and public servants and new lobbying regulations.

Yet, the issue of undue relations between business and politics may need the authorities' attention. Uruguay's political life has traditionally been characterised by a fair degree of integrity and this may have it made relatively less important to introduce specific norms and measures to preserve this situation. As such, there are no regulations aimed at enhancing the integrity of politicians and elected officials and the transparency of political parties' finances. With no disclosure laws around private funding, but with both direct and indirect public funding, Uruguay has a similar regulatory system to a number of medium-sized countries, such as Paraguay and South Africa. It is of course open to scholarly debate whether these interventions are as important as shared values of ethic and honesty, but Uruguay would benefit from developing the legal framework for party funding. A law was promoted by the government in 2019, but did not gain the approval of Parliament before the October elections.

With regard to conflicts of interests, Decree No. 30/2003 lists all the duties, prohibitions and incompatibilities that concern civil servants. An Ethics Code was approved in 2019 (Law 19.823) Nonetheless, there is a perception, authoritatively expressed by JUTEP (2019), that the law does not go far and deep enough in tackling the sources of conflicts of interest. Although there is no official Electoral Code of Ethics, all main political parties have developed their own codes for the 2019 elections. Experience in other countries in setting up a modern integrity policy to uphold ethical standards for members of parliament and of other bodies of legislative authority, and thus in ensuring they perform their functions without undue interference, may provide good examples to Uruguay to act in this regard. For example, Australia and Korea require parliamentarians to disclose their financial interests before debating an issue related to those interests and Australia prohibits MPs from voting on issues that could give rise to conflicts of interest. Australia's code of conduct also requires parliamentarians to disclose gifts exceeding a certain value limit, as well as sponsored travel.

Finally, Uruguay does not regulate lobbying activities either. Despite some discussions at government level on the need for regulation in this area, no such initiative has materialised to date. As a result, no transparency standards are set in this field, potentially increasing the risk of policy capture. In this regard, Uruguay could make use of the *Principles for Transparency and Integrity in Lobbying* adopted by the OECD in 2010, which are international principles addressing concerns raised by lobbying and providing guidance on how to meet expectations of transparency and accountability in the public decision-making process.

Outlook and policy recommendations

Uruguay has made significant progress in improving the legal framework to ensure a stable and high-quality institutional environment. However, efforts should be maintained to make sure that the public administration continues to be at the service of the general public (citizens and investors) and that Uruguay remains an attractive investment destination.

As such, given that SOEs are still present in many sectors of the economy, fostering their integrity as well as improving the level of their oversight and transparency in use of resources in line with the OECD *Guidelines on Corporate Governance of State-Owned Enterprises* deserves particular attention. This will include corporate governance reforms and greater use of performance indicators to monitor SOEs activities and incentivise managers. Further progress in reducing administrative burdens and increasing the regulatory quality – discussed in more detail in Chapter 7 – should also be at the forefront of future government efforts.

Mobilising investment in infrastructure will also require concentrated government action. Uruguay has seen relatively modest levels of private investment in infrastructure. Further improvements in the efficiency of government procurement practices and the take up of PPP projects can be helpful in this regard. The government also has proactive investment attraction tools – including the activities of its national investment promotion agency and the use of investment incentives (described in Chapters 6 and 7) at its disposal to aim to reduce information asymmetries that may be reducing the pool of interested businesses, and encourage more investment.

The effects of reforms to strengthen the integrity and transparency of public institutions are reflected both in high levels of public trust in public institutions and in the low ranking of corruption among business concerns. Ethical principles and rules of conduct are mostly in place; obligations to report personal assets and liabilities are now the prevalent rule. The development of eGovernment services and other approaches that reduce opportunities for corruption and limit discretion in public decision-making is progressing, and this includes public procurement.

Enhancing ethics in the private sector is also important for Uruguay’s success in combatting corruption. The Uruguayan economy is largely based on SMEs and micro-enterprises. The development of these firms on the

domestic market and their integration into GVCs require them to meet international standards. The OECD *Guidelines on Multinational Enterprises* provide guidance on processes and systems - such as internal controls, ethics and compliance programmes - that companies can implement. The OECD *Good Practice Guidance on Internal Controls, Ethics and Compliance* can be a useful reference for promoting, designing and implementing strong corporate compliance programmes, in particular for SMEs active or seeking to be active on foreign markets.

Policy recommendations

Deepen the SOE reform programme to improve performance, in particular through improvements and more widespread use of SOE performance indicators and further corporate governance reforms that will strengthen and increase the professionalism of Boards and management of incentives.

Increase efforts to mobilise private investment in infrastructure, including through more efficient public procurement processes, greater take-up of PPP projects as well as active investment attraction policies in the sector (discussed in Chapters 6 and 7)

Bring to fruition reforms aiming to reduce administrative burdens, including for regulations and procedures stemming from sub-regional bodies. In particular, implement planned projects for administrative simplification and digitisation, such as those led by AGESIC and Transforma Uruguay.

Build on successful long-term efforts to fight bribery and improve integrity in the public and private sector by further clarifying applicable rules. In particular, enhance measures relating to hiring of civil servants, lobbying and financing of political parties as well as promoting corruption prevention in the private sector.

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Notes

[1] The 1918 Constitution distinguished between autonomous entities (such as UTE, ANCAP, BROU, BSE, BHU) and decentralised services (AFE, OSE, ANTEL, ANP).

[2] For an overview of practices in state aggregate reporting on SOEs in 52 OECD and non-OECD countries, see the OECD stocktaking: http://www.oecd.org/corporate/Ownership-and-Governance-of-State-Owned-Enterprises-A-Compendium-of-National-Practices.pdf

[3] The government acquired Ferrocarril y Tranvía del Norte in 1915 and in the following 25 years it built 460 kms of railways and bought 100 kms more from private investors. By 1952, Administración de Ferrocarriles del Estado was managing a network of 2950 kms. In the remainder of the century, less than 100 kms. were built and the network reached a historical peak in 1984 (3005 kms). Currently the extension is only 1903 kms.

[4] Ahead of Bolivia, Guyana and Venezuela (Suriname is not included in the LPI ranking).

[5] Information available on the website of the Ministry of Industry, Energy and Mines: www.miem.gub.uy/sites/default/files/analisis_comparativo_de_tarifas_electricas_1ooctubre_2018.pdf

[6] See Laws Nos. 18.996 (Rendición de Cuentas Ejercicio 2011), 19.149 (Rendición de Cuentas Ejercicio 2012), 19.438 (Rendición de Cuentas ejercicio 2015), 19.355 (Ley de Presupuesto Nacional para el ejercicio 2015-2019), 19.535 (Rendición de Cuentas ejercicio 2016) and 19.670 (Rendición de Cuentas ejercicio 2017).

[7] All the tools and illustrative country case studies, as well as templates of useful documents, are available online as part of the OECD Public Procurement Toolbox at: *www.oecd.org/governance/procurement/toolbox.*

[8] In addition, for taxation benefits decrees number 43/016, 20/016, 326/015, 181/015, 75/015, 357/014, 127/013 and 045/013 were issued, plus the Guide for Recommendable Practices issued by the Ministry of Economy and Finance.

[9] The main responsibilities of the PPP Unit include regulation and policy guidance, capacity-building for other public authorities, promotion of PPPs among the public and/or private sectors in national and international forums, technical support in implementing PPP projects, project approval and oversight of PPP implementation. The Unit is not involved in the identification and selection of PPP projects from the pipeline, revision of the fiscal risks borne by the government, and consultation with affected communities on the potential impact of PPP projects.

[10] Information for investors interested in infrastructure projects by Uruguay XXI can be found at: http://www.uruguayxxi.gub.uy/uploads/informacion/e47ff3e6aff73ad27b44ccd02cc7f4b7491cadb9.pdf

[11] For further information, see the project's website: http://www.iadb.org/es/project/UR-L1159

[12] In particular, Art. 58 states that "public officials are in the service of the Nation and not of a political party" and Art. 59 that "the official exists for the office and not the office for the official".

[13] At end-2018, Banco Central del Uruguay issued guidance regarding risk factors and alert signals that facilitate detection of suspect transactions (Comunication 2018/294).

[14] Law 17.060 (art. 4) had established the Advisory Office for State Economic and Financial Issues (Junta Asesora en Materia Económico Financiera del Estado), that changed name into JUTEP in 2010 (Law 18.362).

[15] See the website: http://www.transparenciapresupuestaria.opp.gub.uy

4 Business establishment and operations

Uruguay has long acknowledged the long-term benefits of an open and non-discriminatory international investment environment. As such, the country retains very few restrictions on establishment and operations of foreign-owned enterprises. This chapter examines the openness of Uruguay's investment regime in relations to barriers to entry of foreign-owned firms and exceptions to national treatment. It also benchmarks the openness of Uruguay's FDI regulatory regime against OECD and various other emerging economies through the OECD FDI Regulatory Restrictiveness Index, showing the level of openness far above the average encountered in developing countries and even most advanced economies.

Uruguay has long acknowledged the long-term benefits of an open and non-discriminatory international investment environment. Investment is a critical condition to spur growth and sustainable development. While domestic firms typically undertake the bulk of investments, international investors can sometimes bring important complementarities. Beyond bringing additional capital to a host economy, evidence suggests that FDI can help to improve resource allocation and production capabilities, act as a conduit for the local diffusion of technological and managerial expertise, and provide improved access to international markets (Moran *et al.*, 2017).

A country's attractiveness to foreign investors depends on a large range of determinants, some of which are exogenous to government control, such as geography and economic size. Unlike these, the openness to foreign investment is a policy area which governments can shape. Two features have a direct bearing on an economy's openness to FDI, namely the conditions that apply the entry of foreign investors and the extent to which they are discriminated against once established. Both policies have been shown to be a significant determinant of the attractiveness of countries to FDI (Fournier, 2015; Mistura and Roulet, 2019; Nicoletti et al., 2003), and, consequently, of the potential effects foreign investments can have on the host economy (see, for instance, OECD, 2015 and OECD, 2018). Partly due to their relevance in shaping the operating environment for international investors, market access conditions and the extent of discrimination against foreign-owned established investors typically lie at the heart of key international regulatory frameworks on investment.

At the OECD, these policies are, respectively, the objective of two internationally-recognised instruments, namely the *Code of Liberalisation of Capital Movements*[1], and the *National Treatment instrument* (Box 4.1), which is part of the OECD *Declaration on International Investment and Multinational Enterprises*. Parties to these instruments are encouraged to uphold the principle of non-discrimination at entry (between residents and non-residents, and across the latter) and thereafter (between nationals and foreigners) as a way of creating an enabling environment for foreign direct investment, and to be transparent about any departures from this principle.

As an applicant for adherence to the *Declaration*, Uruguay is encouraged to voluntarily commit to providing national treatment to foreign investors in its territory – *i.e.* to treat enterprises operating on its territory, but controlled by the nationals of other adhering countries, no less favourably than domestic enterprises in like situations.[2] It is also encouraged not to backtrack in relation to existing measures comprising exceptions to the national treatment. For transparency reasons, as for all other Adherents, Uruguay is required to report a list of any existing exceptions to national treatment during the adherence process. Likewise, it is required to report other measures that may not constitute exceptions to national treatment, but that are important determinants of policies in the context of national treatment, such as measures on corporate organisation or related national security.

Box 4.1. The OECD National Treatment instrument for foreign-controlled enterprises

National treatment is the commitment by an Adherent to the Declaration on International Investment and Multinational Enterprises to treat enterprises operating on its territory, but controlled by the nationals of another country, directly or indirectly, no less favourably than domestic enterprises in like circumstances.

The term "operating in its territory" in the instrument conveys the idea of doing business from a place of business in the host country, as distinct from conducting business in the country from abroad. This recognises that adhering countries' practices differ regarding recognised forms of business but that the main forms of doing business are through locally incorporated subsidiaries and branches. The principle of national treatment applies regardless of the home country's treatment of enterprises from the host country (OECD, 2005).

The National Treatment instrument consists of two elements: a declaration of principle, which forms part of the Declaration, and a procedural OECD Council Decision which obliges Adherents to notify their exceptions to national treatment and establishes follow-up procedures to deal with such exceptions. The Decision comprises an annex that lists exceptions to national treatment, as notified by each Adherent and accepted by the OECD Council. The Investment Committee periodically examines the exceptions. Only measures concerning legal entities are reported for the purpose of the National Treatment instrument, and thus any measure that may apply to natural persons is not reflected in the list contained in the annex to the Council's decision. To ensure transparency, Adherents to the Declaration also undertake to report any measures that, while not representing exceptions to national treatment, have an impact on it. The lists of these exceptions and measures are published and regularly updated. There are featured in Annexes A and B to the present Review.

Drawing from the above frameworks, this chapter examines the openness of Uruguay's investment regime against these two sets of policies: barriers to entry and exceptions to national treatment. In view of Uruguay's adherence to the *Declaration*, this chapter also reports the list of exceptions to national treatment and measures reported for transparency notified by Uruguay to the OECD. Lastly, it benchmarks the openness of Uruguay's FDI regulatory regime against OECD and various other emerging economies through the OECD *FDI Regulatory Restrictiveness Index* (Box 4.2).

Uruguay is open to foreign direct investment

Uruguay is an open economy to foreign investment, and market participants benefit from high standards of protection. As discussed in greater detail in the next Chapter, according to the Constitution all investors have equal legal status and property rights acquired through the investment of capital cannot be restricted by law or any other legal act. Foreign investors are also guaranteed the right to free transfer and repatriation of profit and invested capital. The principle of non-discrimination is enshrined in Law 16.060/1989, section XVI and by Law 16.906/1997 (on national interest, promotion, and protection). In addition, there are no laws aimed specifically at foreign investors, which reduces the risk of inconsistent and discriminatory treatment between foreign and domestic investors.

The Companies Code (Ley de Sociedades, No. 16.060), which regulates the establishment and operation of businesses in Uruguay, provides for equal treatment between domestic and foreign-owned enterprises established in Uruguay. Accordingly, a foreign investor may establish or participate in establishing a company and may acquire rights and/or commitments as for any domestic investor. The establishment of a business entity by foreign investors is carried out as per regulations for domestic investors.

As such, foreign investors are generally treated without discrimination. There is no general investment screening mechanism for inbound FDI, and there are only a few regulatory restrictions concerning the entry and participation of foreign investors in economic activities in Uruguay. These measures are typically limited in scope. Foreign investors are unconstrained in their ability to acquire real estate, be it for business purposes or as real estate investments, with one exception. Foreign companies, or Uruguay-registered subsidiaries that are themselves invested by a foreign state, cannot buy land, a provision introduced in 2014 to protect domestic sovereignty and facilitate the development of the Instituto Nacional de Colonización. In the rest of the economy, the few exceptions, in particular for protected areas, do not discriminate between domestic and foreign investors. All these measures are discussed in further detail below.

Box 4.2. The OECD FDI Regulatory Restrictiveness Index

The Index focuses on four types of measures: foreign equity restrictions, discriminatory foreign investment screening and approval requirements, restrictions on the employment of foreign key personnel, and other operational restrictions (such as limits on purchase of land or on repatriation of profits and capital). The extent of discrimination between foreign and domestic private investors is the central criterion to decide whether a measure should be scored. Nevertheless, non-discriminatory measures are also covered when they are considered more burdensome for foreign investors, such as rules regarding the nationality of board of directors. The Index covers 22 sectors, almost all sectors of the economy except health and education. The economy-wide index is obtained by averaging the scores for all 22 sectors.

Scores range from 0 (open) to 1 (closed). The scoring methodology is inspired by the seminal work of Hardin and Holmes (1997) based on expert judgement. Foreign equity restrictions are given a higher score, followed by discriminatory screening measures. Restrictions on foreign key personnel and other measures receive relatively lower scores. Scores reflect the sum of scores under each policy dimension, capped at one. For further details on the scoring methodology, please refer to Kalinova et al. (2010).

The Index is based on statutory measures as reflected in official OECD instruments or identified in OECD Investment Policy Reviews and yearly monitoring reports. The use of country positions under the OECD Code of Liberalisation of Capital Movements and the OECD National Treatment Instrument, as well as the comprehensive discussion of countries' discriminatory measures undertaken in the Investment Policy Reviews ensures the appropriate identification of measures and allows for a great deal of consistency in their interpretation. The Index is updated on a yearly basis, based on the Secretariat's monitoring of investment policy changes in all OECD members, G20 economies and adherent countries to the OECD Declaration on International Investment and Multinational Enterprise, which is undertaken in the context of Freedom of Investment Roundtable and is extended for the purposes of the Index to all countries covered. OECD members and adherents to the Declaration are also formally required to notify the OECD in case of changes to regulations affecting foreign investment, which facilitates keeping track of reforms for the purposes of the Index. This allows the Index to be used to track the progress of liberalisation over time.

Actual implementation of statutory restrictions, which is difficult to assess, is not factored into the scoring. Although important, other aspects of the regulatory framework, such as the nature of corporate governance, the extent of state ownership, and institutional or informal restrictions which may also impinge on the FDI climate, are not incorporated.

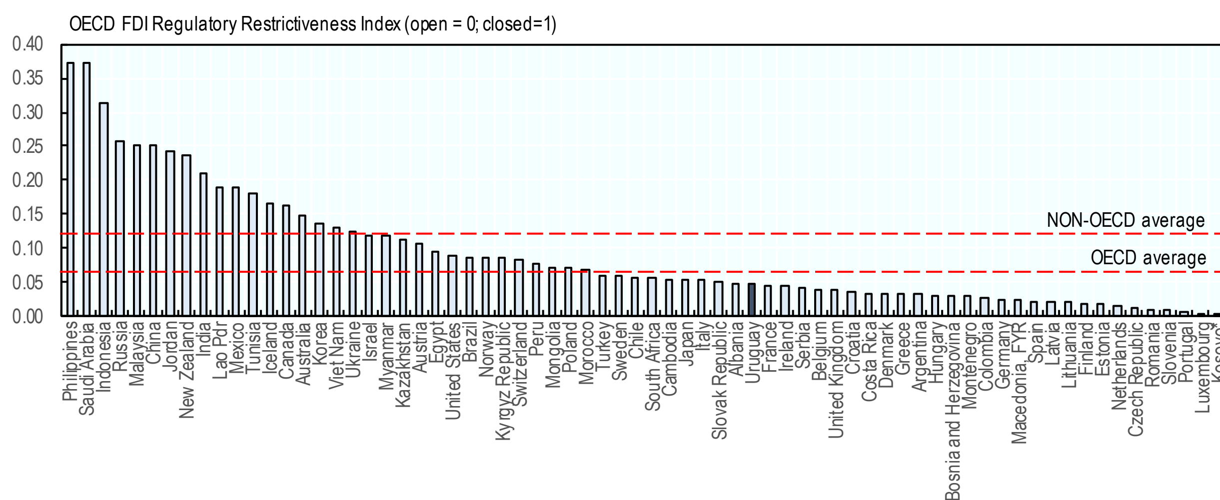
Source: Kalinova et al. (2010).

The openness of Uruguay's investment regime is attested by its position under the OECD *FDI Regulatory Restrictiveness Index*. The extent of discrimination against foreign investors observed in Uruguay's regulations is lower than for most of the 70 countries benchmarked under the Index (Figure 4.1). Uruguay compares favourably against both the OECD and non-OECD averages in this respect, and also against the average of non-OECD Adherents to the *Declaration.* Its level of restrictiveness is 33% lower than the average of the other seven LAC countries covered by the Index and about 35% lower than the average of adherents to the *Declaration*.

On a sectoral basis, Uruguay also maintains a more open environment than most other countries in nearly all business activities. When compared to the OECD average, regulatory restrictions on FDI are greater only in transport industries and the media (Figure 4.2), sectors where many other countries – in particular emerging economies – retain certain restrictions. The remaining restrictions pertain mainly to local

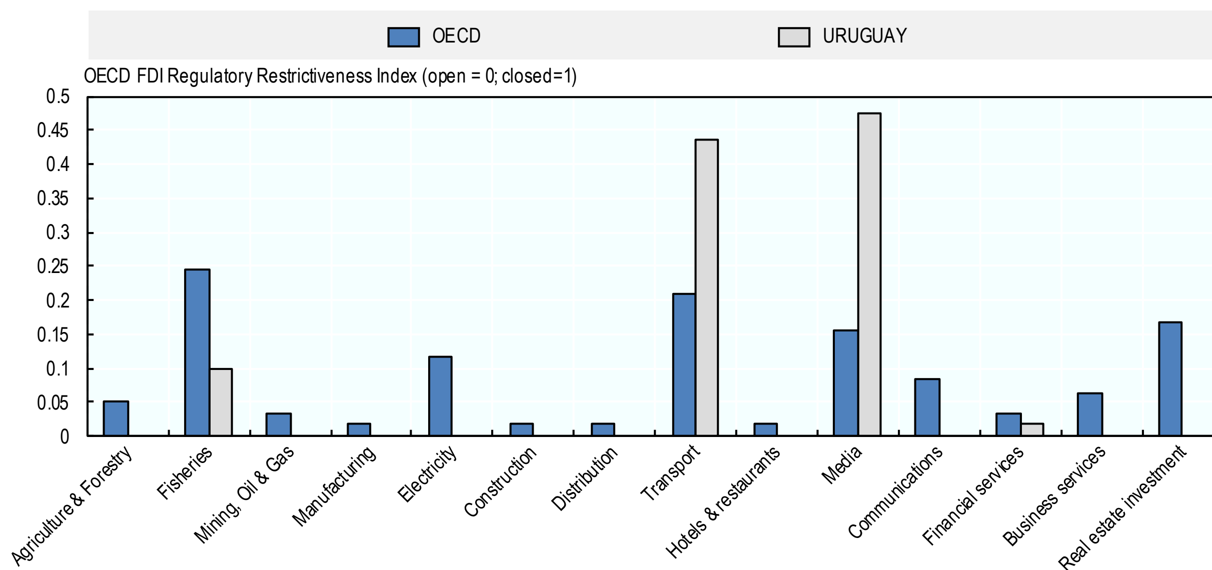
incorporation requirements (e.g. air transport and auxiliary services, rail transport, insurance services) and the use of maximum foreign equity limits (e.g. media services).

Figure 4.1. OECD FDI Regulatory Restrictiveness Index



1. Data reflect regulatory restrictions as of September 2019 for Uruguay, as provided by the authorities, and as of end-year 2018 for all other economies.
2. This designation is without prejudice to positions on status, and is in line with the UN Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo's declaration of independence.
Source*:* OECD FDI Regulatory Restrictiveness Index, www.oecd.org/investment/fdiindex.htm. Please refer to Kalinova et al. (2010) for further information on the methodology.

Figure 4.2. OECD FDI Regulatory Restrictiveness Index, by sector



1. Data reflect regulatory restrictions as of September 2019 for Uruguay, as provided by the authorities, and as of end-year 2018 for all other economies.
2. This designation is without prejudice to positions on status, and is in line with the UN Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo's declaration of independence.
Source*:* OECD FDI Regulatory Restrictiveness Index, www.oecd.org/investment/fdiindex.htm

Any difficulty in attracting FDI into Uruguay is, therefore, unlikely to be related to *de jure* restrictions on local establishment or business operations for foreign investors. Nonetheless, as mentioned above, the regulatory environment for FDI must not be seen in isolation from the overall business environment. While barriers to FDI should not necessarily be a concern for attracting international investment in Uruguay, the stringency and cumbersomeness of business regulations and the level of state participation in the economy may be (Chapters 3 and 7). In some cases, non-discriminatory deficiencies in the business environment may affect domestic and foreign investors alike. In other cases, they may still have disproportional effect on foreign investment.

Uruguay has few exceptions to national treatment of foreign-controlled enterprises

Uruguay has no trans-sectoral exception to national treatment. Market access conditions are also more common across sectors than exceptions to national treatment. Sector-specific measures consisting of departures from the national treatment principle are limited to foreign ownership restrictions in a few commercial activities, such as freshwater fishing, and transport. Uruguay also does not impose limits on access to local finance and incentives (e.g. tax concessions) or government purchasing markets for foreign-controlled enterprises incorporated in the territory.

These measures are discussed in further details below. As per obligations under the *National Treatment instrument,* Uruguay's list of the measures constituting an exception to national treatment at national and territorial level is reported in Annex A of this *Review*. Annex B contains the list of measures reported for transparency reasons (e.g. measures based on national security considerations, as well as non-discriminatory corporate organisation requirements, official aids and subsidies and public and private monopolies and concessions). Measures restricting investments by natural persons are not reported, as they are not covered by the instrument.

Cross-sectoral measures affecting foreign investment

Land and other real estate

The right of ownership of private property and real estate is spelled out in the Constitution and other legal texts (see above). The main exception is Law 19.283 of 2014 that declares preservation and defence of the State's full sovereignty on national resources, and land in particular, to be of general interest. Henceforth, "the executive power will not be allowed to determine that the ownership of rural real estate and agricultural exploitations be in possession of companies controlled directly or indirectly by foreign States or sovereign wealth funds".[3] The measure is meant to assuage fears that investments by foreign governments jeopardise national sovereignty and contribute to growing concentration in wealth and land ownership. A clause indicates that, if the Uruguayan government is interested in hosting a state investor, it will indicate so and instruct the interested party to submit a formal request. The *Instituto Nacional de Colonización* has pre-emption rights on all land deals larger than 500 hectares.

Reciprocity condition

A foreign investor may establish or participate in establishing a company and may acquire rights and/or commitments in the same way as any domestic investor.

Nonetheless, policies conditioning market access on reciprocal treatment in the home country is reflected under the OECD *FDI Regulatory Restrictiveness,* since they depart from the underlying principle of liberalisation embedded in the OECD instruments on international investment and capital movements, which is to promote liberalisation through unilateral action at a countries' own pace rather than through

bargaining. Besides, any benefits associated with such investments flowing to host economies are likely to occur regardless of whether the home country of that firm provides equal treatment to host country firms. There may be cases where reciprocity conditions may actually contribute to ensuring an increasing degree of liberalisation overall, and therefore these are given special consideration under the OECD *Codes of Liberalisation of Capital Movements* for instance, but ultimately they still constitute a barrier for foreign investment.

Sector-specific measures affecting foreign investment

The sector-specific exceptions to the NTi notified by Uruguay concern the ownership of commercial fishing, media, and transport companies (see Annex A to this *Review*). Other sector-specific measures discussed below refer to measures imposing conditions on the establishment of foreign investors in Uruguay. While not covered by the NTi, they constitute statutory barriers to entry and, as such, are included in the OECD *FDI Regulatory Restrictiveness Index.*

Other policies affecting foreign investment and reported for transparency purposes under the National Treatment Instrument

A few other policies applied by Uruguay, while not discriminating between foreign-controlled enterprises and domestic enterprises, may result in difference in impact by potentially imposing a greater burden on the foreign controlled-enterprise. Policies based on public order and essential security considerations may restrain access to certain sectors of national interest. Likewise, the existence of public, private, or mixed monopolies may render access to certain sectors difficult for foreign investors. As such they are important determinants in the context of national treatment. Such measures are notified by a country adhering to the OECD *Declaration* for transparency purposes.

Uruguay has reported only a few measures for transparency purposes under the NTi (see Annex B). These are related to conditions imposed on key personnel in fisheries, media, and sea and air transport, as well as a few sectors which are kept under public monopoly. Also relevant is the obligation to have a majority of nationals on the boards of companies operating surface transport services (railways and roads).

In addition, foreign investment activities can be limited in certain areas due to national security considerations. Uruguay does not have national security review mechanisms nor any other specific policy that would allow it to respond to threats to its national security stemming from established foreign direct investors. However, it does not allow foreign SOEs and Sovereign Wealth Funds (SWFs) to own rural land and caps at 49% their shares in agricultural enterprises.

Measures based on public order and essential security considerations

International instruments such as the OECD *Declaration* and the OECD *Guidelines for Recipient Country Investment Policies relating to National Security* (OECD, 2009) recognise countries' rights to regulate to manage potential risks to national security or public order. Unlike some governments which have recently increasingly invoked national security to control foreign investment (Wehrlé and Pohl, 2016; Wehrlé and Christiansen, 2017), Uruguay has remained content with the absence of formal policies to manage or potentially prevent certain acquisitions by foreigners on national security grounds. If such policies exist, they are limited to the acquisition of land or real estate in some sensitive geographical areas and by state-controlled entities.

Activities covered by public, private, mixed monopolies or concessions

A number of activities are reserved to the Oriental Republic of Uruguay, namely:

- the extraction, import and refining of oil which is carried out by the state-owned company ANCAP;

- the provision of electricity transmission which is carried out by the state-owned company UTE;
- the provision of electricity distribution, which is reserved to UTE;
- the provision of wholesale electricity market supply, which is reserved to UTE;
- the operation of Uruguay's gas storage system, which is reserved to UTE;
- the wholesale gas market supply, which is reserved to ANCAP;
- water supply and management, which is the monopoly of the state-owned company OSE;
- wastewater treatment and sewage, for which OSE is responsible.

Starting and operating a company remain cumbersome according to business surveys

OECD calculations reveal that Uruguay has one of the most open regimes for international investment according to the FDI Regulatory Restrictiveness Index. Exceptions under the OECD National Treatment instrument are limited to foreign ownership restrictions in very few activities or sectors. Despite this de jure openness, investors complain about various types of inconveniences when operating a business, a perception supported by the country's performance in international rankings (Table 4.1). Oft-heard concerns include administrative burdens in terms of time and costs, in particular when registering property and obtaining building permits, and some interpretative inconsistencies between public institutions.

Table 4.1 Uruguay in international rankings

Indicator	Current rank	Previous rank
Doing Business 2020 (World Bank, 190 countries)	**101**	**95**
Starting a business	66	65
Obtaining construction permits	151	155
Getting electricity	65	55
Registering property	119	115
Getting credit	80	73
Protecting minority investors	153	132
Paying taxes	103	101
Enforcing contracts	104	100
Resolving insolvency	70	70
Global Competiveness Index 2019 (WEF, 141 countries, previously 140)	**54**	**53**
Institutions	40	34
Higher education and training	60	59
Labour market efficiency	78	77
Innovation	67	77
Corruption Perception Index 2018 (Transparency International, 180 countries)	**23**	**23**
Rule of Law Index 2017–2018 (World Justice, 113 countries)	**22**	**n.a.**
Absence of corruption	18	n.a.
Open Government	19	n.a.
Regulatory Enforcement	21	n.a.
Civil justice	16	n.a.

Source: OECD based on World Bank's *Doing Business*, WEF's *Global Competitiveness Report*, Transparency International's *Corruption Perception Index* and World Justice's *Rule of Law Index*.

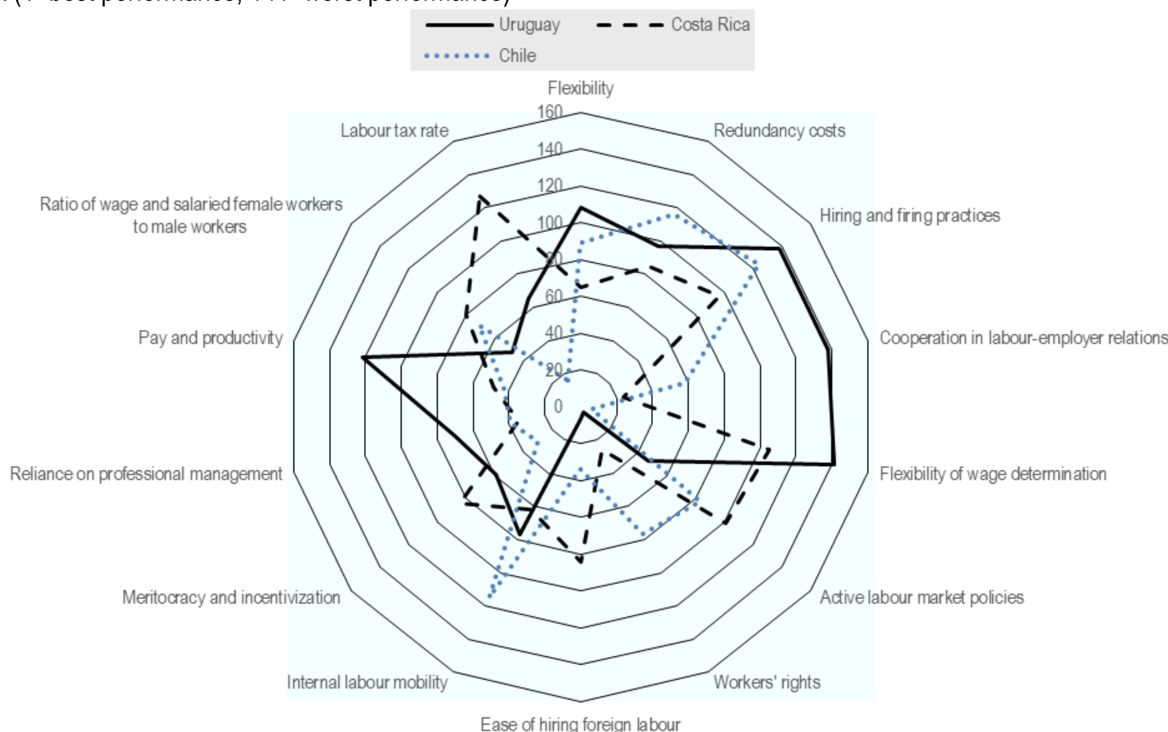
In 2019, Uruguay ranked 101st out of 190 countries in World Bank's *Doing Business* indicators – exactly in the middle, although much closer to the best-performing country (New Zealand, 25 points above) than to the worst one (Somalia, 41 points below). In comparison with other LAC countries, Uruguay is among the

top third, preceded by eight countries and ahead of 21. When compared with the 12 non-OECD countries that are Adherents to the OECD Declaration, Uruguay has worse scores than most of them – from 25th-ranked Kazakhstan to Tunisia at 78th – although better than Egypt, Brazil, and Argentina. It must be noted that *Doing Business* – which addresses ten business regulatory areas such as starting a business, paying taxes and enforcing contracts – should not be construed as an overall measure of the investment climate; but can still provide an indication of possible areas of attention – and the relative importance of the overall administrative burden in the country. Uruguay's relatively weak performance, in particular in comparison with other high-income emerging economies, is driven by poor scores in several sub-indicators, in particular those related to dealing with construction permits, discussed in more detail in Chapter 7 on investment promotion and facilitation:

The *Global Competitiveness* ranking of the World Economic Forum provides additional perspectives on the quality of the business environment. In 2018, Uruguay ranked 53rd out of 140 countries, a loss of three positions with respect to 2017. The country performs well in areas like health (and human capital more broadly) and institutional quality (and the enabling environment in general), but its markets for capital, labour and products are perceived as badly-functioning. In particular, labour markets in Uruguay are characterised by relatively higher costs and relatively more stringent regulations with the associated benefits to workers and potential costs to the private sector. For example, while Uruguay is ranked third globally on workers' rights, highlighting strong regulatory framework and well-developed protection net – it also scores close to the bottom worldwide on pay and productivity, flexibility, redundancy costs, hiring and firing practices, cooperation in labour-employee relationship and flexibility in wage determination (Figure 4.3). This is in stark contrast with Costa Rica or Chile, two similarly small-sized and open economies with which Uruguay may compete for FDI. Other critical factors include weak innovation capability (despite high ICT adoption) and small market size. More discussion of these policy areas can be found in Chapter 3.

Figure 4.3. Overview of Uruguay's scores on labour market regulations, 2019

Rank (1=best performance; 141=worst performance)



Source: WEF *Global Competiveness Index* 2019

Overall, as suggested by Uruguay's overall rankings in *Doing Business* and the *Global Competitiveness Index*, there is room for speeding up administrative procedures, making them more transparent and effective, and improving the overall quality and transparency of market regulation – and specific areas and options for policy reforms are discussed in Chapter 7.

Concerning the promotion and defence of competition, Law No. 18.159/2007 is focused on the investigation of anticompetitive conduct, rather than the analysis of economic concentrations. Implementation is in the hands of the Commission on the Promotion and Defence of Competition, a decentralised body of the Ministry of Economy and Finance, which has scarce resources, few personnel and little autonomy (UNCTAD, 2016). In order to strengthen the system for the protection and promotion of competition that will ultimately enhance consumer welfare and national competitiveness, Law 19.833/2019 introduced two substantive provisions. The reform introduces a list of *per se* forbidden practices (such as agreements between companies or industry associations concerning prices, output limitations, market sharing, and coordination) and a prior authorisation regime for any economic concentration deal above a threshold (total annual turnover of the parties to the deal larger than UI 600 million, roughly equivalent to USD 74 million).

It is evident that an open and transparent environment for foreign investment is important since it expands market opportunities and enhances predictability for investors. Nonetheless, there are other incentives to which foreign investors respond, including the quality of the overall business environment, which also impinges on domestic investors. For this reason, behind-the-borders regulatory challenges, which affect both foreign and domestic investments, should be seen in tandem with market access and treatment of foreign investors. These other policies affecting the overall business environment are addressed in the next chapters.

Outlook and policy recommendations

Uruguay has one of the most open regimes for international investment according to the OECD *FDI Regulatory Restrictiveness Index*. It is more open in statutory terms than the average OECD member country and Uruguay's exceptions under the OECD *National Treatment instrument* are limited to restrictions in a few activities. Any difficulty Uruguay may have in attracting FDI is, therefore, unlikely to be related to its level of statutory restrictiveness.

While an open environment for FDI is important, this is one many factors considered by potential investors. Foreign firms are equally affected by deficiencies in the overall business environment and burdensome regulations, impinging on domestic investors too. As suggested by international indicators, notably in comparison to other emerging economies in LAC and elsewhere, and discussed further in *Review*, there are several areas in the overall business environment where Uruguay has yet to address shortcomings. They can serve as a complement to the market access measures that helped opened the local economy to foreign investment and trade.

Policy recommendations

- Consider if some of the remaining restrictions on FDI, in the transport, maritime and media sectors, could not be reduced or abolished. For example, it could be considered if the restrictions sustained in such sectors as media are consistent with the authorities' objective to build a competitive audio-visual sector and attract FDI.
- Build on successful liberalisation to shift focus towards addressing wider investment climate issues and reducing the administrative burden for all firms. Statutory restrictions on FDI are important but not a determining factor influencing the location of MNE firms. In particular, considering small size of the economy, the ease of doing business and exporting could be its key comparative advantage.

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Notes

[1] The Code of Liberalisation of Capital Movements is an OECD instrument designed to support the progressive freedom of capital movements, while providing flexibility for countries to lodge reservations regarding operations the country is not yet in the position to liberalise and to reintroduce restrictions in situations of serious economic and financial disturbance. Since 2011, non-OECD economies may apply for adherence to the Code. Currently seven non-OECD countries are undergoing the process of adherence (Argentina, Brazil, Bulgaria, Uruguay, Peru, Romania and South Africa).

[2] In the case of the Code, for instance, members are required to progressively abolish measures that discriminate between residents and non-residents and to treat residents of all other members alike. Any remaining restriction on operations they are not yet in a position to liberalise are notified and lodged in the country reservation list for transparency reasons.

[3] For the purpose of the OECD FDI regulatory restrictiveness index, the measure is considered to be for national security, and hence not considered.

5 Protection of investment

Uruguay's domestic legal framework provides protection for investors consistent with an open and modern policy regime for investment. This chapter provides an overview of provisions in both domestic legislation and Uruguay's international investment agreements offering protections for investors. It looks into the rules of expropriation, contract enforcement and dispute settlement as well as the regimes for intellectual property rights. It also reviews Uruguay's international investment treaty practice and its legal framework for investor-state dispute settlement.

The conditions faced by investors, both when they establish and in their on-going operations, are only part of the overall investment environment. The protection of ownership, contracts, intellectual property and other rights extended to investors by domestic legislation, combined with effective enforcement mechanisms, is an important pillar of a sound investment climate. When procedures for making and enforcing contracts are overly bureaucratic and cumbersome, or when contract and other disputes cannot be resolved in a timely and cost-effective manner, investors may restrict their activities and foreign investors may refrain from engaging in the country. As a result, providing protection for investors and offering reliable and efficient enforcement procedures or alternative dispute resolution mechanisms are fundamental for markets to function properly and investors to be confident to place assets.

Uruguay's domestic legal framework provides protection for investors consistent with an open and modern policy regime for investment. This framework reflects the gradual adoption of global best practices and the country's economic opening. As an effective judicial system is an important pre-condition for the promotion of investments and the country's development, Uruguay has also taken a number of steps to streamline the workings of its judiciary, including by rationalising the courts' network, deploying modern information technologies, and developing tools to ensure the integrity and transparency of the judiciary. Uruguay has also increasingly made available alternative dispute resolution mechanisms for resolving commercial and investment disputes. As a result, the performance of the justice system has improved significantly in recent years.

Rights or procedures established under international law can reinforce or complement guarantees extended to certain investors by domestic legislation. In practice, such rights are often established in investment treaties and associated international arrangements. Although most issues addressed in treaties and multilateral conventions are also covered in domestic legislation, international law based guarantees are not always redundant. Rights established under domestic law can be abrogated or altered by the legislator or authorities of the host state within certain limits, while rights or protections afforded by international law are less at the disposition of the host state, and can only be amended through more onerous procedures. This feature of protections afforded by international law, along with adjudication mechanisms that are more protected from potential interference from host states, contributes to the perception that investment treaties have a role to play in strengthening investor confidence, especially in countries with weak governance. That being said, countries can be successful in attracting international investment without the use of investment treaties.

The domestic legal framework

Uruguay's domestic legal framework provides protection guarantees for investors consistent with a modern policy regime for investment

Uruguay's strong fundamentals

Protection of ownership and other economic and civil rights has long been enshrined in the Uruguayan legal tradition, dating back to the first Constitution in 1830 (see Annex 3).[1] In addition, domestic legislation clearly defines property rights and regulations on acquisition, benefits, and use of property. Laws equally apply to Uruguayan and foreign investors and there is no discriminatory or more favourable treatment of foreign investors. Foreign entities incorporated under Uruguayan law are treated as Uruguayan legal persons and thus may acquire property without restriction. Investors are free to transfer profits abroad and to repatriate any invested capital. Expropriation rules apply equally to domestic and foreign investments.

Guarantees against expropriation

The right to expropriate is an undisputed prerogative of sovereign states, safeguarding their ability to pursue legitimate interests. In Uruguay, the right of ownership is guaranteed under the Constitution and may be restricted, or acquired, by law, subject to compensation equal to the market value. Ownership rights may be exceptionally restricted for necessity or public interest purposes (Article 32 of the Constitution). In addition, Law 3.958 (enacted on 28 March 1912 and still applicable) provides several additional guarantees regarding expropriation based on national interest: it clarifies the typologies of assets subject to expropriation, the associated conditions and procedures, and the rules for calculating the amount of compensation.

Uruguay has a modern system of protection of intellectual property rights

The granting and protection of intellectual property rights (IPRs), e.g. through patents, trademarks, is another important component of any policy aiming at attracting investment. Protection of IP rights also fosters development and innovation: It is widely acknowledged that a well-functioning and balanced IP system is key to promoting innovation and creativity, which are the main drivers of economic development of knowledge-based economies (OECD, 2011; WIPO, 2016). The protection of intellectual property rights also results in better protection of consumers, who buy reliable products, and as such promotes positive contributions by enterprises to consumer interests as recommended by the OECD *Guidelines*.

In Uruguay, the role of intellectual property as a lever of economic growth and a driver of scientific, cultural and social progress has been recognised by the Constitution. Article 33 establishes that intellectual labour and the rights of authors, inventors, or artists be acknowledged and protected by law. The main legal instruments that define the process for protecting and enforcing IPRs include the Act on Patents and Designs (17.164 of 1999), the Trademark Act (17.011 of 1998), and the Act on Copyrights (9.739 of 1937 and its successive modifications by Act 17.616 of 2003 and 17.805 of 2004. Uruguay is a member of the World Intellectual Property Organisation (WIPO) and a signatory of all the most important international treaties in the field, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the World Trade Organisation (WTO), the Paris Convention on Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, both the WCT (WIPO Copyright Treaty) and the WPPT (WIPO Performances and Phonograms Treaty), as well as of the main regional ones (Inter-American Convention on the Rights of the Author in Literary, Scientific and Artistic Works of 1947, Protocol on Uniformity of Powers of Attorney which are to be Utilised Abroad of 1941, and General Inter-American Convention for Trade Mark and Commercial Protection of 1930). In 2019, Uruguayan Parliament also approved the ratification of the Singapore Treaty on the Law on Trademarks of 2006, raising the protection for copyrighted works and related rights from 50 to 70 years.

The central body responsible for granting rights and coordinating the national IP rights system in Uruguay is the National Directorate for Industrial Property in the Ministry of Industry, Energy and Mining (MIEM-DNPI). The National Intellectual Property Network responsible for raising awareness about the role of IPRs and promoting the use of existing instruments was established in 2008. The Network groups government institutions, industry associations, and knowledge institutions. Since 2015, MIEM-DNPI has led the Network. Table 5.1 provides an overview of patent and trademark applications in Uruguay in the 2016-18 period.

Table 5.1. Statistics on patent and trademark applications in Uruguay, 2016-2018

	Patents		
Year	Applications	Granted	Rejections
2016	658	84	44
2017	598	63	30
2018	620	117	64
	Trademarks		
Year	Applications	Granted	Rejections
2016	9177	5418	440
2017	10523	6237	234
2018	10783	6194	221

Source: WIPO, *World Intellectual Property Indicators*

Business consider that the patent-granting process is sometimes unnecessarily slow in Uruguay. According to WIPO statistics, the delays for first office action and final office decision (120 and 144 months, respectively) are indeed longer than for similar countries such as Costa Rica (54 and 60), Estonia (4.5 and 24.5), or Turkey (3.6 and 17.4). Nonetheless, differences between national legislations, as well as in terms of size and population between Uruguay and its peers, make it difficult to compare the delays in obtaining a registry. To increase efficiency, MIEM-DNPI is using information technologies both for the filing and processing of applications and for the accessibility of its databases (e.g. an online form for filing trademark and patent applications and an online database for trademarks and patents accessible worldwide).

Enforcement rules are the procedural complement of substantive protection. Uruguayan law provides for administrative, civil and criminal sanctions for IPR infringement. The enforcement system is comprised of MIEM-DNPI, the Copyright Council, Customs, prosecutors, the police, and civil and criminal courts. Yet, currently there are no IP specialised courts and civil litigation is resolved by Civil Courts, which translates into longer processing times for civil proceedings (EU, 2018). As elsewhere in the world, enforcement of IPRs is also an ongoing challenge. Trading partners have expressed some concerns with regards to IP enforcement and consider it important to closely monitor developments. The European Commission has included Uruguay in a category of medium-risk countries that also includes Israel, Kuwait, Paraguay, South Africa, and the United Arab Emirates.[2] The country is considered a transit gateway for trade in optical, photographic and medical equipment (EC, 2018). The Office of the U.S. Trade Representative (USTR) has acknowledged improvements in the quality of IPRs protection and level of enforcement and removed Uruguay from its Special 301 Watch List in 2006 and from the Notorious Markets Report in 2015. In USTR's Special 301 List submissions, the Consortium for Common Food Names, HBO Latin America, and the Trademark Working Group all raised some concerns related to Uruguay (USTR, 2018).

Dispute resolution

Business access to a well-functioning contract enforcement and dispute settlement mechanisms can help increase predictability and certainty in commercial and investment activities. The national justice system has in this regard a fundamental role to play as underlined in a range of policy tools, literature and research, including from the OECD.[3] In the case of Uruguay, its efficient functioning – in particular relative to the region – has proven fundamental for the competitiveness and development of the economy.

Uruguay offers an increasingly efficient and professional judicial system

In Uruguay, judicial power is vested in regular and specialised courts. Regular courts are municipal courts, county courts and the Supreme Court, Uruguay's highest judicial instance. While there are specialised courts for administrative matters and misdemeanours, commercial courts are limited to bankruptcies,

settlements and tenders. Higher organisms (the Supreme Court of Justice and the Appeal Tribunals) have adopted the collegiate system and the monocratic system operates the lower organisms (Courts and Peace Courts[4]), i.e. a court composed of one judge.

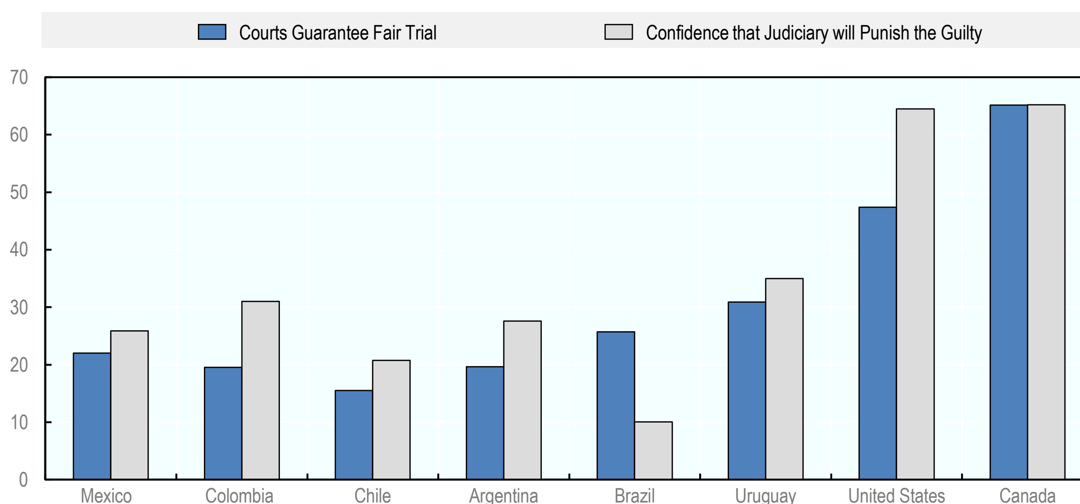
The four major codes have been modernised over time. In particular, in 1989 a general procedural code (*Código General del Proceso*, CGP, Law 15.982) entered into force and marked the transition from a solely written regime to a mostly oral one (Pereira Campos, 2018). The CGP, that rapidly became the continental benchmark, was intended as a unitary code, valid in all justice areas;[5] although the labour process became autonomous in 2009 (Law 18.572, amended by Law 18.847). A major reform also occurred in 2013, as Law No. 19.090 intervened to strengthen the principles and institutions of the mixed proceedings by hearings.

The various reforms have achieved, by and large, their objectives. The burden on judges has diminished, the rate of attendance (by judges, lawyers and the parties) has increased, and the duration of civil cases has been reduced over time. Procedures have been simplified and automated using information and communications technology (ICT), resulting in improved public access and transparency. ICT skills have become part of the in-service training curricula of magistrates in support of greater use of electronic communication in litigation and other proceedings.

As a result, the performance of the justice system has improved significantly over time. Uruguay now has rates of case efficiency for civil, commercial, administrative and other cases comparable with best-performing OECD countries. Important progress has also been made in reducing pending cases, which had plagued the judiciary for many years. In just three years (2013-15), the delay in settling first-instance courts in civil, commercial, and enforcement cases was trimmed by almost two months (from 21 initially), but the progress subsequently diminished.

Figure 5.1. Degree of confidence in the judicial system in Uruguay and selected LAC economies

In %



Source*: Barómetro de las Américas* (2017), available at www.latinobarometro.org

Overall, in international and regional comparison, the judicial system in Uruguay typically ranks well above average. The results from the World Justice Project have been mentioned already. In another report by the *Barómetro de las Américas* (Proyecto de Opinión Pública de América Latina, Lapop), Uruguay is the country in Latin America where the trust in the judiciary is the highest.[6] Still, despite one of the strongest

positions in the region (only after Costa Rica with 49%), in 2018 only 39% of the population had trust in the judiciary. Likewise, according to the World Bank's *Doing Business* report, contract enforcement in domestic courts is an area where Uruguay fares modestly, ranking 100th out of 190 economies, due in particular to bad scores for court automation (1, versus 2.3 in OECD countries) and court structure and proceedings (2, versus 3.6) (World Bank, 2018a). Finally, perception surveys among the population reflect a preoccupation with growing levels of insecurity and criminal activity, which may place further demands on the judicial system (Corporación Latinobarómetro, 2018).

Alternative dispute resolution mechanisms: arbitration and mediation

Encouraging out-of-court settlements has been another priority of the Uruguayan government (Poder Judicial, 2004). Alternative dispute resolution (ADR) schemes have been seen by the authorities as an additional tool to cope with the under-performing judiciary, in particular with regards to small-value commercial cases. Different voluntary mediation or conciliation schemes cover all domains, including commercial, employment, and administrative disputes. The track-record of ADR mechanisms is relatively positive, in particular with the creation of 17 *Centros de Mediación* (six in Montevideo, of which one is specialised in under-age criminal offenders, and 11 in Ciudad de la Costa, Las Piedras, Pando, Florida, Maldonado, San José de Mayo, Salto, Paysandú, Guichón, Rocha, and Mercedes).

Uruguay has long recognised the institution of arbitration as a valid dispute resolution mechanism in its general procedural legislation.[7] The International Procedural Law Treaty was approved in 1889, when Montevideo hosted the first South American Arbitration Congress. In 2018, the Permanent Arbitration Court signed an agreement to make Uruguay one of its host countries.

The 1988 procedural code (the General Procedure Code or “GPC”) included a specific chapter on arbitration and 2013 amendments brought a number of improvements to the field of commercial arbitration.[8] Congress passed the Arbitration Act (Nº 19.636) in mid-2018, almost 14 years after the Executive first sent a draft bill. The Act largely incorporates the 1985 UNCITRAL Model Law on International Commercial Arbitration, with some adjustments that reflect the country’s procedural regulations, long-standing judicial practices and private international law principles. The Act applies, as such, to disputes with an international element – i.e. those where at least one of the parties is a foreign person or legal entity –if the seat is in Uruguay. In addition to domestic arbitration, the Act addresses recognition and enforcement of arbitration rulings, jurisdictional matters and procedures. Once an arbitration decision has been reached, the decision is executed by court order. Arbitration rulings have the force of a final judgment, but can be appealed.

The Center for Mediation and Arbitration-the Court for International Arbitration for MERCOSUR (*Centro de Conciliación y Arbitraje, Corte de Arbitraje Internacional para el MERCOSUR*, CCA-CAI) is the main arbitration institution in Uruguay. It is managed by the Montevideo Trade Exchange and was established in 1853. Arbitration proceedings at CCA-CAI are governed by the 1958 New York Convention, the 1975 *Convención Interamericana sobre Arbitraje Comercial Internacional* (CIDIP-I) and the 1979 *Convención Interamericana sobre Eficacia Extraterritorial de las Sentencias y Laudos Arbitrales Extranjeros* (CIDIP-II), as well as the 1998 MERCOSUR agreements.[9] In addition, the legal basis for mediation has long been established in the Uruguayan Constitution.[10]

Mediation can be conducted in all regular and specialised first and second instance courts in all stages of the proceedings, including during the appeal proceedings. Mediation can also be carried out outside of courts by various mediation centres established at professional associations. Mediation with selected mediators can be conducted outside of these centres. Mediation is initiated on a proposal by one party involved in a dispute accepted by the other party, by a joint motion of both parties, or a proposal by a third party (e.g. a judge in a court proceeding). The procedure for completing mediation is flexible (i.e. according to the Uruguayan authorities, no formal time limits apply upon receipt of the acceptation of the proposal for its launch).

Despite the ample availability of out-of-court methods of dispute resolution, in practice arbitration is primarily used by large companies in international disputes. As far as mediation is concerned, its use in commercial and

civil matters also falls short of expectations. While dealing with a different sets of disputes – principally complaints of the civil society against business– the establishment of an NCP (discussed in Chapter 8) can also support the strengthening of an out-of-court mediation and settlement system.

International investment agreements

Like many countries in the world, Uruguay has taken on international obligations to offer foreign investors specific treatment in international investment agreements (referred to as investment treaties or IIAs), most often in the form of bilateral investment treaties (BITs).[11] These treaties provide stand-alone protections and guarantees to covered investors, in addition to and independently from protections afforded by domestic law. Investment treaties grant these protections only for covered foreign investors as defined in each individual treaty. Domestic investors are in principle not covered by this regime, unless they structure their investment in a fashion that makes them appear as foreign-owned for the purpose of the treaty.

On substance, investment treaties typically guarantee covered investments *relative* treatment standards of non-discrimination – most prominently most-favoured nation (MFN) treatment and national treatment (NT) – as well as *absolute* standards such as protection against "expropriation without compensation" and "fair and equitable treatment" (FET), which do not necessarily have equivalents in protections offered under domestic law. Furthermore, investment treaties typically give covered investors access to investor-state dispute settlement (ISDS) mechanisms to seek damages in cases where they claim the host state has infringed any of these rights; again, domestic law does not typically provide for damages beyond very narrowly defined situations, while it is the default remedy in almost all investment treaties.[12]

The reasons why States have concluded such investment treaties since the late 1950s are debated as part of a recent broad reconsideration of these arrangements in some countries. It is generally held that one of the main reasons that motivated certain countries to conclude investment treaties was their hope to attract foreign investment; capital exporting countries are thought to value these treaties among others to provide additional protections to enterprises operating from their soil – assumptions that are increasingly questioned by a growing strand of empirical literature on the drivers of investment treaty proliferation.[13] Uruguay's past investment treaty policies and practice are in many respects similar to what is observed in many other countries in the world.

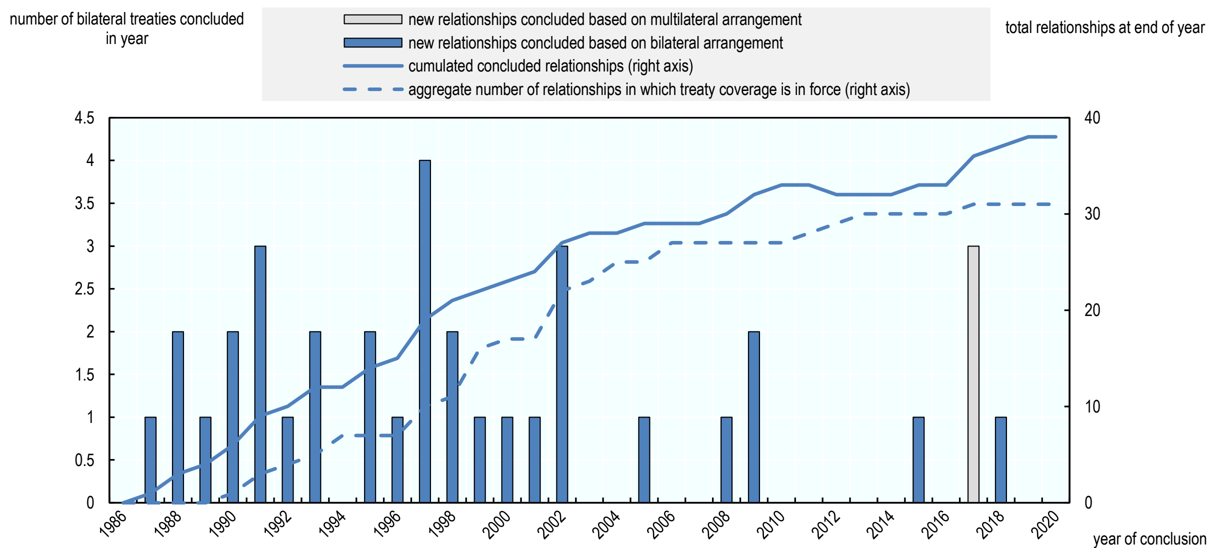
Brief history of Uruguay's investment treaty policies and current trends

Uruguay started concluding investment treaties after its return to democracy in 1985. Within around 30 years, between 1987 and 2019, Uruguay concluded BITs or Preferential Trade Agreements (PTAs) with investment chapters with 34 jurisdictions, predominantly during the second half of the 1980s and in the 1990s. Since then the negotiations strategy has changed – a prior analysis of the country's commercial objectives and investors' interests are taken into account before negotiations are being launched. As such, this has resulted in a more selective and gradual process of negotiations. In particular, Uruguay's more recent negotiations focused on adding treaties with large Asian economies and replacing some older treaties.

In addition to bilateral agreements, Uruguay signed the Intra-MERCOSUR *Investment Protocol on Cooperation and Facilitation* with its MERCOSUR partners Argentina, Brazil and Paraguay in 2017; the Protocol was not in force for Uruguay and Brazil as of January 2020. Also, treaties between the four MERCOSUR members and the European Union as well as with the EFTA Members were successfully concluded in 2019. These agreements include provisions on market access, trade and sustainable development, transparency, intellectual property; and investment liberalisation issues are treated within the services and establishment chapters

As a result of these developments, Uruguay had investment treaty relationships with 32 jurisdictions in effect as of mid-November 2019 (see Figure 5.2).

Figure 5.2. Evolution of Uruguay’s investment treaty relations



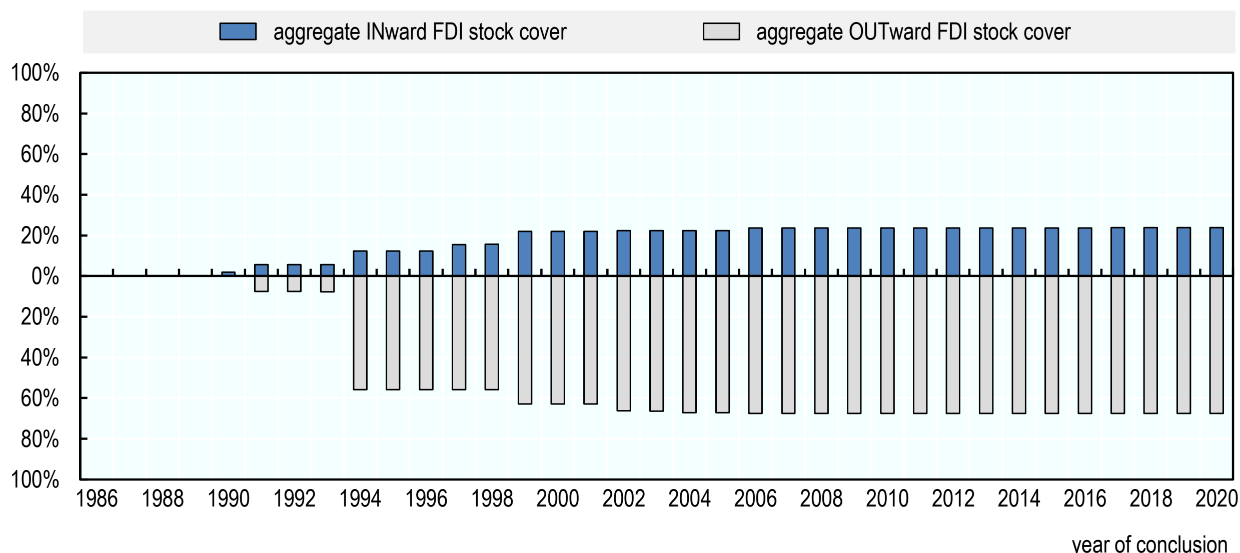
Note: The treaty relationships as of 15 November 2019.
Source: OECD IIA database.

Uruguay has concluded investment treaties with a broad variety of partners on all continents, including large and small and advanced and developing economies. This has led to sizable coverage of its inward and outward FDI stock: as of mid-November 2019, around 65% of Uruguay’s inward and 60% of its outward stock were covered by a treaty in force (see Figure 5.3). Three treaties, all concluded around 1990 and one successfully revised in 2010[14], cover relationships in which sizable foreign direct investment – inward and outward – takes place: for inward FDI stock, these are the treaties with Spain and Chile, while the treaties with Spain and the Netherlands cover the bulk of Uruguay’s outward FDI stock. The entry into force of the MERCOSUR agreement would add significant coverage of FDI, given the importance of the investment relationship with Uruguay’s neighbours Argentina and Brazil.[15]

Government documents reveal that over two decades beginning in the mid-1990s, Uruguay had harboured ambitions – or was approached by other countries – to conclude a much broader network of treaties.[16] Had these plans fully materialised, it would have almost doubled the number of Uruguay’s treaty relationships. The Uruguayan government has stated in the course of this review that it was open to add additional treaties to expand and diversify the sources of its inward FDI. In this context, it is important to consider as potential treaty partners countries that, by virtue of geographical and business considerations, offer realistic prospects of flourishing inward investment.

Uruguay has made its IIAs or related Protocols available to treaty users both through a specific ministerial website and through the official gazette website in Spanish language.[17] The websites feature official information on the existence of investment treaties, additional protocols, and their in-force status. However, no consolidated version of amended treaties is currently made available, and for countries with which Uruguay has more than one treaty, the relationship among those treaties is not clearly established.

Figure 5.3. Approximate evolution of Uruguay's inward and outward FDI stock coverage by international investment treaty cohort



Note*:* The data on the stock of IIAs concluded by Uruguay is as of 15 November 2019. The OECD and IMF FDI stock data are as of 2017 and the most recent values available for the entire time-series are used.
Source*:* OECD International Investment Agreements database as well as the OECD and IMF FDI data

Main features of Uruguay's IIAs

Uruguay's BITs testify to the fast pace at which Uruguay concluded its earlier investment agreements in the 1990s. Such earlier treaties show many of the features associated with "first-generation" treaties concluded by many countries globally in the 1990s, notably a lack of clarity of the meaning of key provisions, absence of rules that most would consider to be essential and that are ubiquitous in a domestic law context, and generous protections favourable to covered investors. At the time, there were serious limitations on the governments' capacity to anticipate the implications and the future interpretation of treaty language.

When agreeing on the treaties, Uruguay has generally accepted the treaty models of its partners, according to information that Uruguayan authorities provided in the course of this review. This approach is common across smaller or emerging economies but can led to some heterogeneity in treaty designs and provisions. Diversity of provisions in IIAs tends to broaden countries' exposure to claims, especially in connection with unspecified most favoured nation (MFN) provisions as currently interpreted by many arbitral tribunals. As Uruguay's treaties systematically grant MFN and many treaties do not specify how MFN is to be interpreted and applied, arbitral tribunals are likely to allow investors to use a treaty that contains the provisions that are most favourable to its specific situation and claim. In this scenario, diversity of treaty provisions tends to harm a defendant state.[18] Most recently, Uruguay has proposed treaty language to its negotiating partners (e.g. China, New Zealand and Colombia) and is ensuring that its key interests are reflected in the negotiated treaty language.

Some of the most central provisions that determine Uruguay's exposure to treaty-based claims and the balance between investor protection and the right to regulate include the "fair and equitable" treatment (FET) clause and the design of investor-state dispute settlement mechanism included in its IIAs.

Fair and equitable treatment clauses

Fair and equitable treatment is at the centre of investment treaty claims and treaty policy; it has been invoked in a great number of cases, and tribunals have often found a breach of this standard.[19] Provisions providing generally for FET have been considered or applied by tribunals in a broad range of claims and there have been widely different interpretations by some arbitral tribunals. Some interpretations of FET are seen as having a significant impact on the right to regulate.[20]

Almost all Uruguayan treaties provide FET to covered foreign investors, the Intra-MERCOSUR Protocol, not yet in force for Uruguay, being the exception.

Up to 2003, Uruguay's treaties included unspecified clauses, i.e. clauses without any further clarifications or conditions attached, while in the following period a majority of treaties refer to a more specific standard. Uruguay's recent treaties tend to clarify the original intent of the contracting parties, either by linking FET to the *minimum standard of treatment under customary international law*, as in the Mexico-Uruguay FTA (2003), or by expressly defining the standard's content through a list of elements, as for example in Korea-Uruguay BIT (2009). This latter design of FET clauses echoes a growing trend to specify FET provisions in treaties (see Box 5.1 for more details).

Box 5.1. Two approaches to specifying and limiting the FET provision

Two important approaches to further specifying the scope of fair and equitable treatment have emerged in the recent treaty practice worldwide:

- Express limitation to the minimum standard of treatment under customary international law (MST): This approach has been used in a number of major recent treaties in Asia and the Americas. A FET provision limited to MST has been repeatedly interpreted under NAFTA. It has been interpreted more narrowly than FET provisions under other treaties. NAFTA governments have also had much greater success than other governments in defending FET claims (UNCTAD, 2012: 61). In addition to the limitation of FET to MST, the Comprehensive and Progressive Trans-Pacific Partnership agreement (CPTPP), which is a largely built on U.S. practice, specifies that the mere fact that government action is not consistent with an investor's expectation does not constitute a breach of FET (Art. 9.6(4). Art. 9.6(3) and (5) contain further specifications).
- Defined lists of elements of FET: Treaties negotiated by the European Union contain a defined list of elements of the FET provision. This approach lists the elements that can constitute a breach of the standard, namely denial of justice, fundamental breach of due process, targeted discrimination on manifestly wrongful grounds, and abusive treatment of investors. While it is a closed list, this approach is broader than some interpretations of MST. Arbitration tribunals cannot add new elements. Only the Parties may agree to add further elements to the list. The article also provides that the tribunal "may take into account" (or "will take into account", in EU-Viet Nam FTA) specific representations that created legitimate expectations. Other defined list approaches are also used. For example, the ASEAN-China Investment Agreement (2009) limits the application of its FET provision to cases of denial of justice (Art. 7).

Both options are more specific than the broad language of treaties that only refer to "fair and equitable" treatment. This does not mean, however, that issues of interpretation may not arise. The content of the minimum standard of treatment, for example, is subject to debate as are a number of elements in the defined EU lists.

Given the centrality of FET to many investor claims and the uncertainty of its meaning, combined with the unspecified design in many of Uruguay's treaties, clarification of government intent could improve predictability for both governments and investors for the treaties that contain unspecified FET clauses. Uruguay may wish to clarify the scope of the FET clause with its treaty partners, including through a renegotiation or amendment; indeed, Uruguayan authorities consulted in this Review confirmed this has been the stance of the government. Yet, it is subject to the willingness to negotiate and eventual approval of the partner country, with which Uruguay wishes to enter an agreement.

Investment dispute settlement mechanisms

Starting in treaties concluded in the 1970s, mechanisms were included for covered investors to bring claims directly against host governments – ISDS mechanisms – for alleged violations of treaty obligations. Such mechanisms had become a near-universal feature of investment treaties by the late 1980s, and OECD research shows that well over 90% of the current global IIA stock provides access to ISDS (Pohl *et al.*, 2012).

With the exceptions of treaties concluded with Saudi Arabia and with its MERCOSUR partners, Uruguay's treaties contain an ISDS mechanism that offers investor-state arbitration (ISA) in addition to or as an alternative to domestic remedies. ISA generally involves *ad hoc* arbitration tribunals selected for each case in an approach derived from international commercial arbitration (Gaukrodger and Gordon, 2012). The disputing parties and arbitration institutions can be involved in the process to select arbitrators. The emphasis is on finality and there are no appeals; arbitrators' decisions are subject only to very limited review.

Proponents of ISA contend that it provides a forum to settle disputes that is independent from both the host state and the investor. However, ISA has been increasingly challenged in recent years for reasons related to the dominance of private lawyers in the pool of investment arbitrators, concerns about inconsistent outcomes, and alleged conflicts of interest and economic incentives among arbitrators and arbitration institutions (Gaukrodger and Gordon, 2012: 43, 58; Gaukrodger, 2017).

Despite some improvement over time, ISA mechanisms in investment treaties are typically barely regulated (Pohl *et al.*, 2012: 39; Gaukrodger and Gordon, 2012) – in stark contrast to procedural rules observed in domestic adjudication in advanced systems of law. Some issues that the treaty does not explicitly address may be regulated by the arbitration rules, but as rules designed for commercial disputes between private parties, they may need adjustment in light of the nature of investment claims. Other issues remain unregulated if the treaties refrain from doing so. For example, in the absence of treaty provisions, ISDS is often rather opaque and lacks a statute of limitations.

When compared to the global average, Uruguay's treaties feature somewhat greater regulatory depth of conditions for and procedures of ISDS. This may reflect the situation that, being a small economy, Uruguay is often a "rules-taker" from larger and more developed negotiating partners, from which it wishes to attract investment. There is, however, a degree of divergence in ISDS provisions within Uruguay's treaty set. For example, only a quarter of Uruguay's 32 treaties which currently provide for ISA have statutes of limitation – clauses that prevent that claims can be brought long after alleged treaty breaches. Statutes of limitation are standard in domestic law systems and have become more and more common in IIAs concluded since 2005. In addition, only 23 of Uruguay's treaties specify on which legal basis tribunals decide cases brought before them, but do not establish a consistent list.

In addition, about half (24) of Uruguay's treaties that provide for ISA offer investors two or even three (the Mexico-Uruguay BIT (1999)) different arbitration fora to choose from. This generous offer allows investors to bring claims under rules that are most beneficial for their specific case. In particular, most of Uruguay's treaties offer access to both ICSID and *ad hoc* tribunals under UNCITRAL rules, which have different regimes in relation to the composition of tribunals, transparency and enforcement.[21]

Treaty use: ISDS claims under Uruguay's investment treaties

Uruguay has some practical experience with treaty-use as a base of investor claims; by mid-November 2019, six claims against Uruguay based on an investment treaty had become known, with the first known claim against Uruguay being filed in 1998. Two treaty claims involving Uruguayan investors against Uruguay's treaty partners – Ecuador and recently Venezuela – are publicly known.

Uruguay has so far been relatively successful in defending against claims. Even before ISDS claims have arisen, the government reports to have reflected on possible changes to its IIA negotiation strategy and treaty language to limit undue exposure to ISDS claims' risk. This reflection, together with a high IIA coverage of potential sources of FDI reached by Uruguay, has led to slower negotiation pace of new treaties in the recent years, described earlier.

Outlook and policy recommendations

Domestic framework for investment protection

Uruguay has a rich past history of reforming its judiciary and a good success rate to bring these reforms into concrete results. The authorities have notably actively worked on the reduction of court backlogs, on digitalisation of the courts and on judicial integrity and professionalism. Overall the changes to the judicial framework go in the right direction: the performance of the justice system has improved significantly and most recent business surveys indicate that the judiciary is perceived as one of the biggest assets when it comes to business conditions in Uruguay compared to other countries in the region.

Against this background, efforts to facilitate arbitration and mediation as mechanisms to settle disputes with the overall purpose of unburdening the judiciary in Uruguay are welcome.

To further improve its dispute settlement mechanisms, Uruguay could consider establishing institutional dispute avoidance mechanisms, such as offering ombudsman services to investors to try to resolve problems before they lead to disputes. Experiences in countries such as Ukraine, which has been operating a Business Ombudsman Council since 2014, or Korea, with its Foreign Investment Ombudsman, suggest that alternative processes may have a potentially powerful role to play (Nicolas *et al.*, 2013; Wehrlé, 2015).

First, such mechanisms can be a stopgap measure to compensate for the shortcomings of the judiciary, and can address issues at an early stage before they become a dispute. They further have the scope to provide quick solutions to companies' grievances by providing businesses with a direct line of communication with a public authority at a high level, by mitigating fears of retaliation by allowing them to report these to an institution that is independent from the agencies they complain about, and by empowering them to become partners with public authorities in advancing their rights and business interests through their involvement in the dispute resolution process. The common denominator among such mechanisms is that they act as redress mechanisms. Their main purpose is to find resolutions of grievances outside the judicial process for reasons such as time and cost saving, informality, and a desire to avoid confrontation (Wehrlé, 2015).

Such mechanisms, which wish to serve the purpose of offering a less formal and quicker way of resolving disputes, should nevertheless not be seen as a substitute for a well-functioning national judiciary (OECD, 2015). While high burdens and backlogs may be reduced through measures aimed at speeding up the resolution of small disputes and the usage of alternative case resolution, a more efficient judiciary can only be achieved by addressing a number of inter-related components such as further simplifying and rationalising regulations dealing with procedural and administrative matters; providing more intensive training for judges in emerging areas of law; improving further the administration of courts; etc. Reforming the judiciary is a challenging undertaking for many governments, including for other middle-income emerging economies.

Investor protection afforded by arrangements based on international law

Uruguay's current investment treaties cover a substantial share of inward and outward investment to and from Uruguay. This scenario entails exposure to potential claims, especially given that the bulk of the treaty-protected stock is covered by Uruguay's older treaties that follow outdated design features with unspecific clauses, and are diverse in design and language. To better balance investor protection with the government's right to regulate, Uruguay could pursue several courses of action.

Higher specification of investment protection provisions would help to better reflect government intent

International practice shows that investment protection standards in older IIAs have often been relatively vague. This vagueness gives investment arbitrators broad discretion to interpret and thereby determine the scope of protection they provide. Many provisions in Uruguay's IIAs – beyond those discussed in some greater detail here – lack specific language to indicate government intent as to their scope and meaning. The government has confirmed that increasing clarity, specificity and consistency in treaty language is its policy objective, and is reflected in its negotiation strategy. Far from signing new treaties, such treaties are negotiated – and the reflection that underpins this process partially explains the slowdown in entering new treaties.

More specific language in investment protection provisions would lead to increased predictability and thereby benefit both investors and governments. The specifications reflect policy choices and also play a crucial role in the quest for balance between investor protection and governments' right to regulate. In some cases, the specifications may affect the degree of protection for covered foreign investors. Policy-makers need to carefully consider the costs and benefits of these choices, and their potential impact on foreign investors and domestic investors, as well as on the host state's legitimate regulatory interests and its exposure to investment claims.

Uruguay has a recent and, for the moment, short history of amending its treaties, and the two amendments (with the Czech Republic and Romania) appear to have been suggested by Uruguay's treaty partners to prepare their EU Membership. These amendments have not led to a more homogeneous treaty set, nor did they bring into place designs that would today be considered sound treaty policy. None of the amendments addressed shortcomings in ISDS provisions or clarified the scope of what FET treatment requires, for instance. The replacement of the treaty with Australia will remedy the situation for this relationship. In turn, the coexistence of the two vastly different treaties in the relationship with Mexico brings exposure without commensurate benefits for Uruguay or Mexico.

Procedural considerations: exit and renegotiation

Given Uruguay's investment treaty features, Uruguay might wish to consider reviewing its existing agreements to ensure that they reflect government intent and sound practices emerging in recent treaty policy. Review and renegotiation of investment treaties takes time, as Uruguay will have experienced during the review of some of its treaties. Also, the option to terminate treaties is not available at all times, as investment treaties' clauses on their temporal validity often place limits on exit (see Box 5.2).

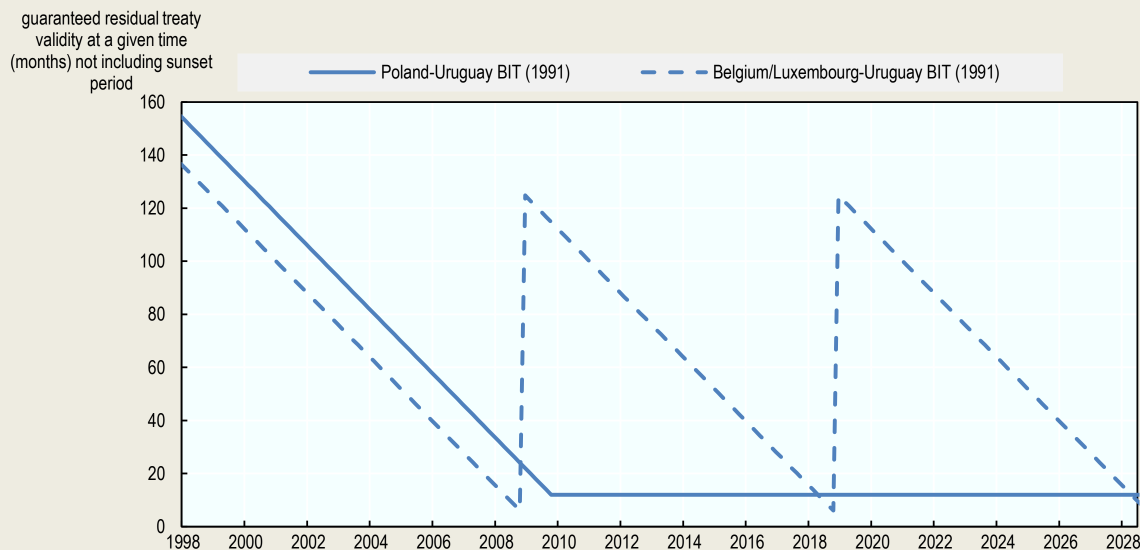
About a third of Uruguay's treaties contain a design of the temporal validity that delay possibilities for unilateral exit from the treaty, a proportion that corresponds roughly to the prevalence of this feature in the global sample. This delay results from automatic extensions for fixed periods. Uruguay is bound by at least one treaty until 2029, and even if it wanted to unilaterally withdraw from the IIA system at the earliest possible occasion, effects of its past treaty policy could bind Uruguay until 2045 (Figure 5.5).

Box 5.2. Designs of temporal validity provisions in IIAs

Unlike most international treaties, which can be denounced at relatively short notice, investment treaties typically contain clauses that extend their temporal validity for significant periods of time. Three designs can be found, often cumulatively in the same agreement: First, most investment treaties set and initial validity period of often 10 years or more, counting from the treaty's entry into force; after that period, many treaties only allow States Parties to denounce the treaty at the end of specific intervals of often 10 years or more; finally, treaty obligations almost universally continue to apply for a "sunset period" after the termination of the treaty, again for periods of typically 10 years or more. Many treaties thus bind the States Parties for at least two decades, and in some extreme cases for up to 50 years.

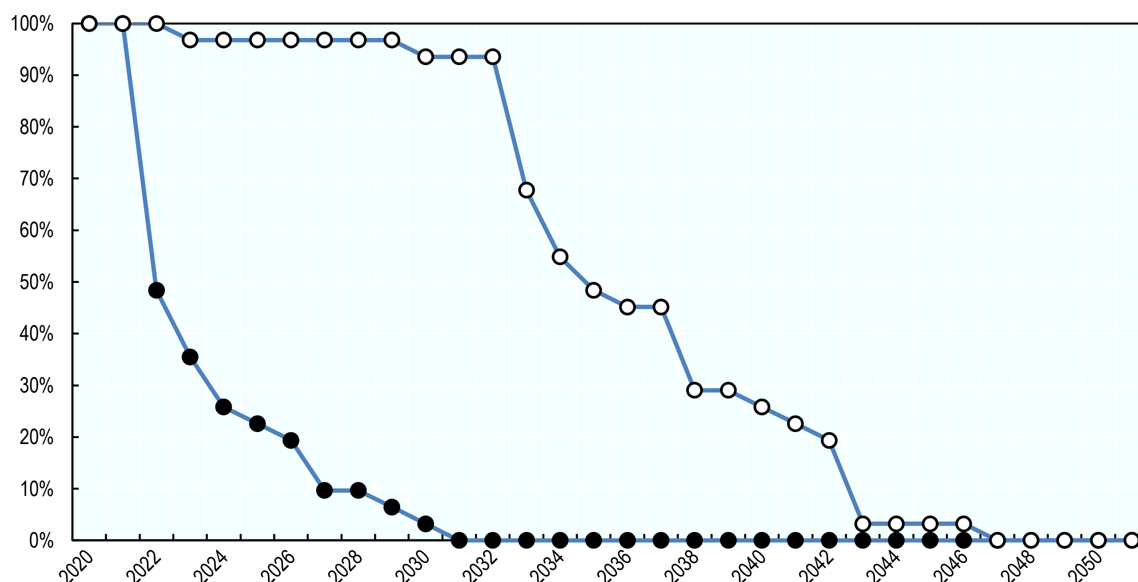
Treaty designs that automatically extend the validity of the treaty for fixed terms are included in around 30% of the global treaty stock, but this design is used less frequently in recent time. This design tends to prolong the period for which States Parties are bound without granting additional benefits in terms of predictability for investors: on the contrary, the oscillating residual treaty validity is hard to grasp and predict without detailed study, and drops to very short residual validity of no more than 6 months (figure below).

Figure 5.4. Different approaches to residual treaty validity



Source: Adapted from Pohl, J. (2013), "Temporal Validity of International Investment Agreements: A Large Sample Survey of Treaty Provisions", *OECD Working Papers on International Investment* 2013/04, **http://dx.doi.org/10.1787/5k3tsjsl5fvh-en**

Figure 5.5. Projection of the temporal validity of Uruguay's investment treaties



Source*:* OECD calculations based on OECD treaty database as of November 2019. Projections based on a hypothetical scenario of unilateral denunciation of all treaties at the earliest possible occasion.

Unilateral exit from treaties is not the only option to address perceived shortcomings. Possibilities for exit may, however, influence how amendments or agreed exits can be negotiated. Uruguay may want, hence, to consider whether the current design of its temporal validity provisions serve its interests and consider adjusting its treaty policy in the context of amendments or renegotiation of existing treaties or in negotiations of future treaties.

Lastly, IIAs are starting to contain language or specific provisions aiming to promote and ensure responsible business conduct (RBC), discussed in more detail in Chapter 9. For example, a survey of treaty provisions in over 2000 IIAs shows that while only 12% of the surveyed IIAs contain references to RBC and/or sustainable development, the frequency of inclusion increases rapidly (OECD, 2014). Broadly speaking, treaties make reference to RBC and sustainable development standards in 9 distinct categories, including preamble references, clauses that discourage lowering standards or require compliance with domestic law, and obligations to have specific legislation in place. Countries differ in their approaches to inclusion of references to RBC, and it is an evolving practice in Uruguay as well (see Box 5.3 and Chapter 9 for a wider discussion of RBC policies in Uruguay).

Box 5.3. Responsible Business Conduct in International Investment Agreements

Investment policy, including through inclusion of specific language and negotiations of relevant provisions, is another policy area through which governments can foster responsible business conduct (RBC). By including related considerations – such as the protection of the environment, the implementation of internationally recognised labour standards, the fight against corruption, and the respect of human rights – in the text of their international investment agreements (IIAs), governments can promote investors' responsible behaviour and their contribution to sustainable development.

As shown in this chapter, to date, Uruguay has concluded more than thirty IIAs to attract and regulate international investment.[1] A study of these IIAs shows that RBC-related language appeared early on in Uruguay's treaty practice. The bilateral investment treaty (BIT) concluded with Canada in 1997 for instance already contained a general exception aimed at preserving policy space for measures designed to protect the environment.[2]

Several IIAs concluded later on by Uruguay include RBC-related language both in their preambles and in the main body of the treaty. The preamble language acknowledges that investment can be promoted without compromising health, security, the environment and/or labour standards.[3] In the same vein, the language included in the body of the IIAs seeks to discourage the loosening of environmental, labour, health and/or security standards and regulations in order to attract investment.[4]

Other IIAs concluded by Uruguay in the recent years (including the latest ones that have not been ratified yet) also contain RBC-related language in their preambles, as well as in their annexes. These annexes provide that, in general, measures taken in order to protect public welfare objectives, such as public health, safety and the environment, do not constitute an indirect expropriation.[5]

Particularly noteworthy is the RBC-related language included in the BIT concluded by Uruguay and Japan in 2015. Besides the preamble and the not lowering standards language mentioned above, this IIA also seeks to preserve policy space for regulating in the public interest and, in particular, for adopting and implementing measures designed to protect the privacy of the individual in relation to the processing and dissemination of personal data and the confidentiality of personal records and accounts.[6] In addition, it establishes the signatories' commitments to take measures and make efforts to prevent and combat corruption in relation to the subject matters covered by the treaty.[7]

1. Government of Uruguay (2019). Ministry of Economy and Finance. Support to the Private Sector Unit. Investment Agreements. Retrieved from: www.unasep.mef.gub.uy/726/8/areas/acuerdos-de-inversiones.html.
2. BIT concluded by Uruguay and Canada on 29 October 1997, Annex 1, Clause III, paragraphs (1) and (2).
3. See, for instance, BIT concluded by Uruguay and the United States of America on 4 November 2005, Preamble. See also BIT concluded by Uruguay and Japan on 26 January 2015, Preamble.
4. See, for instance, BIT concluded by Uruguay and the United States of America on 4 November 2005, Art. 12 and Art. 13. See also BIT concluded by Uruguay and Japan on 26 January 2015, Art. 27.
5. See, for example, BIT concluded by Uruguay and Korea on 1 October 2009, Annex "Expropriation", Clause 3, Paragraph b or BIT concluded by Uruguay and the United Arab Emirates on 24 October 2018, Annex "Expropriation", Clause 4, Paragraph b and the BIT concluded by Uruguay and Australia on 5 April 2019, Annex B "Expropriation", Clause 3, Paragraph b.
6. BIT concluded by Uruguay and Japan on 26 January 2015, Art. 22. For a similar provision, see also the BIT concluded by Uruguay and the United Arab Emirates on 24 October 2018, Art. 18.
7. BIT concluded by Uruguay and Japan on 26 January 2015, Art. 14.

Policy recommendations

Domestic framework

- *Continue the efforts to improve the efficiency of the domestic judicial system:* Considering the importance of effective dispute resolution to favourable business climate as well as the public's perception of well-being, the government should continue efforts to improve the resolution of disputes in the domestic system, including through the creation of specialised courts, the use of out-of-court conflict resolution mechanisms, addressing the existing bottlenecks and a further use of ICT tools.
- *Continue efforts to improve the enforcement of intellectual property rights protection.* Uruguay has made substantial progress in creating a favourable framework for protection of intellectual property rights in the country. Further efforts could focus on enforcement – at the and behind the border*,* building on the progress achieved in recent years.

Investor protections afforded by arrangements based on international law, in particular investment treaties

- *Enhance efforts to manage existing treaties and associated exposure*. The government of Uruguay could consider updating by amendments, clarifications – for example through joint interpretations –, replacing, or if all else fails, terminating by consent or unilateral action investment treaties, especially loosely drafted treaties as those concluded by Uruguay in the 1980s and 1990s, to manage exposure and safeguard the right to regulate in the public interest.
- *Engage in international efforts to balance treaty-based investor protection and associated governance mechanisms*. Uruguay should engage actively in current efforts at international level to balance investor protection and the right to regulate and contribute its experience.

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Notes

[1] Initially the right to private property was described as "sacred and unlimited", with unspecified exceptions for "public usage"; in 1918, the "public utility" provision was added, which is much broader than "out of necessity"; and in 1934, the term "sacred" was dropped.

[2] Priority countries are China (1), Argentina, India, Indonesia, Russia, Turkey and Ukraine (2) and Brazil, Ecuador, Malaysia, Mexico, Philippines, Thailand and the United States (3).

[3] See e.g., the OECD Policy Framework for Investment: 2015 Edition, OECD Publishing, Paris, 2015, and "The Economics of Civil Justice: New Cross-Country Data and Empirics", OECD Economics Department Working Papers, No. 1060, August 2013, ECO/WKP(2013)52.

[4] In Montevideo, the peace court is called conciliation court.

[5] El nuevo proceso por audiencias se aplicó a las materias civil, comercial, laboral, familia, arrendamientos, tributario, contencioso de reparación patrimonial contra el Estado, inconstitucionalidad de la ley, etc. 1

[6] Data kindly provided by Elizabeth J. Zechmeister, Director, Latin American Public Opinion Project (LAPOP), Vanderbilt University.

[7] Noiana Marigo, María Julia Milesi, Santiago Gatica, María Paz Lestido (Freshfields Bruckhaus Deringer), "Tailwind for Arbitration in Uruguay: the Model Law Finally Reaches Safe Harbor", www.arbitrationblog.kluwerarbitration.com/2018/10/28/tailwind-arbitration-uruguay-model-law-finally-reaches-safe-harbor, October 28, 2018.

[8] They included the express recognition, for the first time, of the kompetenz-kompetenz principle (art. 475.2), regulation on preliminary measures granted by a court before arbitration is commenced (art. 488) and the inclusion of some additional grounds for the annulment of an award (art. 499). However, under the GPC, which is still applicable to domestic arbitration in Uruguay, an arbitration clause is not sufficient to submit a dispute to arbitration, and a submission agreement (or compromise) is required once a dispute has arisen. If one of the parties refuses to execute a submission agreement, the other party can request specific performance to a judicial court. This pitfall, coupled with the fact that it is relatively inexpensive to submit a dispute to Uruguayan courts, has traditionally undermined the appeal of arbitration as a dispute resolution mechanism for Uruguayan parties. Other aspects of the GPC's provisions on arbitration are also troublesome. For example, arbitrators must ensure that the parties had a chance to conciliate the dispute before commencing the arbitration proceeding (art. 490). Failure to do so could cause subsequent proceedings to be void. Moreover, by default arbitration proceedings will be decided ex aequo et bono

unless the parties expressly state in the submission agreement that the dispute will be decided by the application of the law (art. 477).

[9] Acuerdos sobre Arbitraje Comercial Internacional (CMC/Decs. 3 y 4/98); Acuerdo sobre Arbitraje Comercial Internacional entre el Mercosur, Bolivia y Chile (CMC/Dec. 4/98); and Acuerdo sobre Arbitraje Comercial Internacional del Mercosur (CMC/Dec. 3/98).

[10] The 1830 Constitution already provided that judges could seek conciliation of lawsuits that a party intends to begin with some exceptions (Art. 107). With some minor changes, this provision has been maintained in more recent versions of the Constitution, including the current one, which states that no suit in a civil matter may be brought without first showing that settlement has been attempted before a Justice of the Peace, save for those exceptions established (Art. 255).

[11] The term IIA covers both stand-alone treaties and investment chapters in broader free trade agreements.

[12] See for more details on this and other differences between domestic systems and the treatment under investment treaties Gaukrodger, D. and K. Gordon (2012), "Investor-State Dispute Settlement: A Scoping Paper for the Investment Policy Community", OECD Working Papers on International Investment, No. 2012/03, https://doi.org/10.1787/5k46b1r85j6f-en.

[13] Pohl, J. (2018), "Societal benefits and costs of International Investment Agreements: A critical review of aspects and available empirical evidence", OECD Working Papers on International Investment, No. 2018/01, www.oe.cd/2ff.

[14] The treaty with Chile was renegotiated in 2009, and signed in 2010. It is an example of a treaty originally signed in 1990s that Uruguay successfully renegotiated to provide greater clarity, transparency and precision in treaty language.

[15] The coverage is assessed based on FDI stock data (2017 or, where 2017 data was unavailable, data of preceding years, giving preference to more recent data, based on data released by OECD and IMF) and IIAs in force in November 2019. For several reasons, reported FDI stock data is not a valid measure for assets that benefit from treaty protections (see Pohl, J. (2018), "Societal benefits and costs of International Investment Agreements: A critical review of aspects and available empirical evidence", OECD Working Papers on International Investment, No. 2018/01, www.oe.cd/2ff for details) and available data does not allow to determine ultimate ownership of assets. The proportions of FDI stock data may nonetheless serve as a rough approximation of stock held by immediate investing country to illustrate features and outcomes of Uruguay's past investment treaty policies.

[16] See, e.g. the document made available online by the Ministry of Economy and Finance: www.mef.gub.uy/innovaportal/file/5328/1/proteccion_de_inversiones.pdf

[17] A list of authoritative treaty texts in Spanish can be retrieved from the website of the Ministry of Economy (specifically Asesoría de Política Comercial, APC), available at: http://www.apc.mef.gub.uy/726/3/areas/acuerdos-de-inversiones.html

[18] A number of arbitral tribunals, beginning with Maffezini v. Spain, Case No. ARB/97/7, have interpreted the MFN clause in a fashion that allowed claimants to import substantive treaty standards from other treaties concluded by the respondent country, despite vigorous objections of such interpretation by certain countries, especially NAFTA-countries. Treaties concluded by the European Union, among others, now clarify the meaning of MFN clauses explicitly, e.g. CETA art. 8.7(4). See OECD (2018), "Background information on treaty shopping" in: Treaty shopping and tools for treaty reform – Agenda and Conference material

[19] According to case analysis covering the period 1997–mid-2019 and made publicly available by UNCTAD, out of 582 cases for which data on alleged breaches was available, investors worldwide have invoked the standard in 482 claims, or 82%, and tribunals have found a breach in 134 cases.

[20] See Gaukrodger, D. (2017), “Addressing the balance of interests in investment treaties: The limitation of fair and equitable treatment provisions to the minimum standard of treatment under customary international law”, OECD Working Papers on International Investment, No. 2017/03, https://doi.org/10.1787/0a62034b-en.

[21] The international community has developed specific institutions and rules to enforce arbitration awards. Uruguay has adhered to the New York Convention and is a contracting state to the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) which has over 150 state parties. The ICSID Convention addresses both the arbitral proceedings and the enforcement of awards rendered under these proceedings. The recognition and enforcement of ICSID awards is governed by the ICSID Convention itself rather than the New York Convention. The ICSID regime is thus more self-contained in this respect. In particular, ICSID awards cannot be reviewed by national courts of the country in which their enforcement is sought. In contrast, the New York Convention permits national courts to refuse the enforcement of awards for, inter alia, reasons of public policy.

6 Tax policy for investment

This chapter describes and assesses corporate taxation in Uruguay with a focus on tax incentives. Tax incentives in Uruguay are used extensively and vary across investments depending on where, when and by whom an investment is made in the country. The chapter first provides an overview on tax revenues and the corporate tax system in Uruguay. It then provides a description and an assessment of the country's tax incentives regime for investment. Two following sections further discuss the use and governance of tax incentives in Uruguay, providing specific policy recommendations on how to enhance the use and governance of tax incentives in alignment with investment and tax policy objectives.

Governments around the world provide corporate tax incentives with the aim of achieving certain policy goals, including attracting investment in specific activities and regions or increasing investment overall. By providing a favourable deviation from a country's general tax treatment, tax incentives reduce or postpone the tax liability of an investor, which can encourage investment in certain circumstances.

However, tax incentives often come at a substantial cost to a country and their use deserves careful monitoring and analysis to understand whether these costs outweigh the benefits. In particular, tax incentives can result in considerable forgone government revenue, i.e. tax revenue that authorities do not collect because business receives preferential tax treatment on investments that it would have made in the absence of the incentive. Furthermore, there are costs from additional administrative and compliance procedures that come along with a fragmented tax code, costs from a distorted allocation of resources that is driven by the incentive, e.g. by treating taxpayers unequally, and costs from an increasingly complex tax system, one that may incentivise business to shift taxable income.

Forgone government revenue is particularly worrisome when tax incentives create little *additional* investment (i.e. investment attracted exclusively by the incentive) and instead are largely redundant. Redundancy refers to tax incentives granted to investment that would have taken place anyway – even without the incentive. For example, an investor may come to a country independently of the tax treatment but thanks to favourable investment conditions in general, or with the objective of gaining access to specific resources or a particular market.[1] In such a situation, granting a tax incentive would be redundant and equivalent to providing a pure windfall profit to business, while creating a loss to the government without additional benefits to the country. It is therefore of paramount importance that governments deciding to offer tax incentives design them in ways that maximise *additionality* and avoid granting incentives that risk large redundancies. Regular monitoring and reporting of tax incentives can support tax policy analysis and reform in this respect.

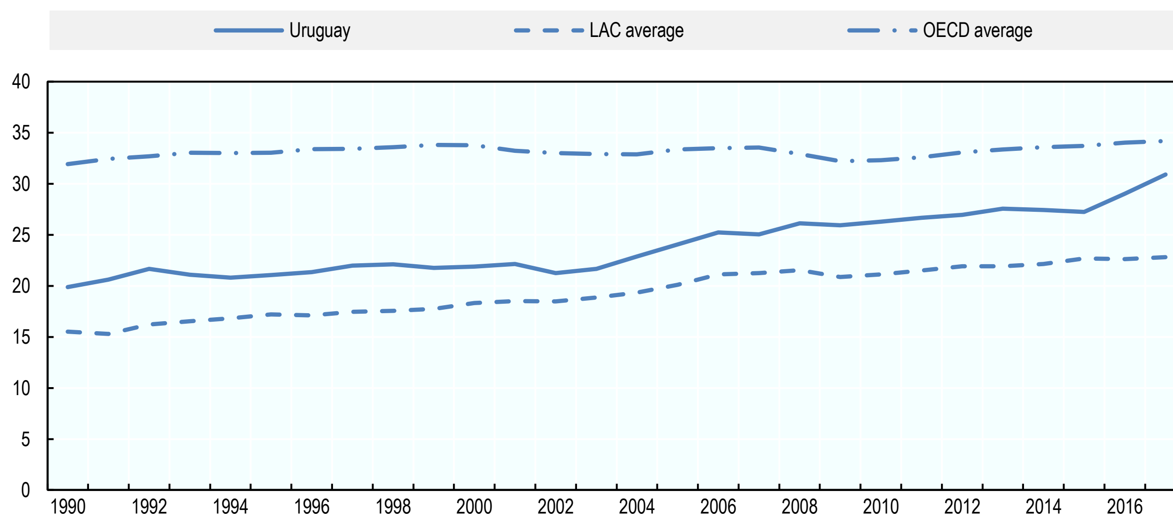
Evaluating whether there are net benefits from tax incentives is of particular importance when public revenue is scarce. Forgone revenue reduces opportunities to spend public funds in other (potentially more productive) ways, e.g. infrastructure, public services such as health and education. Striking the right balance between an efficient, predictable and attractive tax regime for domestic and foreign investment and securing the necessary revenues for public spending and development is important and requires insight into the actual effectiveness of tax incentives for investment (i.e. how much additional investment is generated), how good design fosters effectiveness, and the revenue implications.

This chapter describes and assesses corporate taxation in Uruguay with a focus on tax incentives. Tax incentives in Uruguay are used extensively and vary significantly across investments depending on where, when and by whom an investment is made. The chapter first provides an overview on tax revenues (Section 1) and the corporate tax system in Uruguay (Section 2), before turning towards a description and an assessment of the country's tax incentives regime for investment (Section 3). Sections 4 and 5 further discuss the use and governance of tax incentives in Uruguay, with each of these sections providing specific policy recommendations on how to enhance the use and governance of tax incentives in alignment with investment and tax policy objectives. Section 6 highlights the key recommendations.

Tax revenue in Uruguay

Tax revenue expressed as a percentage of GDP is higher in Uruguay than in the Latin America and the Caribbean (LAC) region on average (Figure 6.1). Total tax revenue in Uruguay increased from 20% of GDP in the 1990s to 31% of GDP in 2017, thereby approaching the OECD average, which stands at 34%.

Figure 6.1. Total tax revenue in Uruguay compared to OECD and LAC averages, 1990-2017



Note*:* LAC = Latin America and the Caribbean countries; The LAC average represents the unweighted average of 24 Latin American and Caribbean countries included in the OECD Global Revenue Statistics Database (OECD, 2018[1]). (Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago and Uruguay). It excludes Venezuela due to data availability. The OECD average represents the unweighted average for OECD member countries.
Source*:* OECD Revenue Statistics in Latin America and the Caribbean 2019 (OECD et al., 2019[2]).

The Uruguayan tax system has undergone several reforms in recent years. In particular, it was substantially reformed in 2007 (Law 18,083) and tax revenues as a share of GDP have increased considerably since then. The reform rationalised the tax structure (eliminating 15 tax types), reduced standard valued added tax (VAT) rates, introduced the personal income tax (IRPF) and the non-resident income tax (IRNR) and modified the corporate income tax, creating a new tax (IRAE). It reformed the tax administration and strengthened the coordination with the social security agency. Smaller changes in 2008, 2014, and 2016 further modified corporate tax provisions. For example, in 2014, new provisions reduced the standard VAT rate to 20% for payments with debit cards and other electronic means of payment. These measures, together with the provision of free bank accounts and debit cards for all workers, pensioners and beneficiaries of social plans, and the requirement to use bank deposits for paying wages, increased formalisation substantially.

Taxes on goods and services and social security contributions (SSCs) represented the largest source of tax revenue in Uruguay in 2017 (Table 6.1). Taxes on goods and services, including VAT accounted for 37.2% of Uruguay's total tax revenue, while SSCs represented 31.2%. Revenues from the personal income tax (PIT) and the corporate income tax (CIT) amounted to 24.4% of total revenues and property taxes to 6.8% (amongst which the corporate net wealth tax accounts for 3.1% of total tax revenue).

Over time, Uruguay's tax structure has remained fairly stable, with the main change arising in 2007 with the introduction of the PIT (Figure 6.2). From that date onwards, PIT revenues have constantly increased as a share of total taxation at the expense of other taxes on goods and services. CIT revenues, in particular, have remained stable in the last twenty years, representing around 10% of total taxation.

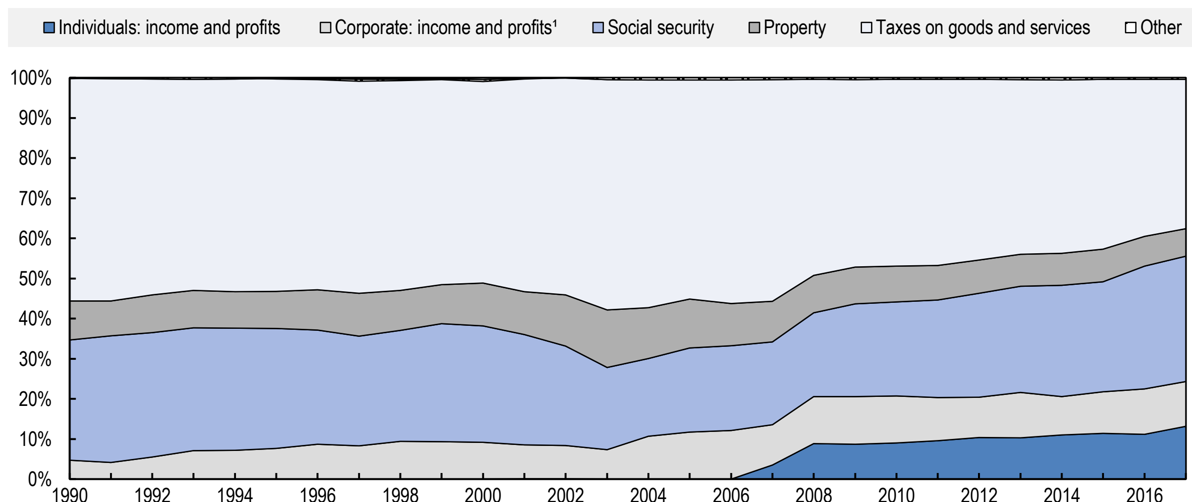
Table 6.1. Composition of tax revenue in Uruguay, 2017

	Tax revenue (as % of total tax revenue)
Taxes on income, profits and capital gains	24.4
Individuals: Taxes on income, profits and capital gains	13.1
Corporate: Taxes on income, profits and capital gains	10.2
Other profit taxes	1.0
Social security contributions	31.2
Property taxes	6.8
Taxes on goods and services	37.2
Value added tax	24.7
Other taxes on goods and services	12.5
Other	0.4

Source*:* OECD Revenue Statistics in Latin America and the Caribbean 2019 (OECD et al., 2019[2]).

Figure 6.2. Composition of tax revenue in Uruguay, 1990-2017

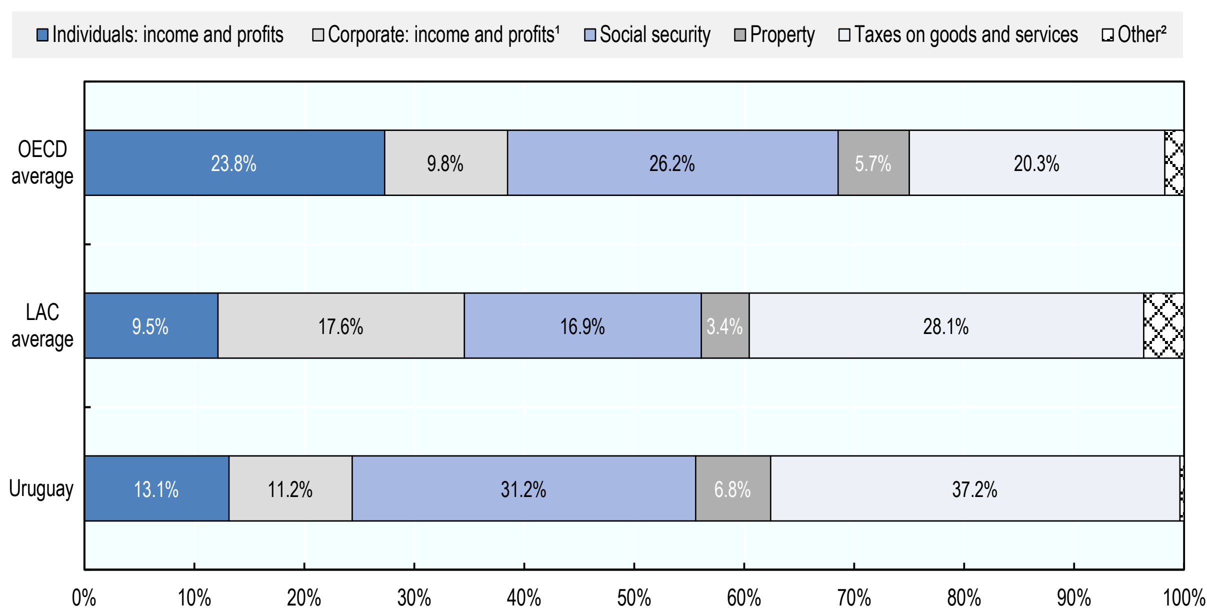
(as a % of total tax revenue)



1. includes "other profit taxes"
Source*:* OECD Revenue Statistics in Latin America and the Caribbean 2019 (OECD et al., 2019[2]).

Uruguay's tax structure partly resembles the LAC and OECD averages, respectively (Figure 6.3). The reliance on revenues from VAT and other consumption taxes in Uruguay aligns with the LAC region on average. On the other hand, the prevalence of revenues from SSCs and the relatively low weight of revenues from corporate income tax bears resemblance with the tax structure across the average OECD country. Generally, SSCs are highest in OECD countries when compared to other regions in the world (Modica, Laudage and Harding, 2018[3]). Revenues from SSCs in Uruguay are particularly high even by OECD standards. The personal income share of tax revenue is relatively small in Uruguay and the average LAC country compared to the OECD average.

Figure 6.3. Composition of tax revenue in Uruguay, LAC and OECD, 2016



Note*:* LAC = Latin America and the Caribbean countries; The LAC average represents the unweighted average of 24 Latin American and Caribbean countries included in the OECD Global Revenue Statistics Database (OECD, 2018[1]). (Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago and Uruguay). It excludes Venezuela due to data availability. The OECD average represents the unweighted average for OECD member countries.

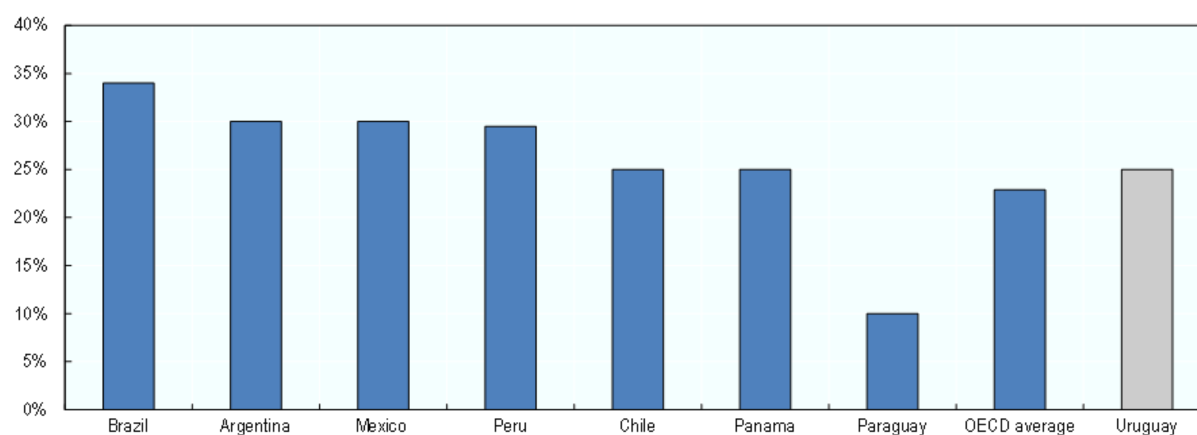
1. includes "other profit taxes"
2. includes "payroll taxes"

Source*:* OECD Revenue Statistics in Latin America and the Caribbean 2019 (OECD et al., 2019[2]).

Corporate tax system

The main corporate tax provisions in Uruguay are summarised in Table 6.2.

Figure 6.4. Standard corporate income tax rates across LAC countries



Note*:* LAC = Latin America and the Caribbean countries;

Source*:* OECD Corporate Tax Statistics Database

Table 6.2. Summary of main corporate tax provisions

Corporate income tax	
Standard rate	25%
Loss carry-forward[1]	5 years
Loss carry-back	No
Capital gains	Treated as ordinary business income
Depreciation[2]	Straight-line method
Branch profit tax	Same as resident companies
Withholding tax	
Standard rate	12%
Interest (sovereign bonds, certain deposits, long-term participation certificates issued by financial trusts through local stock exchange)	0-7% (with the exact rate depending on the instrument)
Dividends and profits from income subject to CIT at corporate level	7%
Notional dividends and profits (generated more than 3 years before)	7%
Income paid to residents in a low or no tax jurisdiction	25%
Net wealth tax	
Standard rate	1.5%
Financial institutions	2.8%
Entities in low or no tax jurisdictions	3%
Property transfer tax[3]	4%

1. As of 1 January 2017, companies can offset only 50% of their taxable income against net operating losses.
2. For urban and rural buildings, the rates are 2% and 3%, respectively. First-hand vehicles depreciate over a period of no less than 10 years.
3. Real estate sales trigger a property-transfer tax that levies a 4% rate on the real value of property. Both the seller and buyer (2% buyer, 2% seller) pay the tax.
Source*:* Texto Ordenado 1996.

Corporate income tax

Corporate income tax (Impuesto a las Rentas de las Actividades Económicas, IRAE) is levied on income generated in Uruguay both from resident legal entities and permanent establishments of non-resident entities (territorial system).

The standard CIT rate in Uruguay (25%) is higher than the OECD average (21.9%) but is lower than some of its key neighbouring countries: Argentina and Brazil at 30% and 34% respectively (Figure 6.4). However, Paraguay's standard CIT rate is significantly lower (10%).

While dividends and profit distributions are not subject to tax at the resident corporate level, resident and non-resident individuals are subject to IRPF or IRNR, respectively, when receiving dividends and profits by companies subject to CIT.

Certain expenses are deductible from corporate tax only if the other party to the transaction is subject to CIT, IRPF, IRNR, or a foreign tax (Art. 19, Title 4 Texto Ordenado 1996, CIT Law). This rule informally named the "lock rule" aims at deterring avoidance. Deductions include interest payments, taxes (other than CIT and net wealth tax) and certain losses. If expenses constitute a capital gain to a person subject to IRPF (Cat 1) or IRNR, the allowed amount of the deduction is 48% (i.e. the quotient of the maximum tax applicable to capital gains to the standard CIT rate, 12/25). If expenses represent a capital gain to a person also liable under the PIT abroad, the deduction will be 100% in cases where the effective tax rate is larger or equal to 25%. The deduction will be proportional [e.g., calculated as (12 + Foreign Income tax rate) / 25] in cases where the effective tax rate is below 25%.

Taxation of small- and medium-sized enterprises (SMEs)

Companies with gross sales lower than 4 million indexed units[2] (approximately USD 480 000) can choose to be taxed by presumed or real income. The presumptive tax is levied on gross income depending on the company's level of sales. Companies with gross sales lower than 305 000 indexed units (approximately USD 36 000), with certain exceptions, are exempt from CIT, net wealth tax (IP) and VAT and pay a monthly flat tax of UYU 3 680 (approximately USD 105) named "minimum VAT". Half of the OECD countries levy a reduced CIT rate for SMEs, reducing country's CIT rates on average by approximately 4 percentage points. Nonetheless, it should be noted that size-based tax preferences may impede firm growth as they provide companies with an incentive to remain below the threshold in order to continue benefiting from such targeted regime (OECD, 2017[4]).

Special taxation regimes by sector

Certain sectors, e.g. educational and cultural institutions and software production, are fully exempt from corporate tax. Companies in the agriculture and livestock sector earning a gross income below 2 million indexed units (approximately USD 240 000) may choose to pay Impuesto a la Enajenación de Bienes Agropecuarios (IMEBA) instead of CIT. IMEBA is a presumptive tax that levies on the first sale of the produced goods at a rate ranging from 1.5 to 2.5% depending on the type of good. Research and development in biotechnology and software are also exempt from CIT with some restrictions (Art. 247, Law 19,535). Independent workers may be subject to CIT rather than PIT if their earnings exceed 4 million indexed units (approximately USD 480 000) or if they opt to pay CIT instead of PIT.

Net wealth tax

The net wealth tax (Impuesto al Patrimonio, IP) applies to assets of companies that are subject to CIT. All property located in Uruguay for business purposes is subject to this tax. The tax base is defined as the difference between taxable assets and deductible liabilities (debt with local financial institutions, local commercial debt, and debt in the form of bonds). Assets held abroad by domestic residents are not subject to net wealth tax in Uruguay. However, only the amount of liabilities that exceeds the value of those assets constitutes a deductible liability (Art. 13, Titulo 14, Texto Ordenado 1996).

The standard rate of the net wealth tax is 1.5%, while a rate of 2.8% is applied to financial institutions and 3% to entities in low or no tax jurisdictions (listed in Decree 56/009) holding assets in Uruguay.

There is a specific regime for companies in the agriculture sector. Net wealth in agriculture is exempt if assets are less than 12 million indexed units (approximately USD 1.4 million). Assets in the agriculture sector that exceed 30 million indexed units (approximately USD 3.5 million) pay a surtax ranging from 0.75% to 1.5% (depending on the value of the assets).

Withholding tax

The standard withholding tax rate on Uruguayan-sourced income is 12%.[3] A reduced rate of 7% applies to dividends from income subject to CIT in Uruguay. The withholding tax rate on interest payments ranges from zero to 12% depending on the asset. Since March 2017, notional dividends have been subject to a 7% withholding tax. Royalties paid to non-residents are subject to the standard withholding tax rate of 12%. A 25% withholding tax applies to residents in a low or no tax jurisdiction. Currently, Uruguay has 21 bilateral double taxation treaties in force. These treaties may lower the withholding tax rates on dividends and interest payments to non-residents and may vary across partner countries.

Given Uruguay's territorial regime, tax is levied only on income sourced in Uruguay. In the past years, some foreign income started to be subject to taxation. In fact, technical services (defined as services in the fields of management, technical, administration, or advice of any kind) provided by non-residents

outside Uruguay to a local user that are associated with taxable income of the local user in Uruguay, are considered to be Uruguayan-sourced and subject to withholding tax. The application of Uruguay's bilateral tax treaties may affect the taxation of technical services by non-residents.[4]

International taxation

Uruguay has implemented several features to protect the domestic tax base from cross-border tax minimisation strategies by multinational enterprises (MNEs), but it is advisable to further extend these efforts and the effectiveness of recent measures should be carefully monitored.

To combat aggressive tax planning, the Uruguayan tax authorities have been closely collaborating with the OECD and other key partners. For example, Uruguay is a member of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), which is monitoring the implementation of the four BEPS minimum standards and completing the work on remaining BEPS issues.

In recent years, Uruguay has amended those preferential regimes providing benefits to geographically mobile business income that were reviewed by the Forum on Harmful Tax Practices (FHTP) as presenting harmful features against the FHTP standards. Preferential regimes have been either abolished5 or amended to comply with the BEPS Action 5 minimum standard6 (OECD, 2019[5]). Next steps within the FHTP include the monitoring of the substantial activities requirements in respect of non-IP regimes7 and grandfathered non-IP regimes8. In this context, Uruguay is invited to ensure the effective implementation of the standards agreed by the FHTP, in particular the substantial activities requirements.

Monitoring the substantial activities requirements of non-IP regimes will ensure that the regimes continue to operate consistently with the legislative framework that forms the basis of the FHTP findings. These include, for example, reviewing taxpayer compliance as well as relevant statistical data, including aggregate numbers of employees and income benefitting from the regime, and denying tax benefits if substantial activities requirements are not met.

Monitoring grandfathered non-IP regimes will ensure that jurisdictions are enforcing and implementing their grandfathering provisions in an effective way. In particular, authorities should collect additional information. This information should include a description of the mechanisms that ensure new entrants (i.e. new taxpayers and new assets or activities) entering the regime after the cut-off date (16 October 2017) are not benefiting from grandfathering and that benefits are not granted to those entitled to benefit from grandfathering after the end of the grandfathering period (30 June 2021).

Recent updates of domestic legislation and regulations (Law 19,484 and Decree 353/018) incorporate the BEPS Action 13 recommendations (OECD, 2015[6]) into the Uruguayan transfer pricing rules. Recent regulation (Resolution 94/019) establishes filing and notification obligations and deadlines regarding country-by-country (CbC) reporting as well as content mostly in line with BEPS Action 13. The law requires multinational enterprises to file CbC reports with the Uruguayan tax authority for fiscal years starting as of 2017. It should be pointed out that the local filing requirements remain wider than required under the Action 13 minimum standard and it is recommended that these regulations are brought fully in line with the BEPS Action 13 minimum standard and terms of reference for the peer review process.

The treatment of interest expense may be an area for review. Although Uruguay has a rule (the "lock rule" referred to above) that implies proportional deductions for expenditure, including interest, it currently has no general interest limitation rules. In line with the best practice recommendations of BEPS Action 4 (OECD, 2015[7]; OECD, 2016[8]), legislation could be implemented that limits the amount of deductible interest expense of an entity to an amount based on its economic activity.

The recommended approach in BEPS Action 4 is to limit net interest expense to a fixed percentage (set within a recommended corridor of 10% to 30%) of its level of economic activity within the jurisdiction measured as earnings before interest, taxes, depreciation, and amortisation (EBITDA). Such a rule could

be supported by a group ratio rule to restrict the amount of disallowed interest in situations where the worldwide group is comparatively highly leveraged, as well as introducing targeted rules to address specific base erosion concerns arising in the context of interest expenditure.

Uruguay deposited its instrument of ratification for the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (MLI) on 6 February 2020. The MLI entered into force on 1 June 2020.

In 2020, Uruguay modified requirements linked to acquiring fiscal residence in Uruguay. Since 2007 and up to 2020, an individual could become a tax resident in Uruguay either proving presence in the country for more than 183 days or proving that the base of his/her economic or vital interests were located in Uruguayan territory. An individual could also become tax resident by making a significant investment in Uruguay. In 2020, decree 163/020 and laws 19 904 and 19 937 introduced a new definition of a tax resident that has the aim of attracting investment to Uruguay. As of July 2020, an individual can become a tax resident in Uruguay if he/she remains in the country at least 60 days per year and invests in immovable property at above 3.5 million indexed units (approximately USD 370 000) or if he/she invests 15 million indexed units in a company creating at least 15 full-time jobs.

The new provisions also significantly reduce the tax treatment of the new tax residents under the personal income tax regarding passive income earned abroad, thereby increasing incentives to acquire fiscal residence in Uruguay. Individuals that became tax residents in Uruguay between 2007 and 2020 were given the option to enjoy a 5-year tax holiday on capital gains earned abroad under non-resident income tax (IRNR) instead of paying the standard personal income tax on this income (IRPF). As of 2020, following laws 19 904 and 19 937, new tax residents can choose whether to be taxed under the non-resident income tax (IRNR), enjoying a more generous tax holidays for 10 years on capital income earned abroad, or to be taxed under the personal income tax (IRPF), enjoying an unlimited reduced rate of 7% (instead of the standard 12%) on capital gains earned abroad .

The change in requirements to acquire fiscal residence may have two noteworthy implications in terms of tax treaties. First, an individual may be considered as being a tax resident of Uruguay and another country at the same time, and could thus be taxed as a tax resident of those two countries without relief from double taxation. If Uruguay and the second country have concluded a bilateral tax treaty based on the OECD or UN Model Tax Convention, the individual would be subject to the tie-breaker rule in the treaty (which is likely to be based on Article 4 of the OECD or UN Model Tax Convention).[9] The treaty and tie-breaker rule could then generally break the tie in favour of the other country – and not Uruguay.

Second, an individual that will be considered as being a tax resident in Uruguay could take advantage of the bilateral tax treaties concluded by Uruguay and could be entitled to treaty benefits with respect to income he/she earned from sources in third countries with which Uruguay has a treaty in force. Concerns could be raised with respect to persons that would only seek to become a tax resident of Uruguay in order to get treaty benefits with respect to the income he/she would earn in those third countries.[10] Such behaviour could undermine the tax base of those third countries as a person would be claiming treaty benefits in situations where these benefits were not necessarily intended to be granted.

Third countries that may have concerns related to such behaviour could consider to add anti-abuse measures in their tax treaties with Uruguay. The BEPS Action 6 Report (OECD, 2015[9]) sets out one of the four BEPS minimum standards, which is that members of the BEPS Inclusive Framework commit to include in their tax treaties provisions dealing with treaty shopping to ensure a minimum level of protection against treaty abuse. Progress on the implementation of the Action 6 minimum standard follows a peer review process (OECD, 2020[10]).

Tax incentives for investment: description and assessment

Uruguay relies significantly on tax incentives as a means to attract investment. It relies upon a number of different regimes that range from general benefits that are automatically available, a more generous scheme (COMAP regime) that requires submission and approval of an investment project by the government and even more generous tax treatment of projects established in free zones and free ports. This section discusses the design of these different incentives and closes with an evaluation and recommendations.

Tax incentives for investment prescribed in the Corporate Tax Law

The CIT regime (Texto Ordenado 1996) grants companies with turnover below UI 4.000.000 the right to deduct immediately 40% of qualifying capital expenditure in machinery, equipment, agricultural inputs and fertilisers, among others. In addition, companies can deduct 20% of qualifying capital expenditure for construction of buildings for touristic, industrial or agricultural purposes. The deduction is limited to 40% of the company's annual net income once other deductions are applied and can be carried forward for the following two years.[11]

Tax incentives prescribed in the Investment Promotion Law

In 1998, the Investment Promotion Law (Law 16,906) declares of national interest the promotion and protection of investment and establishes an equal treatment of foreign and national investors. The law defines two types of tax incentives: general and specific incentives.

General incentives

Companies subject to CIT or IMEBA, which develop industrial or agricultural activities and invest in movable goods used in the production cycle, automatically benefit from the following incentives:

- Exemption from the net wealth tax for the whole lifecycle of the movable good.
- Exemption from VAT and excise tax (IMESI) if the good is imported.
- Reimbursement of VAT for goods purchased locally.

These benefits are compatible with the general benefit in the CIT Law. Since 2014, these benefits have been restricted to SMEs.

Specific incentives (the COMAP regime)

The COMAP regime describes a specific incentive scheme for investment under the Investment Promotion Law that is not automatically granted, but involves a project-based evaluation by the Uruguayan authorities based on a set of eligibility criteria and involving the calculation of a score that triggers a specific credit amount. While the Investment Promotion Law creates the COMAP regime, Ministerial decrees describe its implementation, application and administration details.

Since 2007, the COMAP regime has become significantly more generous and the list of eligible activities has been expanded. In addition, modifications in the allocation mechanism increased transparency in the application and allocation compared to the previous procedure, which assigned incentives by decree. The regime was further revised in 2012 and 2018 seeking a greater impact for the sectors of development and innovation and trying to reduce incentives granted to redundant investment i.e. investment that would have occurred without the incentive (Decrees 455/007, 02/012, 143/018).[12]

Benefits under the COMAP regime consist of:

- CIT credits that range from 20% to 100% of new capital expenditures depending on the nature and size of the project. The amount of the tax credit and period in which it can be used depend on a score obtained through a scoring matrix that is described in more detail in Table 6.3.
- Exemption from net wealth tax: Movable goods benefit from an unlimited exemption, while construction projects are exempt for eight years in Montevideo and for 10 years in the rest of the country.
- VAT returns for the local purchase of goods or services for construction projects.
- Exemption from import tariffs and VAT for movable goods and construction material that does not compete with the national industry.

To obtain these incentives companies must submit a project to the Private Sector Support Unit (UnASeP) in the Ministry of Economy and Finance. The Investment Law Application Commission (COMAP) will subsequently evaluate the project according to several principles and eligibility criteria.

Activities are eligible for the COMAP regime if declared as *promoted activities* by the government (Art. 11, Law 16,906) and include industry, construction, tourism, retail, and generation of non-traditional renewable energies, and public-private partnerships, among others. COMAP evaluates projects based on a predefined scoring matrix that establishes how well they satisfy different policy objectives, namely: employment, decentralisation, exports, clean technologies, research and development, and investment in certain sectors of activity.

Companies that submit a project to UnASeP select one or more objectives to which their investment project contributes (column 1 in Table 6.3) COMAP evaluates the investment projects by calculating a weighted score (0-10 points) based on indicators that are associated with each objective as described in column 2 of Table 6.3 (weights are specified in column 3). Projects that accumulate at least 1 point in the weighted sum and 0.5 points in the sum of the Employment, Exports, Clean Technology, Research Development and Innovation and Sectoral indicators will be evaluated further. If the project satisfies these requirements, it receives a minimum corporate tax credit of 20%. The exact percentage of the tax credit is determined by the following formula:

$$Tax\ credit = \frac{(score - 1)}{9} \times 80\% + 20\%$$

Table 6.3. COMAP regime scoring matrix

Scoring matrix according to Decree 143/018

Objectives	Indicator	Weight	Score
Employment generation[1]	$Incremental\ employment/[EIUI^{1/2}]$	40%	0 - 10
Decentralisation	Investments implemented outside the province capital receives a score of • 10 for the provinces of Artigas, Cerro Largo, Salto, Durazno, Tacuarembó, Rivera, Treinta y Tres y Paysandú (and 9 within the provincial capital). • 8 for the provinces of Lavalleja, Soriano, Rocha, Florida, Canelones, Río Negro, San José, Flores, Colonia and Maldonado (and 6 within the provincial capital). If more than one province is concerned, the score is weighted by the percentage of investment in each province.	15%	0 - 10
Exports	$(Increase\ in\ export)\ /\ [0.2(\ [\![EIUS]\!]\ \hat{}(2\ /\ 3))]$	10%	0 - 10
Clean technology	$((Clean\ technology)\ /\ (Total\ investment))\ /\ 0.05$	20%	0 - 10
Research, development and innovation	$(RDI\ /\ (Total\ investment))\ /\ 0.05$	25%	0 - 10
Sectoral indicators[2]		20%	0 - 10
Financial markets: equity	1 point for each 10% of capital expenditures financed via equity that is issued through the local stock market (max 10 points)		0 - 10
Financial markets: debt	1 point for each 5% of capital expenditures financed via debt that is issued through the local financial market (max 5 points)		0 - 5
Cutting edge renewable energy	1 point for each 10% of capital expenditures invested in geothermal power, wave power, tidal power, concentrated solar power		

Objectives	Indicator	Weight	Score
All sectors: skills[3]	Skill formation: $(0.5 \times Trained\ workers) / \sqrt{(EI_UI)}$		
All sectors[4]	Differentiation of products and processes: 3 points if certificates are obtained		0 - 3
Tourism[5]	Services & infrastructure: $(Additional\ infrastructure) / (EIUS \times 0.1)$		
Tourism[5]	Green building LEED certification (LEED certificate = 4 points; LEED certificate Silver = 6 points; LEED certificate Gold = 8 points; LEED certificate Platinum = 10 points)		0 - 10
Livestock, agriculture & fisheries[6]	Adaptation to climate change: 1 point for each 10% of capital expenditures invested in adaptation to climate change		0 - 10
Livestock, agriculture & fisheries[6]	Differentiation of products and processes: 3 points if certificates are obtained		0 - 3
Industry[7]	Technological level of the product[8] (Primary products = 0 points, Goods based on natural resources = 2 points, Goods low technological level = 4 points, Goods medium technological level = 7 points, Goods high technological level = 10 points)		0 - 10
Industry[7]	Strategic sectors and technologies: • 10 points to: biotechnology, electronics, pharmaceutical, nanotechnology, data science and machine learning, additive manufacturing, audiovisual and mechanic transformation of wood • 1 point for each 5% of capital expenditures invested in new technologies in biotechnology, electronics, nanotechnology data science and machine learning, design of products and industrial processes, additive manufacturing and mechatronics		0 - 10
Industry[7]	National industry stamp[9] (Stamp A = 10 points, Stamp B = 8 points, Stamp C = 6 points)		0 - 10

1. *EIUI* = Eligible investment (announced investment) expressed in indexed units. *Incremental employment* refers to the increase in the number of full-time employees relative to the average number of employees in the previous year. An additional 0.25 employee is considered for each employment satisfying one of the following criteria: women, younger than 25 years, handicapped, rural worker.
2. Companies that choose the sectoral indicators for their evaluation need also to receive a score in the general objectives, e.g. the first five indicators.
3. Companies that choose the skills indicator for their evaluation need to ensure that a minimum of 20% of the original staff receives training as well as all newly employed workers. The course must last a minimum of 60h.
4. The Ministry of Finance (MEF) assesses projects in Retail and Commerce.
5. The Ministry of Tourism (MINTUR) assesses projects in Tourism.
6. The Ministry of Livestock, Agriculture and Fisheries (MGAP) assesses projects.
7. The Ministry of Industry, Energy and Mining (MIEM) assesses projects in Industry.
8. If the investment project is not solely concentrated on the elaboration of certain goods, a weight based on the investment's importance in the whole investment project applies.
9. Stamp that helps identify products of Uruguayan origin in supermarkets.

The total tax credit granted is limited to 100% of the amount of the effective capital expenditures.[13] In addition, the annual credit is limited to 60% of the annual CIT liability based on the company's actual net income. Projects submitted by newly established companies, benefit from an annual limit of 80%.

The period in which the tax credit can be used is determined according to the following rules, but must always exceed three years[14]:

$$New\ company = 2 \times (Tax\ credit\ as\ a\ \%\ of\ announced\ capital\ expenditure) \times [8 + (Capital\ expenditure\ in\ million\ UI)1/5]$$

$$Existing\ company = 2 \times (Tax\ credit\ as\ a\ \%\ of\ announced\ capital\ expenditure) \times [5 + (Capital\ expenditure\ in\ million\ UI)1/5]$$

A higher tax credit and an extended period apply in certain circumstances. For example, if SMEs[15] apply to the COMAP regime for an investment project of up to 3.5 million indexed units (approximately USD 430 000), they benefit from an additional 20% credit of capital expenditures and one additional year to use the benefit. Similarly,

if the company applying to the COMAP regime opts to locate in an industrial or science park (according to Law 17,547 and Art. 251-256, Law 18,362), the tax credit and period are increased by 15% (i.e. the tax credit and period obtained following the criteria of the scoring matrix will be multiplied by 1.15).

With the objective to accelerate investment in the period 2018-2019, decree 218/018 established a transitory 10% increase of the tax credit for projects submitted since Decree 143/018 was in place and up to 28 February 2019. To be eligible for this transitory increase, companies need to ensure that 75% of the investment took place prior to 31 December 2019. Moreover, investment received between 1 March 2018 and 28 February 2019 can include 120% of the capital expenditure in calculating the tax credit.

Tax incentives for specific sectors

In addition to the tax incentives described above, there are schemes that are more beneficial for certain sectors. Most notably, the forestry sector enjoys a permanent tax holiday regarding CIT, net wealth tax and rural property tax. More recently software production, generation of non-traditional renewable energies, R&D in biotechnology, the maritime and electronic industry and call centres have benefited from particularly generous incentives via the COMAP system. Some benefits, such as those granted to the forestry and tourism sectors, have been in place for a long time and defined in separate laws, whereas those approved since 2007 are embedded in the COMAP regime. Table A.C.4 in the Annex C summarises the characteristics of the most relevant regimes.

Free zones

Free zones (FZs) in Uruguay are authorised with the aim of promoting exports, output diversification, fostering employment, skill formation and investment in research and development under Law N° 15.921 further amended by Law 19,566. Some of the most frequent activities currently carried out in the FZs are the commercialisation of goods, storage, assembly, manufacturing as well as service provision. Law 19,566 also approved the creation of Theme Free Zones specialised in specific services, such as audio-visual and entertainment, as long as they are located at least 40 km from the centre of Montevideo.

Companies that are involved with FZs can be operators or users. FZ operators provide necessary infrastructure for the FZ to operate and can be the government or a private entity. Direct FZ users are consumers of the FZ facilities who contract directly with the FZ operator, while indirect FZ users contract with the direct FZ user in order to use the FZ facilities.

Both direct and indirect FZ users benefit from a full tax holiday for the duration of the user contracts. This means FZ users are exempt from all tax that is currently levied on companies (including CIT, net wealth tax, VAT, ICOSA, IMESI, excise tax) and any new tax that may be introduced in the future, except for social security contributions (Laws 19,566 and 15,921). An extension of the period is possible by resolution of the Ministry of Finance.

Prior to 2018, the law included no limit for the duration of user contracts, which was set for each specific FZ by ministerial resolution. The duration of existing user contracts could cover 20-50 years depending on the FZ (Table 6.7). Since 2017 (Law 19,566), direct FZ users can carry out industrial activities in the FZ for 15 years, or provide services for 10 years. Indirect users can carry out any type of activity for a maximum of five years. However, subject to certain requirements, it is possible to extend these terms, e.g. depending on whether the FZ is located outside or within the metropolitan area. FZs outside the metropolitan area benefit from longer durations if they employ more than 50 employees or invest more than 20 million indexed units (approximately USD 2.4 million).[16] As for FZs within the metropolitan area, the requirements to extend terms are to employ more than 100 employees or invest more than 40 million indexed units. The extension of the duration is determined case-by-case by a Ministerial resolution signed by the Minister of Finance and the President.

Restrictions to the corporate tax holiday apply to certain activities related to intangibles. Income from the exploitation of IP rights and other intangibles are exempt of CIT according to the nexus ratio, which includes a 30% up-lift to expenditures that are included in qualifying expenditures, only if they are linked to income from R&D activities carried out in the free zone in relation to copyrighted software and patents. Income from industrial activities is exempt from CIT for the part attributable to IP rights associated to R&D activities carried out in the free zone (i.e. embedded IP income). In this case, income associated to IP rights must be identified according to transfer pricing principles and will be exempt according to the nexus ratio plus 30% up-lift to qualifying expenditures (art 54 Decree 309/018 and Decree 405/018).

FZ operators outside the metropolitan area (i.e., at a 40 km distance from the centre of Montevideo), as opposed to operators in the metropolitan area, are exempt from all taxes except CIT and social security contributions. All FZ operators are eligible to apply for the tax credit under the COMAP regime described in section 6.20.2. FZ operators pay a fee to the Ministry of Finance. There is no rule as for how the fee operators of FZs pay is set and generally, it has been set at a token amount.

Goods imported from abroad to a FZ are exempt from customs duties and VAT. FZ purchases of goods from the Uruguayan territory represent an export transaction from the national territory point of view. Hence, they are not subject to VAT (nor IMESI), and the exporter recovers any inbound VAT. Selling goods from FZs to the rest of the Uruguayan territory represents an import transaction from the national territory point of view and is subject to import duties and taxes. However, selling FZ imports to the domestic market is temporarily free of VAT and customs, if these goods continue to be used in the production of Uruguayan export goods. There are no export-share requirements for FZ users.

To be eligible for the preferential tax regime in FZs, a minimum of 75% of employees of FZ users must be of Uruguayan nationality. This threshold decreases to 50% if the FZ user is a service provider. The Directorate of Free Zones at the Ministry of Finance can reduce the thresholds under certain circumstances.

FZ users can provide services within FZs to other FZ users, other countries and to corporate taxpayers in national territory. International trading (purchase and sales of goods that do not enter Uruguayan territory) is allowed within FZs (Art. 10, Decree 309/018). The scope of transactions that FZ users can perform with non-FZ areas was recently further expanded (Law 19,566). There are certain activities that FZ users can provide companies within Uruguay that are not corporate taxpayers (call centres, distance learning, audio-visual, among others). In addition, the government can allow other types of activities judged to be beneficial for Uruguay's development.

Upon request from the FHTP, Uruguay's FZ regime was amended in 2017 and 2018 and substantial activities requirements (i.e. definition of core income generating activities, adequate number of full-time skilled employees, adequate amount of operating expenditures and monitoring and enforcement mechanisms) are now in place (OECD, 2019[5]). In particular, FZ users need to follow a business plan in order to monitor the creation of substance within FZs and every two years they are requested to submit a sworn statement documenting that the company has pursued the substance and complementary activities stated in the business plan (Decrees 309/018 and 405/018).[17]

Free ports and airports

The "puerto libre" regime governs Montevideo port and some commercial ports (Nueva Palmira, Fray Bentos and Colonia) and exempts imports to Uruguay from customs duties. Goods are treated as imports only if they enter national territory after entering these ports (Laws 16,246 and 19,276). An identical regime applies to Carrasco International Airport (Law 17,555).

Evaluation of tax incentive design and recommendations

General recommendations

Legal basis

The simultaneous existence of different laws and decrees providing tax incentives for investment, the Investment Promotion Law (Law 16,906) establishing the COMAP regime, the different sector specific regimes (see Table A.C.4 Annex C) and the FZ Law (Law 19,566), can complicate investors' understanding of which tax provisions and eligibility criteria apply to their activity. This uncertainty risks reducing the effectiveness of the incentives and creates additional costs to investors. It can also unintentionally create scope for investors to negotiate a customised policy. In addition, there is a risk that companies use the existence of different laws to reduce their overall tax liability via tax planning, e.g. through establishing separate entities under different laws and shifting profits.

It is recommended that efforts be taken to increase transparency and legal certainty by consolidating all tax-related provisions within those legal statutes from which the incentives provide relief (IMF OECD UN World Bank, 2015[11]). Corporate tax incentives (such as the COMAP tax credit) would best be provided through the Income Tax Law, whereas exemptions from VAT and customs should figure in the VAT and Customs law respectively. This suggests amending tax incentive provisions within the Investment Promotion Law, the FZ Law and the sector specific laws and decrees so that they refer to relevant articles in the Income Tax, the VAT and the Customs Laws.

Multiplicity of incentives

A multiplicity of tax incentives co-exist in Uruguay and there is significant heterogeneity in the actual tax benefit that companies can obtain, which depends on the exact timing and the location of the investment, but also on the specific conditions that govern their availability (e.g. the duration of user contracts for FZ benefits). This fragmentation opens room for rent seeking behaviour and creates an uneven playing field across investors. Both can reduce the effectiveness of the incentives and create distortions.

Compared to other Latin American countries with relatively high income, Uruguayan corporate tax incentives for investment stand out as particularly generous. According to Agostini and Jorratt (2013[12]) and Intelis (2017[13]), Chile has the same standard corporate tax rate of 25% as Uruguay, and provides tax credits of 4% for general investment and of 35% for investment in R&D, which compare to a maximum credit of around 60% for a regular company investing in Uruguay.

Authorities can improve the fragmented incentive framework by bringing all companies under one single regime, e.g. the COMAP tax credit and making sure no company-specific incentives are granted via decrees or other special agreements. Systematically monitoring the actual application of tax rules ex post will support the government with understanding to what degree the tax incentive framework is fragmented in its application today and where unequal treatment of investors occurs. (Sections 0 and 0 provide more details on reporting and monitoring of tax incentives.)

Regime specific recommendations

Free Zones

As highlighted in IMF, OECD, UN, World Bank (2015[11]) income-based tax incentives, such as the corporate tax holiday available to FZ users or the forestry sector in Uruguay, are often redundant and generally less efficient than expenditure-based tax incentives, such as accelerated depreciation or tax credits. Income-based incentives relate to the profit rate of a company and reduce tax liability independently of the size of the investment. This benefits highly profitable companies that plausibly would invest in a country or a zone also without the preferential tax treatment.[18] This design feature of income-

based incentives risks generating large windfall gains for companies but revenue forgone to the Uruguayan government, without generating additional investment.

Furthermore, using income-based incentives in the presence of multiple incentive regimes increases the risk of tax avoidance through profit shifting. More precisely, fully exempting profits of FZ companies from CIT, while taxing profits of non-FZ companies creates opportunities for harmful tax planning through transfer pricing or specific financial arrangements.

Given the numerous disadvantages of income-based incentives, the Uruguayan government is encouraged to phase-out opportunities for investors to obtain tax holidays in the future. Although it is a good sign that the government recently fixed the maximum period for tax holidays to FZ users, a full removal of this legal provision is preferable. With respect to existing tax holidays and to avoid retroactive changes to investment conditions, the government should eliminate tax holiday provisions when renewing existing FZ user contracts and not extending tax holidays beyond the contract's initial maturity date.

The revision of FZs could also be done in light of tax reforms undertaken by other countries, in particular in relation to global minimum taxes. The 2017 US tax reform contains a provision, the Global Intangible Low Taxed Income (GILTI), which constitutes a minimum tax on the profits of subsidiaries abroad controlled by US parent companies. Thus, under certain conditions, part of the income of a Uruguayan company controlled by an American company should be included as part of US business income, reported to the US tax administration, and taxed up to 10.5% by the United States (13.125% after 2025). Hence, if the taxation of profits is low (less than 10.5% currently, then less than 13.125% after 2025), Uruguay will lose tax revenues from companies controlled by American parent companies. This is particularly relevant for FZs where companies are foreign. The effects will be all the more significant if similar taxes are put in place in other countries or if a global minimum tax is adopted as part of the OECD solution to address the tax challenges arising from digitalisation (Pillar 2 of the OECD/G20 Inclusive Framework on BEPS Programme of Work). In that event, removing CIT exemptions to FZs could be advisable.

Overall, the Uruguayan government should re-evaluate the necessity of using tax incentives in FZs at all. The investment climate in FZs differs importantly from that in other parts of Uruguay in many respects, e.g. access to infrastructure, simplified administrative procedures and other preferential treatment granted through the FZ status, and may reduce incentives for the across the-board improvement in the quality of the business climate and investment facilitation (see Chapter 6). The necessity of granting a tax benefit on top of these advantages to attract additional investment should be supported by rigorous impact evaluations as to whether government revenue could be used more productively elsewhere in the economy than via decreasing tax liability for FZ users. In case the government decides, nevertheless, that a tax incentive is necessary to enhance regional development or other policy objectives, alternative and likely less-costly tools to the tax holiday exist in the current legal framework, for example via the COMAP regime.

COMAP Regime

As indicated above, expenditure-based tax incentives, such as the accelerated depreciation available in the CIT Law or the COMAP tax credit granted through the Investment Promotion Law, are generally preferable over income-based incentives, mainly because they tend to yield more additional investment per dollar spent. Expenditure-based incentives directly target investment expenses. By reducing the user cost of capital, they target better new investment and investment that would not be profitable without the incentive (marginal investment). This increases the probability of generating additional investment, i.e. new investment that would not occur without the incentives.[19]

Although expenditure-based incentives often represent an improvement over income-based incentives, they still come at a substantial cost to a country. Careful and regular monitoring and analysis to understand whether these costs outweigh the benefits is needed. To increase investor certainty, it would also be advisable to prescribe a timeline for an evaluation of whether the benefits of the COMAP tax credit justify their costs.

The revision of the COMAP regime in 2007 increased the transparency of the system substantially and reduced discretion in the application of the regime's eligibility criteria. Further revisions in 2012 and 2018 improved its design. For example, the new scoring matrix (Table 6.3) clearly and objectively outlines the requirements that are necessary to obtain a tax credit and that apply uniformly across all types of investors.

Nevertheless, several areas of improvement are possible: The policy objectives applicable to justify an incentive are numerous and associated indicators for calculating the score are complex and overlap to some extent. In addition, many exceptions to the regime and special treatments for companies are available via decrees. All these characteristics reduce transparency and clarity of the system and increase administrative and compliance costs. In particular, it requires substantial monitoring from the side of the Uruguayan authorities to run the COMAP regime smoothly and extensive compliance efforts from the side of the prospective investor to prepare an application and to file necessary documentation ex post. The complexity of the regime can deter investors from applying to the regime and represent a barrier in particular for small enterprises, which can reduce the efficiency and effectiveness of the regime.

Furthermore, the measurements used to calculate additional employment or additional exports are insufficient to avoid redundancy, thereby risking that the tax credit is granted to support employment or exports that would have occurred in the absence of the incentive and providing a pure windfall profit for companies. For example, the measure of incremental employment included in the COMAP scoring matrix (Table 6.3) compares the number of future full-time employees as stated in the project application to the average number of employees in the previous year. On the one hand, this difference is not necessarily a measure of additional employment, i.e. employment that is attracted through the incentive regime and not for other reasons. On the other hand, the measurement can incentivise a company to keep a low number of employees in the years before filing an application to COMAP. With respect to exports, the indicator is sensitive to exchange rate fluctuations and its appropriateness should be evaluated.

To improve the clarity of the COMAP regime and reduce monitoring and compliance efforts, it is recommended that Uruguay generally avoids introducing special treatments and exceptions by decree and rationalise the COMAP scoring matrix, e.g. by reducing the number of policy objectives and focusing only on the most important areas where support is to be targeted. For example, the numerous sectoral objectives may be removed and a uniform scoring system be applied to provide a consistent and comparable application of the incentives across investors. When adjusting the objectives, the government should consider the specific needs in the economy and evaluate whether policy instruments other than a tax incentive may be more appropriate to meet the policy objective. For example, to strengthen local financial markets it is likely more effective to provide regulatory and institutional stability and to reduce entry barriers to the market instead of adding a local financial market indicator to the scoring.

South Africa, which operates an investment allowance that is also based on a scoring approach, uses fewer objectives (namely direct employment creation, business linkages, energy efficiency, innovative processes, location in special economic zones, skills development, and SME procurement). Other interesting features of the South African regime are the use of a sunset clause for the overall regime and a ceiling for the total amount granted through the program.

Finally, applying a credit ceiling and a well-designed and -implemented sunset clause may bring benefits to the COMAP regime as well. In particular, a maximum credit amount would introduce a limit to government expenditures in terms of revenue forgone through the incentive. Without expenditure ceilings, governments have no control over future funds that they forgo through tax incentive regimes. Applying a ceiling per project (as opposed to a ceiling for the total regime) may increase the value of the incentive for smaller companies, relative to larger ones. Sunset clauses can also have positive effects, as they introduce a temporary limit to the incentive regime and can trigger periodical evaluation of the incentive's efficiency. This strengthens a company's incentive to accelerate investment immediately and avoids extensive revenue losses to the government. On the other hand, such a provision can also bring uncertainty to investors and increase the complexity of the tax system.

Sector-specific regimes

Granting additional benefits to certain sectors that are already covered by the COMAP regime increases the complexity of the incentive framework and creates an unequal treatment of investors. Providing additional benefits to sectors currently not covered by the COMAP regime raises questions about the regime's pertinence.

Overall, the process and criteria chosen for selecting sectors to benefit from special regimes has not always been clear, which gives rise to opportunities for rent seeking and negotiation of customised deals. In addition, the sector-specific regimes generally do not include a mechanism for phase-out, once they no longer serving the purpose or meeting the objective for their introduction. As indicated above, sunset clauses, as the one used for the tax allowance in South Africa can provide for a phase-out requirement and trigger necessary evaluation of the suitability of an incentive regime.

Authorities can reduce the complexity of the incentive framework by bringing all companies under one single regime, e.g. the COMAP tax credit, or phasing-out incentives altogether.

The use of tax incentives

This section, first, discusses the relative importance of different tax incentive regimes measured in terms of tax expenditures and, second, describes in more detail the use of incentives under the COMAP and FZ regimes.

The relative importance of different tax incentive regimes in Uruguay

By summarising the tax expenditures from each tax incentive regime as reported by the General Directorate of Taxation (Dirección General Impositiva, DGI) in their annual tax expenditure reports, this section shows the relative importance of different tax incentive regimes discussed in Section 0 over time. Expenditures (i.e. forgone government revenue) are calculated following a simple accounting approach excluding behavioural effects. That is they represent "…the amount by which tax revenue is reduced (increased) as a consequence of the introduction (abolition) of a tax expenditure, based upon the assumption of unchanged behaviour and unchanged revenues from other taxes" (Kraan, 2004, p. 136[14]). (Section 0 discusses in more detail the methods used to estimate forgone revenue including benefits from incorporating (or not) behavioural effects.)

Over the period 2008-2017, revenue forgone from tax incentives for investment measured as a share of GDP peaked in 2012 amounting to 2.2% of GDP and decreased afterwards to reach 1.3% of GDP in 2017 (Table 6.4). The development of tax expenditure-to-GDP ratios over time should be interpreted with care, as they can typically involve changes in both the numerator and the denominator and can also be driven by changes related to tax policy (i.e. changes in tax rates and tax bases), the development of tax base, as well as changes in GDP.

FZs represent the incentive regime generating the largest amount of forgone revenue measured as a share of GDP, followed by the incentives provided through the Investment Promotion Law. The peak in foregone revenue associated with the COMAP regime can be mainly associated to investment in non-traditional renewable energy that took place in 2012-2013.

DGI estimates forgone revenue in FZs as the difference between current tax liability (i.e. zero under the holiday) and a counterfactual tax liability that considers the most beneficial option for the company had the FZ tax holiday not existed.[20] Choosing the most beneficial tax option as a benchmark to establish tax expenditures instead of an alternative benchmark (e.g. the standard corporate tax rate applied to the entire tax base) affects the amount of estimated revenue forgone. For example, many FZ users may benefit from the regime specified in Resolution 51/997 for international trading operations (if they operated outside the FZ. Net income from international trading operations generated on Uruguayan territory (i.e. the purchase and sale of goods for which Uruguay is neither the origin nor the final destination and the intermediary in the provision of services) is determined on a notional basis of 3% of the operation's gross margin (difference between sales price and purchase price). Hence, the counterfactual tax liability for these firms concerns only 3% of their income. The benchmark choice may partly explain the relatively moderate estimate of revenue forgone from CIT in FZs. It also complicates the comparability of estimates across the different incentive types. (Section 0 provides more details on the approaches to estimate forgone revenue from tax incentives.)

Table 6.4. Tax expenditure from tax incentives for investment, measured as a share of GDP

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Corporate income tax	**1.4**	**1.4**	**1.5**	**1.4**	**1.5**	**1.3**	**1.1**	**1.1**	**0.9**	**0.8**
Free zones	0.7	0.6	0.6	0.5	0.7	0.5	0.3	0.4	0.3	0.3
Investment promotion law (Law 16,906)[1]	0.3	0.4	0.5	0.5	0.5	0.4	0.3	0.3	0.3	0.2
Investment tax allowances (Texto Ordenado 1996)	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.0	0.0	0.0
Incentives for specific sectors	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Forestry	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Maritime and aerial navigation	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.2	0.1	0.1
Biotechnology, Software and Pasteur Institute	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1
SMEs	0.1	0.1	0.1	0.1	0.1	0.1	0.2	0.2	0.2	0.1
Employment, Training, and International Certification	0.0	0.0	0.0	0.1	0.1	0.1	0.0	0.0	0.0	0.0
Net wealth tax	**0.4**	**0.4**	**0.4**	**0.5**	**0.5**	**0.5**	**0.4**	**0.3**	**0.3**	**0.3**
Free zones	0.2	0.1	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2
Investment promotion (Law 16,906)[2]	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Incentives for specific sectors	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Agriculture	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.0	0.0	0.0
Forestry	0.0	0.0	0.1	0.1	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
SMEs	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Valued added tax (Machinery and equipment)	**0.1**	**0.1**	**0.1**	**0.1**	**0.2**	**0.2**	**0.3**	**0.3**	**0.3**	**0.1**
Tax incentives for investment (total)	***1.9***	***1.9***	***2.1***	***1.9***	***2.2***	***2.0***	***1.9***	***1.8***	***1.5***	***1.3***

Note*:* Corporate income tax incentives include the following references from DGI (2017, pp. 18-25[15]): 81, 77, 73, 74, 66, 67, 76, 79, 80, 70, 71, 78, 83, 89, and 90. Net wealth tax incentives include the following references from DGI (2017, pp. 18-25[15]): 110, 111, 109, 114, 116, 112, and 118. VAT tax incentives include the following references from DGI (2017, pp. 18-25[15]): 3, 4, and 5.

1. The amounts reported under the Investment Promotion Law (Law 16,906) covers the COMAP regime and incentives for specific sectors described in Section 6.12.
2. ibid.

Source*:* Own calculations based on DGI (2011[16]; 2013[17]; 2015[18]; 2016[19]) and DGI (2017[15]).

Measuring foregone revenue as a share of total tax revenue per tax type shows that the relevance of corporate tax incentives for investment can be high and fluctuates considerably (Table 6.5). It represented more than 55% of CIT revenue in 2008-2012, while decreasing to 26% of CIT revenue in 2017. Net wealth tax expenditures on incentives for investment peaked in 2013, representing 51% of total net wealth tax revenue and settled at 34% in 2017. VAT incentives related to investment are minor compared to those related to CIT and net wealth tax.

Table 6.5. Tax expenditure from incentives for investment, measured as a share of total tax revenue per tax type

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Corporate income tax	**77%**	**62%**	**59%**	**58%**	**65%**	**48%**	**50%**	**46%**	**31%**	**26%**
Free zones	37%	25%	23%	21%	29%	20%	15%	17%	9%	9%
Investment promotion law (Law 16,906)	15%	19%	18%	20%	21%	14%	14%	11%	9%	6%
Investment tax allowances (Texto Ordenado 1996)	5%	5%	5%	5%	3%	3%	4%	1%	1%	1%
Incentives for specific sectors	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Forestry	2%	1%	1%	1%	1%	1%	0%	1%	0%	0%
Maritime and aerial navigation	9%	4%	3%	3%	3%	3%	7%	8%	5%	5%
Biotechnology, Software and Pasteur Institute	0%	0%	1%	1%	1%	1%	1%	1%	1%	2%
SMEs	8%	6%	5%	6%	6%	5%	7%	7%	6%	3%
Employment, Training, and International Certification	2%	2%	2%	2%	2%	2%	2%	1%	1%	1%
Net wealth tax	**37%**	**34%**	**41%**	**46%**	**50%**	**51%**	**44%**	**36%**	**32%**	**34%**
Free zones	16%	13%	16%	18%	21%	24%	18%	20%	17%	18%
Investment promotion (Law 16,906)	0%	1%	1%	2%	2%	3%	3%	3%	3%	4%
Incentives for specific sectors	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Agriculture	9%	9%	12%	12%	14%	12%	11%	5%	4%	5%
Forestry	5%	4%	5%	5%	5%	5%	4%	0%	0%	0%
Other	7%	6%	7%	9%	8%	8%	6%	7%	6%	7%
SMEs	0%	0%	0%	0%	0%	0%	1%	1%	1%	1%
Valued added tax (Machinery and equipment)	**1%**	**1%**	**1%**	**1%**	**2%**	**3%**	**3%**	**3%**	**3%**	**2%**

Note*:* Corporate income tax incentives include the following references from DGI (2016, pp. 18-25[19]): 81, 77, 73, 74, 66, 67, 76, 79, 80, 70, 71, 78, 83, 89, and 90. Net wealth tax incentives include the following references from DGI (2016, pp. 18-25[19]): 110, 111, 109, 114, 116, 112, and 118. VAT tax incentives include the following references from DGI (2016, pp. 18-25[19]): 3, 4, and 5.
Source*:* Own calculations based on DGI (2011[16]; 2013[17]; 2015[18]; 2016[19]) and DGI (2017[15]).

Use of tax incentives in the COMAP regime

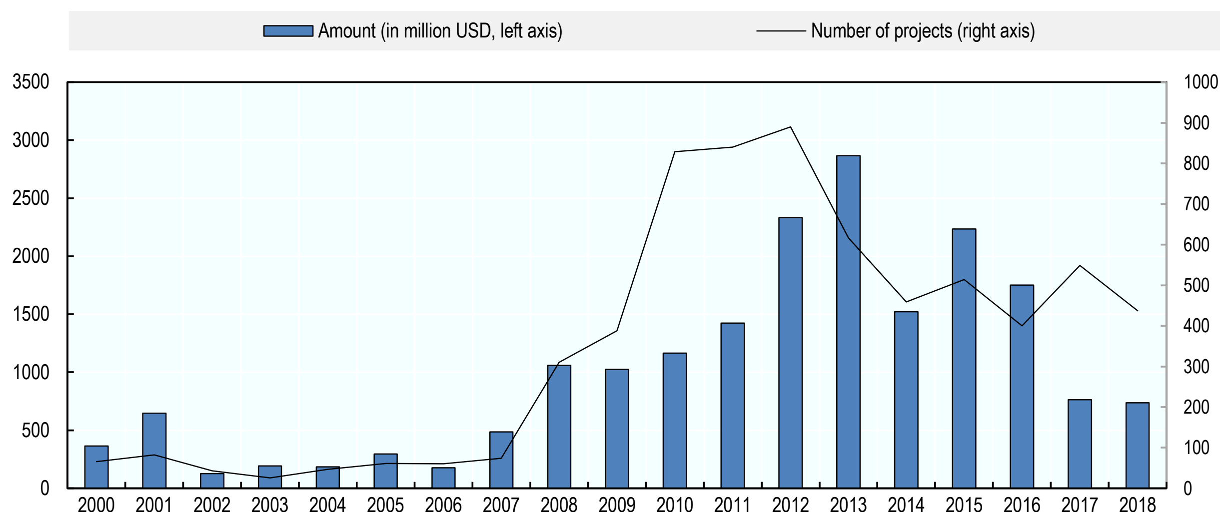
Since 2007, the number of projects and the amounts of investment approved by the COMAP regime has risen significantly (Figure 6.5). In the period 2008-2018, COMAP approved 6 233 projects equal to USD 16 881 million in capital investment.[21] According to UnASeP, forgone revenue through COMAP credits in this period may have reached up to USD 8 158 million. The average credit represented 47% of the eligible capital expenditure for an average credit period of 4.7 years.

USD investment approved by COMAP peaked in 2013, which mainly relates to investment in non-traditional renewable energy. During 2013-2016, investment in wind power and generation of other non-traditional renewable energies amounted to USD 3 042 million representing 28% of the total amount approved under the COMAP regime (UnASeP, 2017[20]). Investment projects in renewable energies enjoyed credits that were relatively more generous compared to the average COMAP credit, receiving an average credit of 51% for an average duration of 11 years. Overall, the majority of all projects approved in 2008-2018 relate to the industry or energy sector, with the Ministry of Industry, Energy and Mining responsible for evaluating the applications (Table 6.6).

The effectiveness of the incentives in creating *additional* investment is, however, unclear, as the amounts reported by UnASeP do not account for redundant investment that would have come even in the absence of the incentive. For example, investment in renewable energies receives many additional benefits beyond tax incentives, such as preferential Power Purchase Agreement (PPA) contracts with the state-owned electric power companies that committed to buy wind power and biomass from windmills and large industries on a fixed price for periods of 20 years approximately. These additional benefits may have had an important impact on attracting investment.

Figure 6.5. Investment projects approved under the COMAP regime, 2000-2018

(in million USD and number of projects)



Note*:* The amount of investment approved in one year does not necessarily imply that the investment occurred in that year. Furthermore, the projects approved under the COMAP regime do not necessarily represent *additional* investment, i.e. they may have occurred not necessarily because of the incentive.
Source*:* UnASeP.

Table 6.6. Investment approved by COMAP, by sector of activity

(in USD million)

Year	Agriculture (MGAP)	Retail (MEF)	Industry and Energy (MIEM)	Services (MEF)	Tourism (MINTUR)	Total
2008	27	83	619	291	39	1 058
2009	90	51	551	259	73	1 024
2010	79	151	413	319	205	1 166
2011	138	219	467	326	274	1 424
2012	190	271	984	578	310	2 333
2013	105	362	2 043	213	144	2 866
2014	148	68	797	407	102	1 521
2015	113	128	1 400	204	389	2 235
2016	92	102	1 349	146	63	1 752
2017	55	77	436	144	52	765
2018	55	155	252	200	75	737
Total	**1 093**	**1 666**	**9 311**	**3 086**	**1 725**	**16 881**
In percentage of total	*6.5%*	*9.9%*	*55.2%*	*18.3%*	*10.2%*	*100%*

Note*:* In parentheses is the ministry responsible for evaluating the investment project. MGAP = Ministry of Livestock, Agriculture and Fisheries; MEF = Ministry of Finance; MIEM = Ministry of Industry, Energy and Mining; MINTUR = Ministry of Tourism.
Source*:* UnASeP.

Most companies submitting a project under the COMAP regime chose to file under the policy objectives related to the generation of employment and clean technologies (as detailed in Table 6.3). These companies committed to create 47 825 new jobs, to invest USD 5 071 million in clean technologies, to increase exports by USD 2 455 million and to invest USD 479 million in research and development during 2008-2018. Roughly 1 850 projects selected the decentralisation objective.

During 2008-2018, the COMAP regime covered projects from *existing* companies more often than projects filed by *new* companies, with SMEs taking the largest share. The percentage of approved projects filed by new companies (as opposed to existing companies) ranged from 10 to 20% depending on the year. From 2009 onwards, the percentage of successful SMEs continuously exceeded 60%.

Use of tax incentives in Free Zones

In 2019, there are eleven FZs on Uruguayan territory, one operated by the government. As Table 6.7 shows, FZs are established for extensive periods of 20-50 years so that the corporate tax holiday associated with these projects is available for large periods of time. Gross value added by all FZs expressed as a share of GDP was estimated at 3.49% in 2012 (INE, 2015[21]), while their contribution to Gross National Income is said to be much smaller, according to the Central Bank, because a significant part of income is transferred overseas.

One of the objectives of FZ is to increase exports from and employment in Uruguay, FZ exports accounted for only 28% of Uruguayan exports in 2016 and 43% of the FZ companies did not export at all. Services, particularly in the areas of administration, finance and insurance, account for a larger share of FZ exports compared to Uruguayan exports not originating from FZs. Central Bank estimates even suggest that FZ exports in 2017 accounted for 21% of total goods and services exports.

Approximately 14 000 workers were employed in FZs in 2016, which represents only 1% of total employment in Uruguay (MEF, 2018[22]). Zonamerica stands out as the largest employer and contributor to GDP.

Table 6.7. Free zones in Uruguay – main features

FZ name	Resolution date	Period (years)	Hectares	Activities	GVA as a share of GDP (in %, 2012)	Employment (2016)	Exports (in USDm, 2016)
Nueva Palmira	Public		100	Trade / Logistics	0.03	525	5.05
Zonamerica	16/02/1990	50	45	Mixed	1.82	6907	1165
Florida	11/12/1991	50	16	Trade / Logistics	0.13	529	24.9
Colonia Suiza	19/12/1991	30	14	Mixed	0.02	30	17.88
Grupo Continental (Colonia)	24/01/1994	20	22	Industrial	0.59	488	487.57
Lideral S.A (Libertad)	13/05/1994	30	17	Trade / Logistics	0.09	250	10.8
UPM Fray Bentos	27/10/2004	30+15	550	Industrial	0.54	513	289.23
Itsen S.A (Aguada Park)	31/07/2007	30	0.642	Services	0.09	2504	259.96
WTC Free Zone	31/07/2007	30	0.3071	Services	0.01	1267	1422.47
Punta Pereira	22/01/2008	30	361	Industrial	0.16	696	300.98
Parque de las Ciencias	09/07/2009	30	51	Mixed	0.01	387	119.73
Cuecar S.A (UPM)	04/01/2019	30	350	Industrial	NA	NA	NA

Source*:* APC (2013[23]) and INE (2015[21]).

Impact evaluation studies

Although the use of tax incentives for investment seems to be somewhat correlated with observed private investment in Uruguay, it is challenging to determine whether they effectively caused *additional* investment or whether the investment occurred thanks to favourable investment conditions in general or other benefits. Very few studies have aimed to determine the causal impact of tax incentives on investment in Uruguay. All of them concentrate on the COMAP regime, while there is no impact analysis on FZ tax holidays in Uruguay.

Artana and Templado (2012[24]) analyse the impact of the COMAP regime under decree 455/007 on total investment across sectors in 2008-2010 as opposed to 2000-2007. They use data from companies' tax returns reported to DGI and apply a difference-in-difference estimation strategy. The analysis is restricted to companies that had received another type of tax incentive prior to 2008. The authors conclude that the change in regime towards COMAP is associated with an increase in existing companies' average investment by 7 percentage points.

Llambi et al. (2018[25]) analyse the impact of the COMAP regime on investment, employment, exports and labour productivity for the 2008-2011 period (decree 455/007). They use firm level data from tax returns provided by DGI, employment data from the social security agency and exports data from Uruguay XXI, and data from COMAP for those companies that submitted investment projects. By means of an identification strategy combining difference-in-difference and matching, they find a positive and significant correlation between the COMAP regime and investment, employment and exports, while they do not observe significant differences in labour productivity. The authors estimate that affected companies increased their investment on average by 11%. According to their estimates, the associated forgone revenue in 2008-2011 represents 33% of the additional investment achieved by the regime over the same horizon.

So far, no study assesses the impact of FZ on additional investment. Tax incentives are costly, especially if the investment benefiting from the tax incentive is redundant. The anecdotal view in the Uruguayan administration is that FZ companies would not operate in Uruguay without the preferential treatment and in this sense, any investment in FZs is considered *additional*. To date no reliable analysis has investigated the role that tax incentives play in attracting investment to Uruguay or to what extent it would have come in the absence of the incentive, nor whether their benefits outweigh their costs. There is also no analysis of whether a more targeted and less costly (e.g. expenditure-based incentive) scheme could be (more) beneficial.

Although some analysts have highlighted the relevance of FZs to the Uruguayan economy given that their exports account for 28% of Uruguay's total exports (21% in 2017 according to unpublished data from the Central Bank), FZ's contribution to employment generation appears minor: FZ's employees represent only 1% of Uruguay's employed population, which is also encountered in other countries. However, Labraga (2017) estimates a sizeable impact of knowledge spillovers of companies operating in FZs that export services on output growth. Additional data that FZs will submit as of 2019 allow for more detailed studies to determine the extent to which FZs are beneficial for Uruguay or not.

Governance of tax incentives: description and assessment

This section describes and evaluates the current governance arrangements for tax incentives in Uruguay, focussing on the decision-making process, the monitoring and the reporting of incentives. Authorities in Uruguay are encouraged to consider reform in the area of tax incentives to stimulate investment and to continue working towards a more transparent and coherent regulatory framework; one that reduces discretion in the decision-making and administration of tax incentives and that minimises opportunities for corruption, rent seeking and for negotiating investor-specific policy.

Decision-making process

While the creation of new tax incentive schemes requires parliamentary approval, most design features of the incentives are determined by decrees or resolutions, which are much less scrutinised. For example, the Investment Promotion Law (Law 16,906) introduces general tax incentives and the COMAP regime, but Ministerial decrees outline the specificities and details of these incentives (e.g. indicators in the scoring matrix, evaluation criteria, exemptions and special treatment to accelerate investment in specific periods). Similarly, Laws 19,566 and 15,939 create tax holidays for FZs and the forestry sector respectively – although the specific implementation details for each FZ figure in specific decrees and resolutions (e.g. extension of user contracts). The President and the respective Ministers responsible for the topic, sign the decrees or resolutions.

Discretion in the interpretation and implementation of laws can lead to important distortions in the economy and tax policy frameworks, as it reduces the accountability of decision-makers, creates uncertainty for investors and risks arbitrary variation in the application of tax rules. This may create opportunities for rent seeking and corruption; it can also unintentionally create scope for particular investors to negotiate customised tax policy.

Good practice in this respect would be to minimise issuing tax policy decisions via decrees, resolutions or company-specific agreements that are less subject to scrutiny, but to codify them in laws. Ensuring that the Minister of Finance has the final authority to determine the design of tax incentives (in cooperation with relevant ministries and agencies) and to ratify provisions via the legislative body, can increase transparency, certainty and foster the rule of law (IMF OECD UN World Bank, 2015[11]).

Decision-making under the COMAP regime

As described in section 6.15, companies that apply for a COMAP tax credit submit their application to the Ministry of Finance's Unit of Support to the Private Sector (UnASeP) for an ex-ante evaluation of their investment project. UnASeP sends the project to COMAP, a commission that advises the government. COMAP consists of delegates from the Ministry of Finance (MEF), the Ministry of Agriculture (MGAP), the Ministry of Industry and Energy (MIEM), the Ministry of Labour (MTSS), the Ministry of Tourism (MINTUR) and the Planning Office (OPP). COMAP decides which ministry is in charge of evaluating the investment project depending on the investor's activity outlined in the application.

Based on the evaluation, COMAP is expected to advise the Ministry of Finance within 60 days on whether the project should receive support in the form of the incentive, and the Ministry of Finance establishes a resolution on whether and what tax credit is granted. So far, the government has always followed COMAP's advice. COMAP publishes the resolution signed by the Ministry of Finance and associate ministry for each successful investment project including information on the amount of announced capital expenditures and the size of tax incentives granted.[22]

The COMAP coordinator belongs to the Ministry of Finance and has double vote in case the commission disagrees on the evaluation and conclusions. In circumstances in which the commission does not agree with a ministry's project evaluation, the responsible ministry re-evaluates the project.

According to UnASeP, rejection of a COMAP credit rarely occurs. UnASeP officials argue that the clear rules of the COMAP scheme typically lead to an approval of every application. Currently, no official statistics exist on the number of applications that COMAP approved or rejected.

Assigning different line ministries to evaluating COMAP projects is useful to ensure the right expertise applies to the evaluation of applications and the granting of incentives. However, it can also lead to a disproportionately high level of approvals of projects and an unequal treatment of investors across different sectors: the associate ministry may aim to attract investments to their specific sector and may be less concerned with protecting the tax base, therefore interpreting favourably the COMAP eligibility criteria and

scoring matrix. It is advisable to confer to the Ministry of Finance the right and the capacity for the final decision, in close cooperation with other stakeholders to ensure a smooth information exchange.

A first step to increase transparency and evaluate the implications of the COMAP decision-making process would be to publish regular statistics on the evaluation process. Such statistics could summarise the number of project applications per year, the percentage of approved as opposed to declined projects per year and per evaluating ministry and the number of projects cancelled by the investor including their reason. The South African Report to Parliament on the "12i Tax Allowance" gives some indications for a light version of such a statistic (Dti, 2017[26]). Preferably, information that is more detailed would be included in a future Uruguayan version. (Sections 0 and 0 provide more details on monitoring and reporting of tax incentives.)

Decision-making under the Free Zones regime

A Ministerial resolution establishes a free zone status for FZ operators and users. Companies interested in becoming FZ operators must submit an investment project to the government "reliably demonstrating its economic viability and the benefits it will bring to the country" (Art. 10, Law 19,566). The Minister of Finance and the President of the Republic sign the resolution drafted by officials from the Ministry of Finance. Companies interested in becoming direct or indirect FZ users file an application to the Directorate of Free Zones at the Ministry of Finance (Art. 29, Decree 309-018).

The decision-making process to determine FZ status and to define the specific governing criteria of the FZ appears open to discretion and negotiation of customised tax incentive arrangements for single investors. For example, no specific and objective criteria exist to decide on FZ status nor on the generosity of the tax benefits (e.g. length of the holiday). Although it is a good feature that the government recently fixed the maximum period for tax holidays to FZ users, a simple resolution can extend the duration of the holiday for specific users. This ultimately leads to an unequal treatment of investors in Uruguay; not only between companies investing in FZs as opposed to other parts of the country, but also between different FZ companies (Table 6.7). Furthermore, important distortions can arise in the Uruguayan economy, if it is an investor's bargaining power and relation to government officials that determines the approval and duration of a tax holiday, rather than the projected performance and efficiency of the investment project.

As long as no phase-out of the FZ tax holiday takes effect, the government should establish clear and uniformly applied eligibility criteria and requirements for receiving this benefit in order to ensure a uniform and objective application of the incentive regime across investors.

Monitoring

Monitoring the operations and the outcomes of tax incentive frameworks is essential to verify the integrity of the tax system, to review, analyse and adjust policy or practice where misalignments occur and to minimise distortions. Monitoring can cover many areas of tax incentive policy, for example, the monitoring of an investments' performance, compliance with qualifying conditions, and audits to detect potential fraud or abuse of the incentive framework. Credible monitoring can also help to prevent tax avoidance.

Reaping the full benefits from regular and careful monitoring requires administrative capacity and assigning clear responsibilities that are guided by the rule of law, with clarity about eligibility criteria. Therefore, it is necessary to consider monitoring needs and available resources when designing and legislating tax incentives. Establishing and enforcing penalties in case of non-compliance or abuse can be an effective deterrent to fraud.

Monitoring of the COMAP regime

According to the Investment Promotion Law, COMAP monitors *ex post* the execution of the approved investment projects and the accomplishment of the announced commitments (e.g. in terms of investment and employment). Each year, companies have to submit documentation, signed by an accountant, who certifies that they effectively carried out the announced investment. A company that does not submit follow-up documentation or that does not fulfil the objectives it had committed to in the application triggers the full elimination of the tax credit and a recalculation of tax liability.[23] The resolutions of the revocations are available online but no official statistic is published currently.

In practice, however, COMAP rarely monitors *ex post* the information filed by companies. According to COMAP, prior to 2017, companies had to submit documentation to both COMAP and the ministry in charge of the ex-ante project evaluation. Since 2017, companies submit *ex post* records only to the relevant ministry. COMAP does not automatically receive information on whether the ministry carries out monitoring. Effectively, COMAP has only received documentation on projects relating to retail and services that were evaluated and approved by the Ministry of Finance. This relates to the fact that COMAP officials are employed by the Ministry of Finance.

UnASeP publishes reports summarising the number of projects and amount of investment approved under the COMAP regime as well as some ex-ante descriptive analysis of the projects by sector and company size. Two reports summarise information on investment projects monitored by the Ministry of Finance (UnASeP, 2014[27]; UnASeP, 2017[20]).

Although monitoring is foreseen in the law, the government needs to ensure a sound implementation of the regime in practice, e.g. by improving *ex post* monitoring. In this respect, conferring the monitoring responsibility to one agency is important in ensuring effective monitoring of the implementation. There is a need to strengthen inter-institutional cooperation and coordination and enable a smooth exchange of information and documentation between responsible ministries, agencies and COMAP.

Given the complexity embedded in the current COMAP regime, effective monitoring may require additional administrative capacity beyond the current 19 COMAP and seven UnASeP employees. Concentrating monitoring efforts first to medium and large investment projects can reduce the monitoring burden. Rationalising the COMAP mechanism, e.g. by reducing the number of policy objectives used in the scoring matrix and focusing only on few key areas for support would further facilitate the monitoring effort, while improving clarity of the system. (Section 6.10.2 provides more details in this respect.)

Effective monitoring of companies' compliance with the qualification requirements and scoring matrix of the COMAP regime is crucial. Establishing regular statistics will support monitoring compliance with the criteria under which companies file their application (e.g. employment, investment) and specific scoring indicators. Such statistics could for example compare indicators based on what companies announced ex-ante in the application as opposed to what they achieved *ex post*. Authorities should establish an objective system of procedures and potential penalty system to follow when the statistics reveal important divergences. (Section 6.15.1 mentions other parameters that may be included in the statistics.)

To evaluate whether *additional* investment, exports or employment is created by the COMAP regime, more substantial analysis would be needed. The indicators chosen for the COMAP matrix are not necessarily a proxy for *additionality*. For example, measuring *additional* employment by the increase in the number of full time employees relative to the average number of employees in the previous year does not control for employment, which would have occurred in the absence of the incentive and which should not count towards matching the eligibility criteria. The methodologies used in the *ex post* analyses discussed above can serve as an example for future analysis. Merging data from companies| tax returns with employment information from the Social Security agency, similarly to Llambi et al., (2018[25]) can help to verify compliance in terms of employment increase. Cooperating with academia can provide a win-win situation to carry out such analysis based on reasonable time frames and technical capacity.

Monitoring of Free Zones

The Directorate of Free Zones at the Ministry of Finance is in charge of monitoring FZ activities. Since 2008, a resolution (1859/008) requires FZ users to file account balances to DGI. In addition, a 2018 decree (309/018) requests FZ users to file every two years a sworn statement to the Ministry of Finance on income earned and activities performed, the investment executed and the number of employees hired and their education level.[24]

The filing requirement of FZ users is a positive development as it enables the authorities to assess the revenue costs associated with the incentive and can reduce opportunities for tax planning and avoidance. Taxpayers who shift income from a taxable entity to the entity that qualifies for the tax holiday need to file account balances even if no tax is due.

Nevertheless, it would be advisable to ensure a smooth exchange of information between the different ministries and government agencies involved in monitoring FZ outcomes, to motivate DGI to audit companies that operate under the tax holiday and to establish a formal monitoring mechanism for evaluating whether FZ users are complying with the FZ regulation. This could for example include monitoring whether commitments announced in the investment project are met or whether eligibility requirements for longer holidays in terms of employment and investment size hold. Although this may require additional resources, it also helps to understand the performance of new FZ investment and incentivises investors to make realistic ex-ante projections.

Establishing clear and uniform eligibility criteria will facilitate the monitoring process in FZs and allow an equal treatment across investors.

Reporting

The regular reporting of tax expenditures is a cornerstone of good practice. By highlighting the revenue costs associated with tax incentives, it creates accountability and better control over the use of public funds. It also supports the analysis and evaluation of tax incentive effectiveness and efficiency.

Governance

DGI reports tax expenditures on an annual basis in Uruguay since 2008. As of 2018, tax expenditure reports in Uruguay are associated with the budget (Art. 183, Law 19,438), which represents a significant improvement. Indeed, revenue forgone from tax incentives is typically much less visible than expenditures from direct spending programs, despite their comparable effects on government budgets. By embedding tax expenditure estimates in the budgetary process, the revenue costs associated with granting tax incentives become transparent and can be considered by policy-makers in fiscal management (IMF OECD UN World Bank, 2015[11]).

It is advisable that one authority estimates forgone revenue from tax incentives to ensure a consistent application of methodologies across incentive types and sectors. Authorities involved with estimating, administrating and evaluating the incentives need to cooperate well to make sure all necessary information is available for the estimation process.

Key elements for good tax incentive reporting

The current format of the Uruguayan report is not straightforward to interpret as a stand-alone document, mainly because it does not include an adequate description of the different incentives, nor a sufficient explanation of the method applied to estimate forgone revenue. The current report provides only a simple table that lists the type of incentive granted, mentioning the relevant legal basis together with the estimated amount of tax expenditure per year. It does not include an analysis of expenditures either.

The standard advice for establishing a tax expenditure report is to provide a list of all tax incentives and to mention systematically the following elements. (i) the type of preferential treatment granted, (ii) a description of the incentive, (iii) their stated policy goal, (iv) a precise legal reference, (v) potential time limits, (vi) estimates of forgone government revenue, and (vii) a detailed description of the estimation method (IMF OECD UN World Bank, 2015[11]).

Redonda and Neubig (2018[28]) review the reporting practices on tax expenditures across 43 G20 and OECD economies along several dimensions. They list nine countries with detailed and comprehensive reports that lag behind best practice in only one or no dimension: Australia, Austria, Canada, France, Germany, Italy, Netherlands, Korea and Sweden. These countries' reports would be a good example to follow.

For example, the German report provides a detailed information sheet per tax incentive, listing the key elements mentioned above. In addition, it provides information on whether an evaluation of the tax incentive was performed in the recent past or will figure in the upcoming activities of the ministry. The German Subsidy Policy Guidelines are added to the report reminding that tax incentives are "subject to regular evaluation" and "should be reviewed with the view to replacing them". The report also contains an analysis of tax expenditure trends and ranks the incentives in terms of forgone revenue with the objective to determine the most important expenditure item that would be in the focus of a future evaluation (BMF, 2018[29]).

In view of these best practices, the Uruguayan reporting practice should follow the list of key elements outlined above and add missing elements. In particular, the report should mention the policy objective for introducing the incentive, a short but self-explanatory description of the incentive, more detailed reference to the legal basis and a detailed explanation of the methods used to estimate revenue forgone. On the basis of these estimate, an analysis over time and across incentives could be added to the report as well. Similar to what was done in Germany, the authorities may also consider introducing a compulsory evaluation of the most expensive incentive programs determined by a ranking of incentives based on the estimates.

Estimating forgone revenue

Estimating revenue forgone from tax incentives requires specifying a benchmark tax system. This allows calculating revenue forgone as the reduced tax liability of all beneficiaries relative to this benchmark. The natural benchmark in most countries is to apply the standard corporate tax rate to the entire tax base, which generally constitutes income net of business expenses incurred in deriving that income. Using simple accounting principles, a static measure of revenue forgone is calculated as the difference in tax revenue under a scenario in which the tax incentive applies relative to the benchmark scenario, where the tax incentive is removed from the tax system. Such a measure does not consider changes in the behaviour of taxpayers owing to the removal of the incentive.

Calculating forgone revenue including behavioural effects would improve the estimation result, but is not a straightforward exercise. For example, it would require detailed information or assumptions on how investors react to a change in tax policy. The static evaluation, excluding behavioural effects, already gives a good first indication of the relative size of incentives and is similar to the method used to calculate budgetary transfers through direct spending programs, so facilitates comparability. The technical background document by IMF, OECD, UN, World Bank (2015[30]) elaborates on the different methods to calculate revenue forgone through tax incentives.

Although, it is advisable to include estimates of forgone revenue in any tax expenditure report, it remains a country's choice to define the benchmark tax system and the specific estimation method.

It appears that Uruguay has not chosen the same benchmark corporate tax system across incentive types, but has used the most preferential treatment available to a company in the absence of the incentive. This

leads to the use of different benchmark tax rates according to the activity of a company, which complicates the comparison of revenue forgone across incentives and largely reduces the information value from deriving such an estimate. For example, and as highlighted in Section 0, forgone revenue in FZs is estimated as the difference between current tax liability and a benchmark considering the most beneficial tax treatment available to companies, in the case where the tax holiday does not exist.

It would be preferable that Uruguay chooses to apply the same benchmark across the entire corporate tax base, e.g. the standard corporate tax rate, and to remove preferential treatment from the benchmark. This would improve comparability of revenue forgone from different incentive regimes and improve consistency over time. It would also lead to a more comprehensive estimate of the cost of incentives, which can then be compared to direct spending programs, thereby improving the decision-making of budgetary priorities. IMF (2019[31]) discusses the use of different benchmarks and elaborates on tax expenditure reporting more in general.

Outlook and policy recommendations

Uruguay relies significantly on tax incentives as a means to attract investment. A number of different regimes exist, ranging from general tax benefits that are automatically available to investors, over a relatively generous scheme (COMAP regime) that requires submission and approval of an investment project by the government and even more generous tax treatment of projects established in free zones and free ports. Tax incentives in Uruguay vary across investments depending on where, when and by whom an investment is made in the country.

While tax incentives may be capable of attracting investment, with potentially positive spillovers on output, employment and productivity, they can also reduce revenue-raising capacity, create economic distortions, increase administrative and compliance costs and potentially trigger harmful tax competition. Even when the incentive attracts additional investment, there is a risk that the costs associated with the policy exceed the benefits.

Policy recommendations

Continue constructing a transparent and coherent regulatory framework for tax incentives to deliver certainty and stability to investors

- Consolidate all tax-related provisions within those legal statutes from which the incentives provide relief.
- Bring new investment under one tax incentive regime and avoid company-specific incentives via decrees or other special treatments.

Improve the design of tax incentives by broadening tax bases and treating investors uniformly for more efficiency

- Rationalise the COMAP scoring matrix, by reducing the number and the overlap of objectives and revise its scoring indicators.
- Consider introducing a ceiling for the COMAP credit and a well-designed sunset clause.
- Phase-out the legal basis for corporate tax holidays and eliminate tax holiday provisions when renewing existing Free Zone user contracts.
- Re-evaluate the need for generous tax incentives in Free Zones on top of existing economic zone benefits to attract additional investment.

Continue ongoing efforts to protect the domestic tax base from cross-border tax minimisation strategies and carefully monitor the effectiveness of measures recently implemented, in particular

- Ensure the effective implementation of the standards agreed by the FHTP, in particular monitoring of the substantial activities requirements in non-IP and grandfathered non-IP regimes.

Reduce discretion in the decision-making and administration of tax incentives and minimise opportunities for corruption, rent seeking and for negotiating investor-specific policy.

- Assign to the Minister of Finance the final authority to determine tax incentive approval.
- Publish regular statistics on the outcomes of the COMAP evaluation process.
- Establish clear and uniformly applied requirements for receiving a Free Zone tax holiday until they are removed.

Monitor the operations and the outcome of the tax incentive frameworks to verify the integrity of the tax system, to review, analyse and adjust policy or practice where misalignments occur and to minimise distortions.

- Confer the monitoring responsibility to one agency and verify effective implementation.
- Strengthen inter-institutional cooperation for a smooth exchange of monitoring information between responsible ministries and agencies.
- Provide regular statistics on company compliance with COMAP eligibility criteria and the scoring indicators.
- Ensure the monitoring of eligibility criteria for corporate tax holidays in Free Zones until holidays are removed.

Use reporting tools to highlight revenue costs associated with tax incentives by providing comparable estimates of tax expenditures.

- Improve existing reporting practice by providing additional information per tax incentive regime in the report: include the policy objective and a self-explanatory description of each incentive and a detailed explanation of the method used to estimate revenue forgone.
- Apply the same benchmark across the entire corporate tax base when estimating forgone government revenue and avoid using preferential treatment as a benchmark.

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Notes

[1] IMF, OECD, UN and World Bank (2015[11]) summarise that tax incentives are often found to be redundant and that taxation is only one of many factors that determine an investors' location decision – and usually not the most important one in developing economies. In addition, without well-functioning infrastructure, macroeconomic stability and a stable rule of law, tax incentives are unlikely attracting (additional) investment. The effectiveness of tax incentives, however, is sector and incentive specific and deserves careful monitoring and analysis.

[2] Indexed units (UI) are adjusted by consumer price inflation. Their value varies daily.

[3] Non-residents, that is, those that have not established domicile in Uruguay, are subject to Impuesto a la Renta de No Residentes (IRNR). Residents are subject to Impuesto a la Renta de las Personas Físicas (IRPF).

[4] For instance, under bilateral treaties based on the OECD Model Tax Convention on Income and on Capital (OECD, 2017[32]), profits of a company of a contracting state shall be taxable only in that state

unless the company carries on business in the other contracting state through a permanent establishment (as defined under the bilateral treaties) situated therein.

[5] These regimes include the Intellectual Property (IP) aspects of the regime allowing benefits for biotechnology under Law 16,906; and the (non-IP) regime for financial company reorganisation.

[6] These regimes include the (non-IP) shared service centre regime; the free zones regime, with regard both to the IP and non-IP aspects; the non-IP aspects of the regime allowing benefits for biotechnology under Law 16,906; and the regime for biotechnology and software under Lit S Art. 52, with regard both to the IP and non-IP aspects.

[7] These regimes include the shared service centre regime; the free zones regime; the regime allowing benefits for biotechnology under Law 16,906; and the regime allowing benefits for biotechnology and software under Lit S Art. 52.

[8] The free zones regime.

[9] Under such treaty, where an individual would be a resident of both countries, then his status would be determined as follows: a) he shall be deemed to be a resident only of the country in which he has a permanent home available to him; if he has a permanent home available to him in both country, he shall be deemed to be a resident only of the country with which his personal and economic relations are closer (centre of vital interests); b) if the country in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either country, he shall be deemed to be a resident only of the country in which he has an habitual abode; c) if he has an habitual abode in both country or in neither of them, he shall be deemed to be a resident only of the country of which he is a national; d) if he is a national of both country or of neither of them, the competent authorities of the countries shall settle the question by mutual agreement.

[10] Treaty shopping typically involves the attempt by a person to indirectly access the benefits of a tax treaty between two jurisdictions without initially being a resident of one of those jurisdictions.

[11] Art. 53, Título 4, Texto Ordenado 1996 and Art. 114-121, Decree 150/007.

[12] The main changes introduced by Decree 143/018 to the COMAP regime are the following: simplifying the employment indicator; separating indicators for R&D and clean technologies; allowing companies that do not generate profits in a certain year to postpone benefits; increasing to 80%the ceiling from the percentage of benefits that new companies can use each year; increasing to 10% the amount of planned, but not executed, investment for unforeseen reasons; discontinuing to allow investment carried out six months prior to submission of the project unless it represents less than 20% of total amount; setting at six years the maximum time schedule for the project.

[13] In the event that a company ultimately invest more than indicated in the project proposal submitted to UnASeP, they have the opportunity to increase the amount of capital expenditure for the approved investment project by up to 20%, provided they submit information justifying that they score higher in the matrix by the second year of the project.

[14] Companies can suspend the period of promotion for 1 year in case their score yielded a period of up to 5 years. The suspension can take 2 years if the benefit was approved for 6 years or more.

[15] The regime defines SMEs as companies with a maximum of 19 employees and sales lower than 10 million indexed units (approximately USD 1.22 million).

[16] Unit adjusted by consumer price inflation. It varies daily so that by the end of the month it accumulates the price increase of the previous month. On 6 June 2019, 1 UI was equivalent to 4.1827 UYU.

[17]The FHTP conducts a yearly monitoring process of the implementation of certain aspects of preferential regimes in practice. The last monitoring process of Uruguay included, for the first time, monitoring of the substantial activity requirements of four regimes, i.e. Benefits under Law 16,906 for biotechnology, Benefits under lit S Art. 52 for biotechnology and for software, free zones and shared service centre (OECD, 2019[5]).

[18] Artana (2015[33]) analyses FZs in Costa Rica, El Salvador and Dominican Republic and concludes that FZs generally benefit high profitability projects that would have been implemented anyway in the absence of incentives.

[19] For example, House and Shapiro (2008[35]) find that accelerated depreciation reduces the user cost of capital in the US (2002 and 2003) and estimate an elasticity of investment to user costs of capital between 6 and 14.

[20] Since 2008, FZs are required to submit their account balances to DGI.

[21] These amounts do not include investment projects under Decrees 110/016 (Parking) and 329/016 (Construction of immovable goods for sale or rent) as detailed in Table A.C.4 in Annex C.

[22] Recent resolutions on the COMAP regime by investment project are available under: www.mef.gub.uy/6421/7/areas/resoluciones.html

[23] In recent years, many tax credits were revoked by COMAP upon request of the beneficiary company.

[24] In addition, the Directorate of Free Zones has undertaken Census of FZs in agreement with the National Statistics Institute and reports numbers for exports, employment and contribution to Gross Value Added. The latest reports available refer to data from 2016.

7 Investment promotion and facilitation

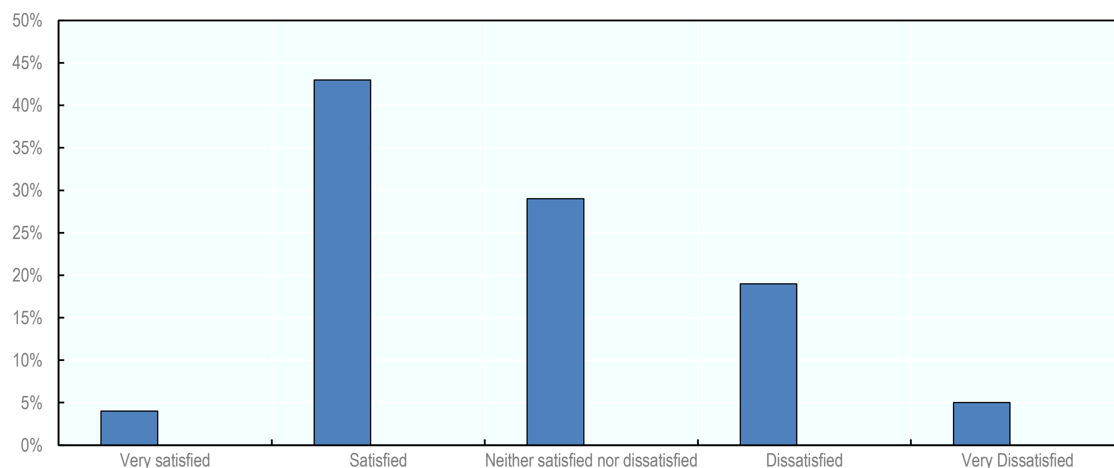
The chapter reviews investment promotion and facilitation policy in Uruguay. It first provides an overview of the overall institutional and regulatory framework, including those regulating investment incentives. It also analyses the activities of the national investment promotion agency, Uruguay XXI, and benchmarks via-à-vis agencies in the OECD economies. Finally, it assesses the country's investment facilitation and administrative simplification efforts and identifies possible improvements in the area of regulatory quality. It concludes with key policy recommendations.

As highlighted in the *OECD Policy Framework for Investment* (OECD, 2015a), investment promotion and facilitation – if adequately designed and implemented – can be powerful means to attract investment and ensure its contribution to economic development. As such, countries worldwide decide to not only remove restrictions on foreign direct investment and provide high standards of protection to investors, but also to proactively promote and facilitate investment, or certain types of investment, to maximise the benefits to the host economy. Considering that Uruguay has removed most formal barriers to FDI (Chapter 4), and is characterised by a stable macroeconomic framework and high level of protection to investors (Chapters 2 and 5), it can benefit from active and well-designed investment promotion and facilitation policies to help attract and retain investment that can assist its transition towards more innovation, diversification and high-quality employment.

As will be shown in this chapter, Uruguay has a generally conducive business climate and has reformed its regulatory framework for investment promotion and facilitation over time. These reforms have resulted in a wide range of government support provided to firms and favourable business conditions. According to the most recent surveys, the majority of foreign investors are either satisfied or very satisfied with the overall investment climate (Figure 7.1). In addition, despite general instability in the neighbouring region, Uruguay has thus far not suffered any large-scale divestments; and nearly 50% of investors decided to reinvest their earnings in the last five years.[1] Still, there is perception that relatively timid progress on administrative simplification can hamper opportunities for private investment. The medium-term challenge will be to continue the reforms, in particular addressing existing administrative bottlenecks, deepening regulatory reform and paying more attention to investment facilitation, while also streamlining and improving the oversight of existing regimes for investment incentives.

Figure 7.1. Overall satisfaction with investment climate in Uruguay

In %



Note*:* The survey took place in July-October 2018; 900 companies were contacted and 261 responded. The graph shows answers to the question: "How satisfied are you with Uruguay as a place to develop your business activities?".
Source*:* Foreign Investors Survey (2018)

This chapter provides an overview of the current approach to investment promotion and facilitation in Uruguay, including the overall regulatory framework and institutional set-up, evaluation of the activities of the national Investment Promotion Agency (IPA), namely Uruguay XXI, and the scope for progress in the area of administrative simplification regulatory quality. It concludes with main findings and options for further reform.

National strategy and the institutional set-up

Uruguay has developed elements of a national strategy for FDI attraction…

The legal framework for investment promotion and facilitation in Uruguay is defined by the Law on Investments (Law 16.906) and its regulatory decrees (e.g. Decree 02.012 of 2012), Law on Special Economic Zones (Law 19.566 and 15.921 and Decree 454/988), Law on Industrial Parks (Law 17.547) and a series of special sectoral regimes, governed by different laws and decrees (Table 7.1). In particular, the Law on Investments, enacted in 1998 and reformed several times since then (2007, 2012 and 2018), outlines the overall goals of Uruguay's investment policy[2], sets out general principles of treatment of foreign investors,[3] and lists specific sectors that can benefit from investment support and outlines relevant criteria and applicable procedures.

In addition, several strategic documents aim to provide a long-term strategic vision for the development of the Uruguayan economy and are of relevance for the formulation of investment policy and the internationalisation of Uruguayan firms, more generally. For example, *Visión Uruguay 2050* and the associated national development strategy (*Estrategia Nacional de Desarrollo al 2050*) aim to provide a vision for socio-economic development over the next thirty years (Box 7.1).[4] The plan, elaborated under the leadership of the Office of Budget and Planning (*Oficina de Planeamiento y Presupuesto, OPP*) and officially presented in August 2019, explicitly mentions the insertion into the global market as one of its key elements.[5] Several strategic economic activities are listed in the plan, together with broad measures for their development: i.e. bio-economy, digital economy, forestry and wood sector, renewable energies, creative industries, tourism, food products, global services.[6]

Besides the overall umbrella of the development plan, there also exists a more detailed strategy devoted specifically to productive transformation and competitiveness (*Plan Nacional de Transformación Productiva y Competitividad*), developed by Transforma Uruguay (*Sistema Nacional de Transformación Productiva y Competitividad*), a special dedicated body created in 2017. The plan, which was first developed in 2017 and extended in 2019, covers the 2017-2021 period, and includes several objectives linked to investment promotion and facilitation as well as specific projects to achieve them, together with the respective implementing agencies and applicable timelines (Box 7.1).[7] The plan also lists key economic sectors (food products, creative industries, forestry and wood sector, global services and logistics, life sciences, pharmaceuticals and tourism) and includes sectoral roadmaps for some of them.[8] It was elaborated through a consultative process, involving different private and public institutions, and was subject to public consultation.[9]

The elaboration of these strategic documents can benefit FDI attraction policy in Uruguay for several reasons. First, it has involved consultations and consensus-building that can help define national priorities and the role of investment within it. For example, the exchanges about priority sectors could lead to a more focused and unified approach to prioritisation at the national level. By virtue of including many horizontal projects, the process can also help strengthen inter-institutional cooperation, including on investment attraction. Finally, this effort could help broaden the scope of investment promotion and facilitation in Uruguay, going beyond the provision of investment incentives. Yet, in order to achieve tangible results, the institutions responsible for its coordination should have sufficient political clout and convening capacity to involve different government bodies and other relevant stakeholders, as discussed in the section on coordination. In addition, a degree of continuity by incoming government is necessary to build on the identified projects and develop new horizontal activities.

Box 7.1. Strategic objectives of investment promotion and facilitation policy in Uruguay

Several strategic documents in Uruguay touch on the role of investment promotion and facilitation policy. In particular, the National Development Strategy developed in 2019 outlines a long-term vision for Uruguay and the main priorities for the next thirty years (*Visión Uruguay 2050)*. Internationalisation is one of the key strategic axis of the document.

In addition, the *Plan on Productive Transformation and Competitiveness* for 2017-2019, developed in 2016 and updated in 2019 (including in light of the National Development Strategy), includes more detailed goals relevant to business climate and investment attraction, such as: 1) consolidation of a function of attraction of investments of a strategic nature; 2) deepening the link between investment incentives and sustainable development goals; 3) adapting the presence abroad through the network of Embassies and Consulate to the requirements of a strategic investment attraction function; and 4) improving the efficiency of the public bureaucracy with a focus on the facilitation of procedures and procedures related to foreign trade and investments. In the area of internationalisation, the Plan also proposes to consolidate

Source: OECD based on information provided by Uruguayan authorities, including Transforma Uruguay and the Office of Budget and Planning and strategic documents

…which may help improve coordination related to business climate issues

As highlighted in the OECD *Policy Framework for Investment* (OECD, 2015a), investment promotion and facilitation policy is transversal by nature and involves different public and private actors. As such, the ability to coordinate effectively is one of important requirements of successful investment attraction policy. Uruguay has undertaken several steps in this direction, as part of the strategic planning described above.

For example, Law 19.472 of 2017 outlines the different actors in the area of productive transformation and competiveness (Figure 7.3) and provides a basis for inter-institutional cooperation. In particular, the Inter-ministerial Committee for Productive Transformation and Competitiveness (*Gabinete Ministerial de Transformación Productiva y Competitividad*), created in 2016, performs the overall oversight role and is supported by coordination teams composed of representatives of different Ministries and by the technical Secretariat (*Secretaría de Transformación Productiva y Competitividad,* or Transforma Uruguay). The role of the Committee is to provide the overall strategy and objectives, approve the national plan, set the guidelines, priorities and objectives for Transforma Uruguay, and evaluate its activities. Meanwhile, Transforma Uruguay and the coordination teams are in charge of articulating and coordinating specific projects and activities, overseeing the implementation of the Plan as well as monitoring and evaluation. Individual agencies are responsible for proposing and executing actions in the area of their responsibility and providing inputs for monitoring and evaluation.

The institutions involved in the National System for Productive Transformation and Competitiveness are also relevant for the formulation of investment promotion and facilitation policy in Uruguay. In particular, all of the Ministries represented in the oversight Committee have specialised units or teams responsible for drafting decrees that can influence investment policy.[10] Yet, the universe of actors responsible for investment attraction is somewhat different. On the one hand, it is narrower, as it involves agencies and government units most closely responsible for investment attraction and dealing directly with investors. In this context, the Ministry of Economy and Finance plays a critical role in setting the overall policy direction; and the Unit for Private Sector Support (*Unidad del Apoyo al Sector Privado, UnASeP*), responsible for managing investment incentives, and Uruguay XXI, the national investment and trade promotion agency are key implementing agencies. On the other hand, it is broader as it involves other actors, both public and private, relevant to different aspects of firm internationalisation decisions, such as free zone operators,

chambers of commerce, the Customs administration, among others. Figure 7.2 illustrates this in a schematic fashion. Therefore, a tailored approach to coordinating activities related to internationalisation support (i.e. trade and investment promotion and facilitation) may be needed. The new authorities are currently evaluating the advantages and disadvantages of the current approach to strategic planning and policy coordination, including the role of Transforma Uruguay and other relevant institutions.

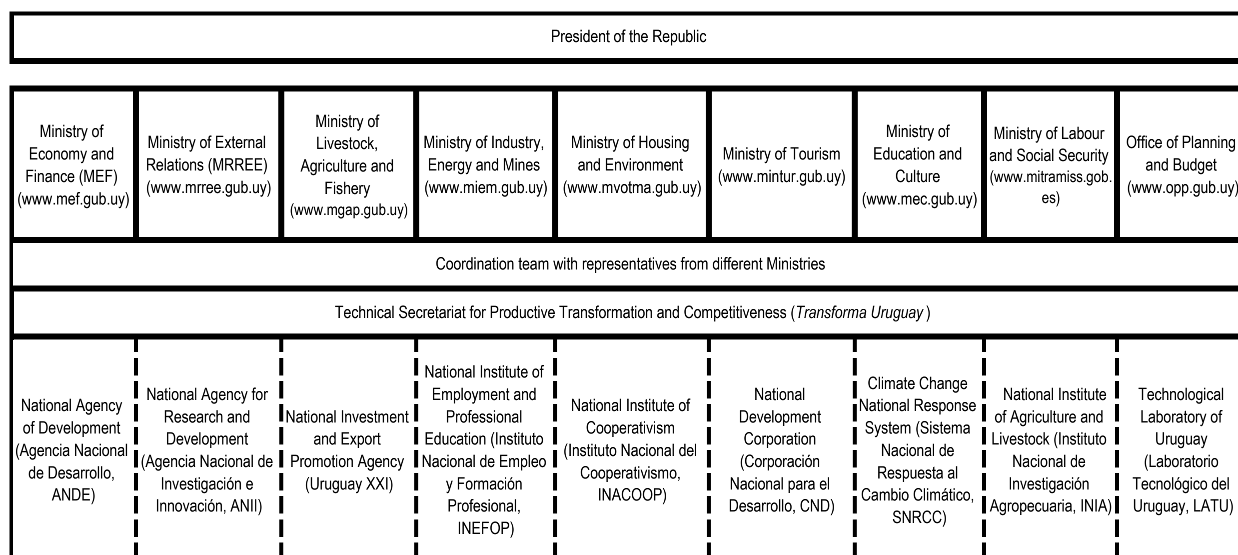
Regardless of the specific institutional set-up in this area, the critical component will be to ensure the continuity in the articulation and execution of key horizontal projects in the area of trade and investment policy (e.g. single window for investment or reduction of barriers in selected sectors and under certain institutions) and ensuring that the coordinating institution has the technical capacity to ensure day-to-day management and oversight of relevant activities as well as sufficient political capital to ensure whole-of-the-government approach and buy-in from different stakeholders for critical reforms.

Figure 7.2. An illustrative overview of selected institutions involved in investment promotion and facilitation in Uruguay

Note: The figure is presented for illustrative purposes only, is not exhaustive and does not imply a hierarchical structure or relationship between the various institutions.
Source: Government of Uruguay and the OECD.

As highlighted by various stakeholders in the process of this *Review*, a continuous long-term strategic focus on business internationalisation support is critical given Uruguay's limited size and the resulting need to generate access to global markets. Stakeholders have argued that for several years that this has not been explicitly highlighted, which may have led to lesser degree of support and cross-agency coordination, but acknowledged recent efforts. If dully implemented and sustained, and supported by an effective coordination mechanism, the strategic planning could help create conditions for long-term focus and support. Its implementation may serve as an opportunity to broaden the scope of investment attraction in Uruguay, which has predominantly focused on provision of investment incentives, and allow the government to pay more attention to administrative and regulatory barriers hindering business activity.

Figure 7.3. Overview of the National System for Productive Transformation in Uruguay

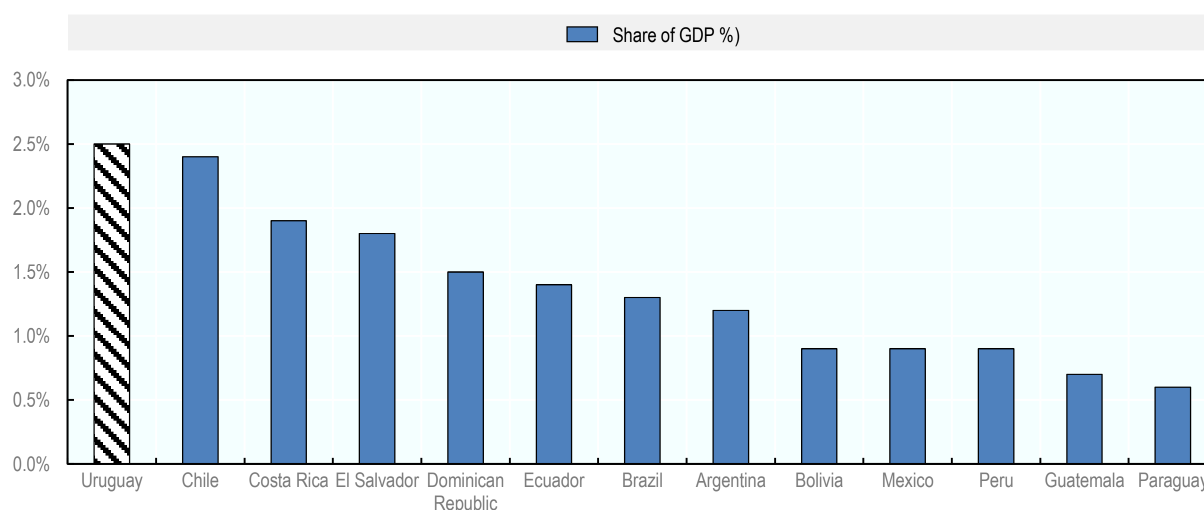


Source*:* OECD based on the Law19.472 and information provided by Transforma Uruguay and the Ministry of Economy and Finance

…which may help better identify the scope of investment attraction in the country

Uruguay relies significantly on tax incentives to attract investment (Chapter 6). According to OECD estimates, tax incentives for investment accounted on average for 1.8% of Uruguay's GDP in 2008-18.[11] A recent study by ECLAC and Oxfam (2019) found an even higher estimate of 2.5% for 2017 (Figure 7.4), positioning Uruguay as the country with the highest fiscal cost of investment incentives in LAC. Besides their total cost, incentives are notable for the high number of different schemes available to investors (see Box 7.2 for an overview) and the share of investment they support (Figure 7.5).

Figure 7.4. Estimates of fiscal costs of tax investment incentives in Uruguay and selected economies in Latin America and the Caribbean

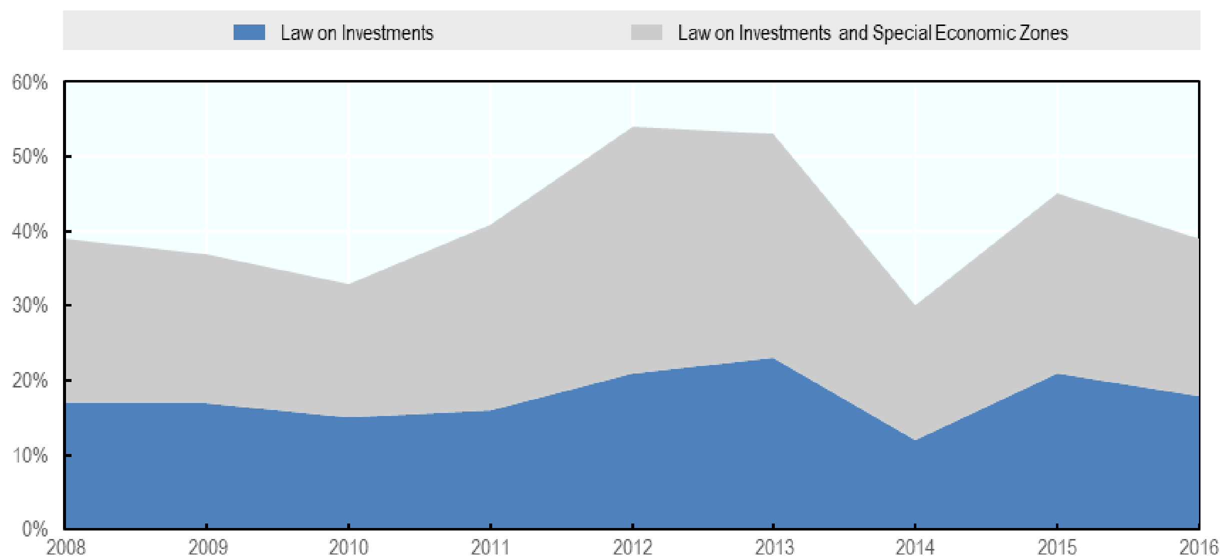


Source*:* ECLAC/Oxfam (2019)

Overall, the gradual evolution of investment support schemes in Uruguay (Figure 7.6) has helped the government align better the provision of investment incentives with the goals of sustainable development and improve the overall control (Chapter 6). Yet, this gradual approach has also led to a creation of an overlapping web of incentive schemes. In particular, individual decrees added various activities over time, resulting in an extensive list (Table 7.1).[12] At times the government also introduced temporary measures, applying to a particular period or type of investment (e.g. in 2018 and 2019).[13] New incentives have also tended to be introduced in pre-electoral periods (Figure 7.7). For example, between 1987 and 2019, twice are many sectoral regimes or other laws bestowing investment incentives have been adopted in the two years prior to elections than two years afterwards.[14] These different steps have led to a fragmentation of the legal framework for investment incentives.

As a result of such changes, the support that an investor may receive in Uruguay depends on the exact timing, location and scheme used at the time of the application for investment support. This may reduce the transparency of the system and increase the probability of customised treatment of individual investors, potentially opening opportunities for politically-motivated allocation of state support and lobbying by selected groups, tilting the level playing field for business.[15] Moreover, investors requesting incentives under sectoral regimes outside of the COMAP system do not have to comply with the eligibility matrix managed by the Ministry of Economy and Finance, which aims to link the goals of investment promotion with sustainable development, potentially introducing further asymmetries. Hence, as highlighted in Chapter 6, and in line with the OECD *Policy Framework for Investment*, several measures could be considered to further improve the transparency and efficiency of the investment incentives system in Uruguay and minimise its costs, in particular through streamlining of the various provisions in the key underlying laws and making a more frequent use of in-built sunset clauses.[16]

Figure 7.5. Share of total investment promoted via the Law on Investment (COMAP) and the Free Economic Zones regime (Zonas Francas) in Uruguay



Source*:* ILO (2018) based on data from the Central Bank of Uruguay, COMAP and Uruguay XXI.

The recent discussions and consensus-building on priority activities conducted as part of the national strategic planning may help assist in the more defined approach towards specific economic activities supported by the government. Table 7.2 provides an overview of the various priority sectors featured in

the strategic documents and of those targeted by the national investment promotion agency. For example, the Plan on Productive Transformation and Competitiveness outlines eight priority sectors – i.e. ICT, food, forestry, creative industries, logistics, global services, tourism, biotechnology and pharmaceutical industries – and includes sector-specific action plans with relevant support measures.[17] The sectors featured on Uruguay XXI's website features sectors that belong to the universe identified in the Plan.[18] As such, the Plan may outline the scope for prioritisation and provide an additional basis for coordination among the bodies involved in investment promotion and facilitation. Still, it will be important to ensure that priority sectors of different agencies are aligned in practice, also over time.

Box 7.2. Overview of regimes for tax incentives in Uruguay

There are several different regimes for investment incentives in Uruguay, ranging from general benefits that are automatically available, a special more generous regime (COMAP) under the Law on Investments that requires an application and approval and further incentives under Free Zones and Free Ports, governed by separate Laws. Their key provisions are summarised below:

Corporate Income Tax (CIT) Law

40% deduction of qualifying capital expenditure in machinery, equipment, agricultural inputs and fertilisers; 20% deduction of qualifying capital expenditure for construction of buildings for touristic, industrial or agricultural purposes

General Incentives – Law on Investments[1]

- Exemption from the net wealth tax for the whole lifecycle of the movable good; Exemption from VAT and excise tax (IMESI) if the good is imported; Reimbursement of VAT for goods purchased locally.

Specific Incentives (COMAP regime) – Law on Investments[2]

- CIT credits that range from 20% to 100% of new capital expenditures depending on the nature and size of the project. The amount of the tax credit and applicable period depend on a score obtained through a scoring matrix described in Chapter 6.
- Exemption from net wealth tax: Movable goods benefit from an unlimited exemption, while construction projects are exempt for eight years in Montevideo and for 10 years in the rest of the country.
- VAT returns for the local purchase of goods or services for construction projects.
- Exemption from import tariffs and VAT for movable goods and construction material that does not compete with the national industry.

Sectoral regimes: CIT/VAT exemptions and credits, import subsidies, customs duties exemptions net wealth tax and rural cadastral tax exemptions, depending on the sector.[3]

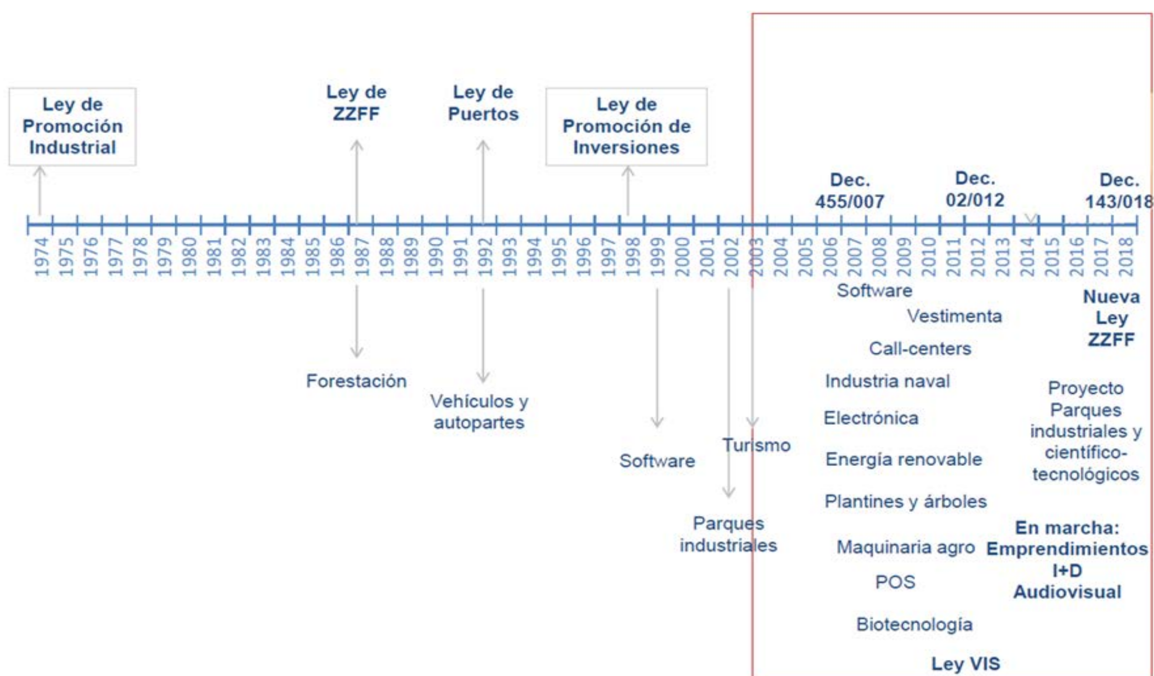
Free Zones, Industrial Parks and Free Ports and Other[4]: Full tax holiday in FEZs;[5] reductions in CIT and employer contributions for Industrial Parks[6] and exemption from import duties in the port of Montevideo, Carrasco International Airport and several commercial ports.[7] Transitory increases in tax credits also apply for specific time periods.[8]

Since the reform of the COMAP regime in 2007, which made the system more generous, the volume and number of projects supported under the Investment Law rose: in 2008-2018, COMAP approved 6 233 projects equal to USD 16,881 million in capital investment.[9] More generally, the COMAP

investment project support system together with FEZs regime account for a sizable share of total investment in Uruguay, estimated to amount to over 40% of total investment in the country over the period 2008-2016 (Figure 7.3).

1. Available for companies that engage in industrial or agricultural activities and invest in movable goods used in the production cycle (since 2014 limited to SMEs).
2. Activities are eligible for the COMAP regime if declared as promoted activities by the government (Art. 11, Law 16.906) and include industry, construction, tourism, retail, and generation of non-traditional renewable energies, and public-private partnerships, among others.
3. For a full list of sectoral regimes and the applicable incentives, see Table A A.1 in Chapter 6.
4. To be eligible for the preferential tax regime in FZs, a minimum of 75% of employees of FZ users must be of Uruguayan nationality. This threshold decreases to 50% if the FZ user is a service provider.
5. The tax holiday applies for the duration of the user contract. In the past, there has been no limit on such duration and those tended to vary between 15-50 years. Since 2007, direct FEZs users can carry out industrial activity in the zone for 15 years and a services activity for 10 years while indirect users can carry any type of activity for maximum of 5 years. Contracts can be extended in certain circumstances. (See Chapter 6 for more information).
6. Law 17.547, Decree 524/005, Decree 002/012.
7. Goods are treated as imports if they enter national territory after entering these ports (see Laws 16.246, 19.276 on the Free Ports regime and 17.555 for the Carrasco International Airport regime).
8. For example, Decree 218/018 established a 10% increase of the tax credit for projects submitted since establishment of Decree 143/018 and up to 28 February 2019.
9. Data provided by the government authorities as part of this Review.

Figure 7.6. Evolution of legal regimes for investment incentives in Uruguay, 1974-2018



Source: Ministry of Economy and Finance

Table 7.1. List of selected sector-specific investment schemes in Uruguay

Economics activity	Applicable legal basis
Agricultural machinery	Law 16.906, Law 19.637, Decree Nº 220/998 and Decree 006/010
Biofuels	Law 17.567, Law 18.195, Law 19.289 and Decree 523/008
Biotechnology	Law 16.906; Law 19.637
Communication industry	Law 13.320, Law 13.349, Law 13.695, Decree-law 14.882
Electronic industry	Law 16.906, Decree 58/009, Decree 532/009 and Decree 127/011
Energy generation	Law 16.906, Decree 354/009, Decree 002/012, Decree 23/014
External financial intermediation	Decree-Law 15.322, Decree 381/989, Decree Nº 266/991, Decree Nº 227/002
Forestry	Law 15.939, Law 18.245, Title 4° of the Consolidated Text, Law N° 18.083
Graphic industry	Law 13.349 and Law 15.913
Housing	Law 18.795, Decree 329/016, Decree Nº. 7/017, Decree Nº. 194/017, Decree Nº. 59/018, Decree Nº. 48/018
Hydrocarbons	Law 14.181, Law 16.213, Decree 354/009, Decree 68/013
Industrial solid waste	Law 16.906, Decree Nº 411/011
Maritime or air navigation	Law 18.083
Remote customer service centres	Law 16.906, Decree Nº 207/008 and Decree Nº 379/011
Scientific and technological innovation	Law 16.906, Decree 330/016
Shared services centres	Law 16.906, Decree 251/014, Decree 330/016
Shipping	Law 15.657, Law 16.906, Decree 58/009, Decree 532/009
Software	Decree N° 150/007, Law 18.083
Tourism	Law 16.906, Decree 175/003, Decree 404/010 and Decree 59/012
Vehicles and equipment for freight transport	Law 16.906, Decree 210/010
Vehicles or auto parts	Decree 316/992, Decree 340/996 and Decree 126/012

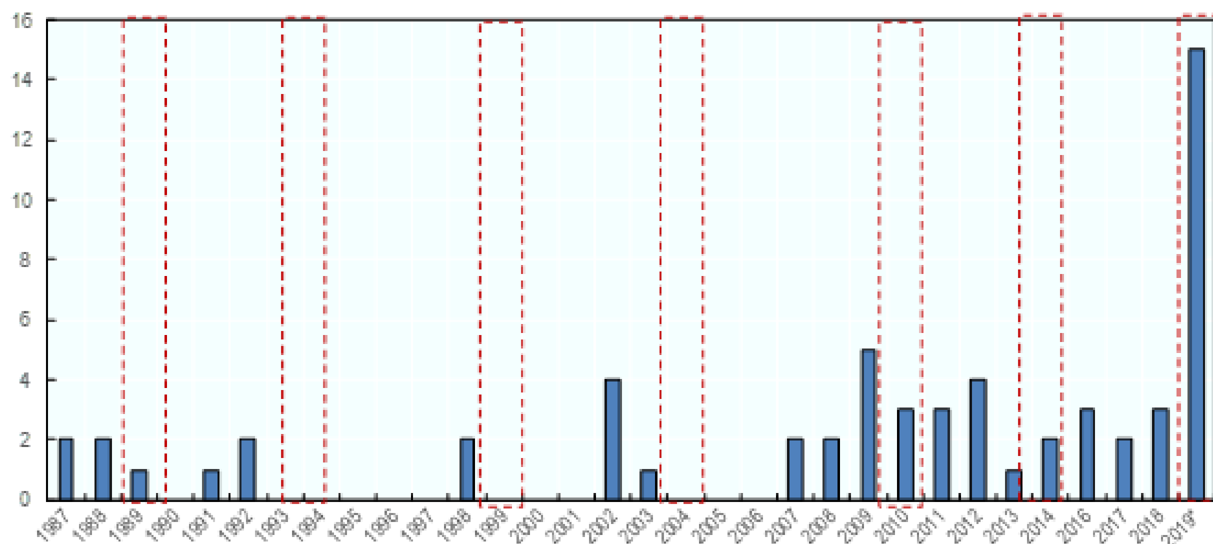
Source: Information provided by Ministry of Economy and Finance, UnASep, and Uruguay XXI.

Table 7.2. Overview of Uruguay's priority economic sectors

	National Development Plan	Plan on Productive Transformation and Competitiveness	Sectoral Action Plans Publically Available (as of October 2019)	Uruguay XXI (as of January 2020)
ICT, Digital & global services	✓	✓ esp. AI & data science	✓	✓
Food / Agribusiness	✓	✓ esp. science & technology of food production	✓	✓
Forestry	✓	✓ esp. mechanical transformation & R&D	✓	✓
Creative industries	✓	✓ esp. audio-visual & design	✓	✓
Infrastructure & logistics	Mentioned	✓		✓
Tourism	✓	✓		
Bio-economy & Renewable energies	✓	✓ Biotechnology & pharmaceutical		✓

Note: The list of priority sectors is non-exhaustive and presented for illustrative purposes only.
Source: OECD based on the National Development Plan, the Plan on Productive Transformation and Competitiveness, the website of Uruguay XXI, Volpe Martincus and Sztajerowska (2019) and the information provided by the Uruguayan authorities.

Figure 7.7. Number of laws and sectoral decrees introduced and the incidence of elections in Uruguay.



Note*:* The bars in the figure above show the total number of laws related to allocation of fiscal incentives in Uruguay (i.e. laws on Investment, Free Economic Zones, Free Ports and Industrial Parks) as well as sectoral decrees providing incentives for particular sectors (as listed in Table 7.1) while the dotted lines identify the period of general elections in Uruguay.
Source*:* Information provided by Ministry of Economy and Finance, UnASep, and Uruguay XXI.

Investment promotion agency in Uruguay relative to OECD and LAC economies

National investment promotion agency – together with its foreign offices and regional partners – can be an important and relevant actor in the institutional landscape for investment promotion and facilitation. The economic literature shows that, by providing potential investors with information on local business conditions, regulations and providers, among others, IPAs help bridge information asymmetries and attract investment into the local economy (Alfaro and Charlton, 2007; Harding and Javorcik, 2011; 2012; 2013). In this context, the number of IPAs has increased substantially (OECD, 2018a; Volpe Martincus and Sztajerowska, 2019). In addition, over 60% of such agencies in LAC perform both investment and trade promotion functions.[19] In the case of Uruguay, Uruguay XXI, the national investment and trade promotion agency, established in 1996, serves this dual function (with investment promotion mandate and function being added in 2009). As the agency participated in the OECD-IDB survey of IPAs in 32 OECD and 19 additional LAC countries (Box 7.3), this section highlights the main findings regarding its activities and characteristics vis-à-vis other agencies, highlighting recent achievements and suggesting possible areas for future reform.

Box 7.3. The OECD-IDB survey of IPAs

The OECD and the IDB have partnered to design a comprehensive survey of IPAs. The questionnaire provides detailed data that reflect the multiple recent policy developments as well as rich and comparable information on the work of IPAs in different countries. The survey was displayed and shared with IPA representatives from OECD and Latin America and Caribbean (LAC) countries in the form of an online questionnaire that was divided into nine parts:

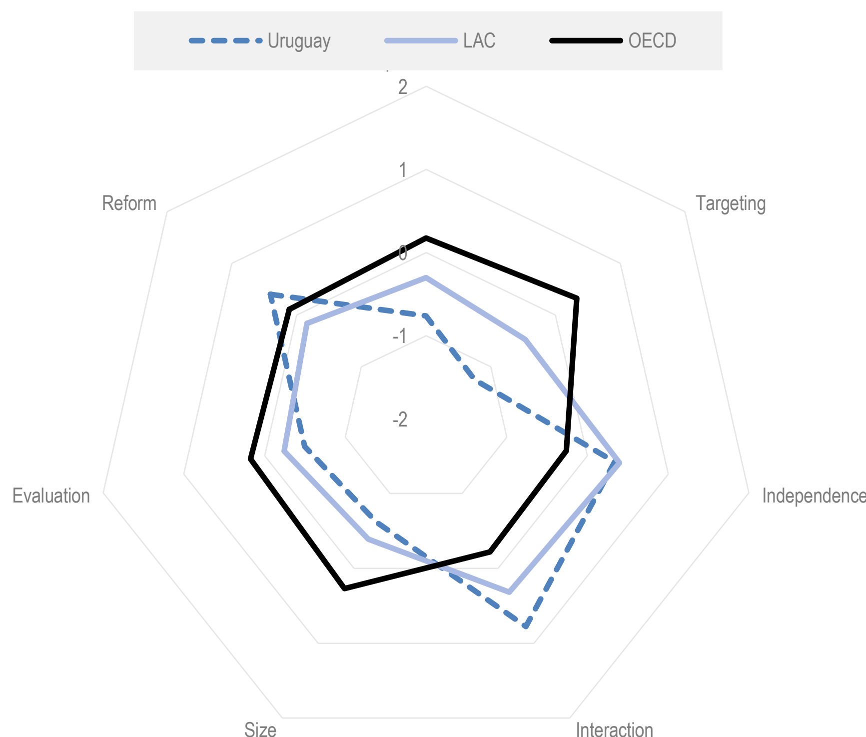
- Basic profile;
- Budget;
- Personnel;
- Offices (home and abroad);
- Activities;
- Prioritisation;
- Monitoring and evaluation;
- Institutional interactions; and
- IPA perceptions on FDI.

National IPAs from 32 of the 35 OECD countries participated in the OECD- IDB survey (representing a 94% response rate) as well as 19 LAC countries (outside of the OECD area). The detailed data gathered through the survey has allowed rich cross-country analysis and served as a basis for a preparation of a mapping report of IPAs in OECD countries (OECD, 2018a) as well as benchmarking between LAC and OECD agencies (Volpe Martincus and Sztajerowska, 2019). It has since then been also used in other regions, including Middle East and North Africa and South-Eastern Europe.

While ubiquitous, IPAs are far from being equal – they vary significantly in size and ways in which they perform their functions (OECD, 2018a; OECD, 2019; Volpe Martincus and Sztajerowska, 2019). This, in turn, can have implications for their effectiveness and impact in terms of investment attraction. For example, the size of the agency's budget per capita together with its targeting intensity are associated with both higher levels of (per capita) FDI stock and the (per capita) number of foreign affiliates in the economy; while the level of institutional independence is associated with a higher number of foreign affiliates per capita (Volpe Martincus and Sztajerowska, 2019). Hence, on top of conducting detailed impact evaluations–which Uruguay XXI has done recently (and will be discussed later) – comparing the different institutional and operational aspects across agencies in different countries can help identify the individual agency's relative strengths and weaknesses. For this purpose, Figure 7.8 summarises Uruguay XXI's characteristics relative to its regional LAC and OECD peers on various dimensions, ranging from size to the degree of interaction with stakeholders, which are discussed next.

Figure 7.8. Overall Investment Promotion Agency Scorecard: Uruguay XXI

2 = max. performance; -2= min. performance



Note*:* The figure shows radar graphs that compare each IPA with the LAC and OECD averages along relevant dimensions captured by the indices defined above.
Source*:* Volpe Martincus and Sztajerowska (2019)

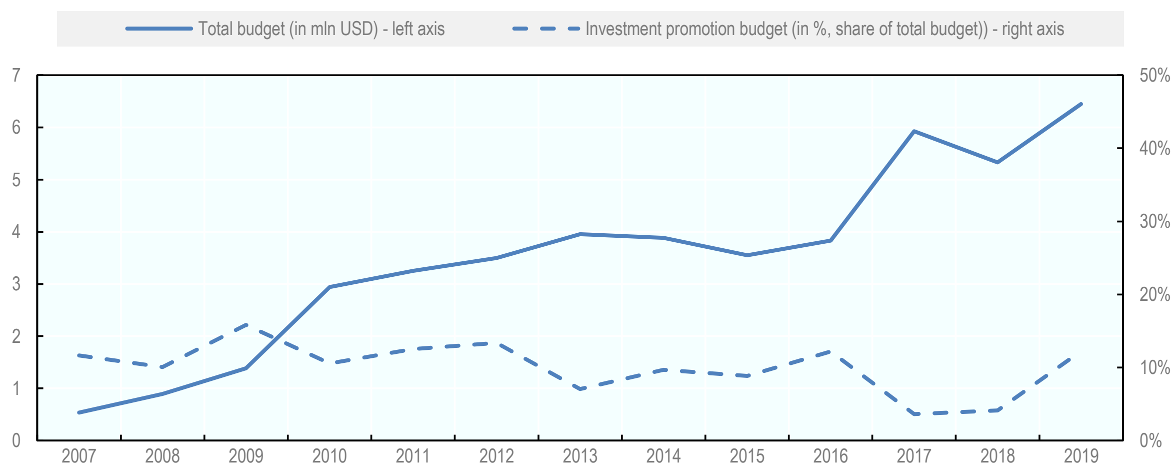
Uruguay XXI is a relatively small but growing and independent agency…

In general, Uruguay XXI is a highly independent agency that has undergone a number of institutional reforms and interacts with a large number of relevant stakeholders. With a total budget of USD 6.5 million in 2019, covering all of its different mandates, it is a relatively small agency compared to its OECD peers but it has a similar size to other IPAs in the region.[20] The agency's budget has also evolved over time, rising from about USD 60 thousand in 2007 to over USD 6 million in 2019 (Figure 7.9). The share of the agency's budget dedicated to investment promotion has stayed broadly stable over time (at 10%) and, thanks to the creation of the aftercare unit, in line with the increases in the agency's total budget.

The fact that other activities account for a large share of resources is closely linked to the agency's dual function as both a trade and investment promotion organisation (TIPO). In particular, activities related to export promotion and the operation of the Single Window for Trade taken together account for as much of the agency's total staff as investment promotion and aftercare activities (i.e. 30% of the total 90 employees in 2019, Figure 7.10). Other functions, such as competitive intelligence– i.e. gathering, analysing and disseminating information relevant to trade, investment and the overall business climate in the country – or the image-building and communications department support both types of activities, allowing the agency to benefit from internal synergies. It is also worth mentioning that the agency's staff is highly educated and has relevant work experience: 80% of staff have a university degree and an even higher share have prior private sector experience. Perhaps unsurprisingly in this context, foreign investors that used Uruguay XXI

services have shown high levels of satisfaction with the agency's assistance, in particular in regards to the quality of information provided, installation assistance and aftercare.[21]

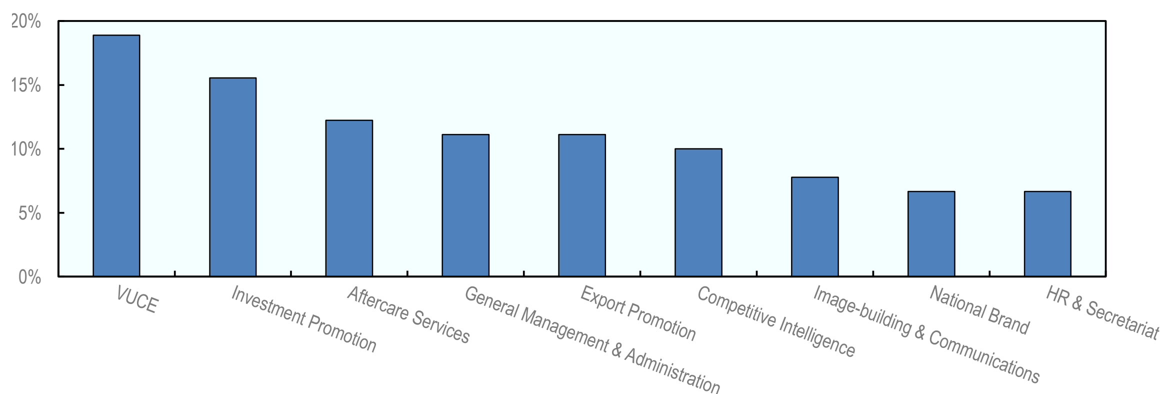
Figure 7.9. Total budget of Uruguay XXI, 2007-2018



Note*:* The share of investment promotion budget for 2019 incorporates the budgets of investment promotion department and the newly created aftercare unit.
Source*:* OECD-IDB Survey of Investment Promotion Agencies and Uruguay XXI

Figure 7.10. Distribution of staff of Uruguay XXI across different programmes, 2019

In %



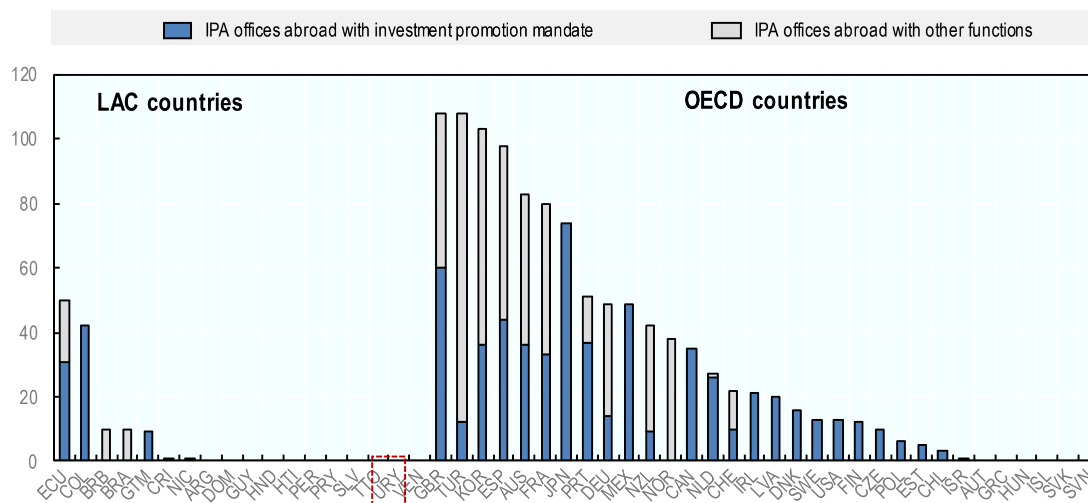
Note*:* The Global Services Programme became a new aftercare unit of Uruguay XXI in 2018.
Source*:* Uruguay XXI

In terms of the institutional arrangement, Uruguay XXI is established as a public-private agency by Law 16.736 (Article 202). This status, which together with fully private agencies is more common in the LAC region than in OECD countries, allows the IPA greater independence, also enabling it to pay wages at a level similar to the private sector to attract qualified staff. All of the IPA's budget comes from the Ministry of Economy and Finance. As with a majority of IPAs in the LAC region, Uruguay XXI also has a Board of Directors, which allows for the oversight of the agency's actions and a representation of a broader group of stakeholders. For example, several Ministries are represented on the Board, in particular the Ministry of Foreign Affairs that serves as its President. The private sector and civil society representatives also jointly account for 45% of the agency's Board.

It is worth noting that Uruguay XXI has no offices abroad – as most agencies in the LAC region – which differentiates it from its OECD peers that tend to have well developed foreign offices networks (Figure 7.11). To address this issue, Uruguay XXI has adopted creative strategies with the Ministry of Foreign Affairs in order to use existing facilities and staff of embassies and consulates abroad. For example, as part of the cooperation under a project supported by the Plan for Productive Transformation and Competitiveness, Uruguay XXI and the Ministry have signed an MOU and created a network of commercial attachés located in key embassies and consulates who obtain relevant training and materials to collaborate with the IPA to implement a market-specific action plan (so-called "Commercial Antennas" programme).[22] Most recently, the agency has also developed a complementary "Business Developers" programme involving signing of contacts with private service providers to help with prospecting activities and contacts with investors abroad. Currently, European and North American markets are being prioritised.[23]

Uruguay XXI also interacts intensively with other government bodies, including the partner Ministries and other relevant agencies (e.g. Customs, Innovation institute, etc.), as well as representatives of the private sector and key 'influencers', among others. In fact, Uruguay XXI is among the top five LAC IPAs in terms of the number of different stakeholders with which it interacts, according to the OECD-IDB survey (2017). Potentially, this can be a powerful tool to overcome the agency's limited size and, with time, it can also permit it to specialise more, leaving some activities to other government bodies. Indeed, IPAs whose strategies are more targeting-intensive collaborate with a broader range of entities (Volpe Martincus and Sztajerowska, 2019).[24] This likely reflects the fact that defining and revising various multitier priorities and delivering properly tailored assistance to consistently identified beneficiary firms should be aligned with broader policy objectives, in general, and requires reaching consensus, coordinating, and cooperating with a larger set of stakeholders, in particular.

Figure 7.11. Number of offices abroad of agencies in different OECD and LAC countries, 2017.



Source: OECD-IDB Survey of Investment Promotion Agencies (2017)

… that has invested in best practices on monitoring and evaluation…

As a small agency, the IPA not only depends on cooperation and creative partnerships with other agencies. It also aims to ensure that its actions achieve the maximum possible effect with limited resources. As such, Uruguay XXI has invested heavily in robust monitoring and evaluation (M&E) systems, particularly in internal data collection and analysis, and has crafted external partnerships to evaluate the effectiveness of its actions.

As a first step for effective M&E, an IPA needs to know well what it does, how it does it, and how these actions translate into firm investment decisions over time. For this purpose, IPAs use a customer relationship management system (CRM), which allows the agency to have an institutional memory and an overview of its past activities. It allows, among others, tracking firms' assistance, sources of investment leads, and the investor's eventual decision to establish or not. Most IPAs in OECD and LAC have a CRM (about 80%) albeit their quality differs widely (Volpe Martincus and Sztajerowska, 2019). Uruguay XXI developed its tailor-made system, which *a priori* covers all units of the agency and activities with investors, and since its roll-out in 2017 is continuously working on improving its use by its staff and coverage, a common challenge across IPAs.[25] In 2019, a business intelligence unit was introduced, which used both internal and external data sources, and allows for an easier and more automated process of tracking of IPA's performance indicators.

In addition, Uruguay XXI has done impressive work to systematise the information on the firms it assists as well as all foreign-owned firms operating in the economy. This is a non-trivial ask and not systematically done by other agencies, despite its critical value for allowing to better target investment promotion efforts. Meanwhile, Uruguay XXI conducted a data-collection effort to create a census of foreign-owned enterprises located in the country, generating a unique source of data on the activities of foreign firms in the country (which was formerly not available). This work has, among other thing, identified what share of firms that decided to establish in Uruguay have been assisted by the agency, which increased from about 9% at the time when the agency started to promote investment to 26% in most recent years. The information gathered also serves as a very useful tool for the agency's prospective work and looking for reinvestment opportunities. It has also served as a key input into the impact evaluation of agency's activities undertaken by the IDB, which studied the effect of the agency's assistance on the probability that the firm locates in the economy. Employing advanced econometric techniques, the study has found statistically significant impact (Volpe Martincus et al., 2019, see Box 7.4), confirming the effectiveness of agency's interventions. Last but not least, to have a further source of qualitative information in terms of areas of particular focus, the agency has also started conducting a survey of foreign investors (as is done in many OECD countries) in order to measure the overall level of satisfaction as well as the individual factors that contribute to contentment or dissatisfaction of investors. Such surveys are a useful tool to support the IPA's policy advocacy efforts, and have, in fact, been used in various places in this *Review*. In 2020, the agency is also planning to conduct targeted client-satisfaction surveys with investors assisted by the agency to obtain tailored feedback on specific activities.

In a similar fashion, the agency has strengthened its collaboration with various external data providers and relevant agencies. For example, as part of an agreement with the Customs administration, the agency has access to daily firm-level data on imports and exports. It also obtains more aggregated data by sector on exports, jobs and sales from the Ministry of Economy and Finance (for the economy as a whole and the firms located in FEZs) as well as the Social Security Administration, among others. Finally, as part of a broader project on the impact of MNEs in the economy, the agency also managed to provide access to the IDB research staff to anonymised firm-level data from the Tax Office to better understand the nature of linkages between domestic- and foreign-owned firms. The various studies and the data analysis conducted through these exercises confirm Uruguay XXI*'s* impact on FDI attraction into the economy, controlling for all other relevant factors (Box 7.4).

Box 7.4. Does investment promotion work?

Insights from the IDB impact evaluation of Uruguay XXI

The Inter-American Development Bank (IDB) and Uruguay XXI have partnered to undertake an impact evaluation of the agency's activities on investment attraction. For this purpose, a collaborative and meticulous data collection and preparation process took place in order to complete the information on foreign-owned firms operating in the country and their assistance by Uruguay XXI, using the official national statistics, the data gathered by the agency as well as private data providers, such as Dun & Bradstreet data, jointly prepared by the IDB and the agency. As a result, information on the number of assisted firms, total number of firms located in the economy and those that could have potentially decided to locate was created, permitting a rigorous impact evaluation.

Using this data, the study by Volpe Martincus, Carballo and Blyde (2019) shows that the assistance of an enterprise by Uruguay XXI has a positive and statistically significant effect on the probability of MNE presence in the local economy. Specifically, such a probability increases by 5% and significant results are also found for the first establishment and the number of foreign affiliates. In addition, the effect is particularly strong for countries that are OECD members and those operating in the services sectors. As such, investment promotion is shown to have a potential to help diversify the productive base in the economy. The results are also robust to different specifications and confirmed by placebo tests; for example, regardless of whether the IPA reactively assists a firm or proactively seeks it out, the effect is found to be positive and statistically significant. The study also find similar effects in the case of CINDE, national IPA of Costa Rica.

A follow-up study in Uruguay has considered the extent of linkages between foreign-owned MNEs and domestic firms, and the effect of those linkages on domestic firms export capacity. In particular, Carballo, Marra de Artiñano and Volpe Martincus (2019), exploit firm-level tax data to identify and study buyer-seller relationships among firms in Uruguay. Among others, they show that foreign companies are responsible for 16% of total purchases and about half of them are foreign exporters; and, upon controlling for firm-, sector- year and destination-year fixed effects, they find that selling to foreign companies in Uruguay is associated with a 70% increase in the likelihood to become an exporter in the subsequent year. They also find a positive effect on the total and domestic sales, number of employees, and labour productivity when a firm is selling to an MNE. These results show the contribution of MNEs to domestic firms' upgrading in Uruguay as well as the close link between the goals of investment attraction and export promotion. They also contribute to a better understanding of FDI spillovers, which in the past relied on aggregate data and assumptions on firm interactions based on sectoral characteristics.

Source: Volpe Martincus, Carballo and Blyde (2019); Carballo, Marra de Artiñano and Volpe Martincus (2019, Uruguay XXI

… and is increasing significantly its capacity in investment facilitation and aftercare

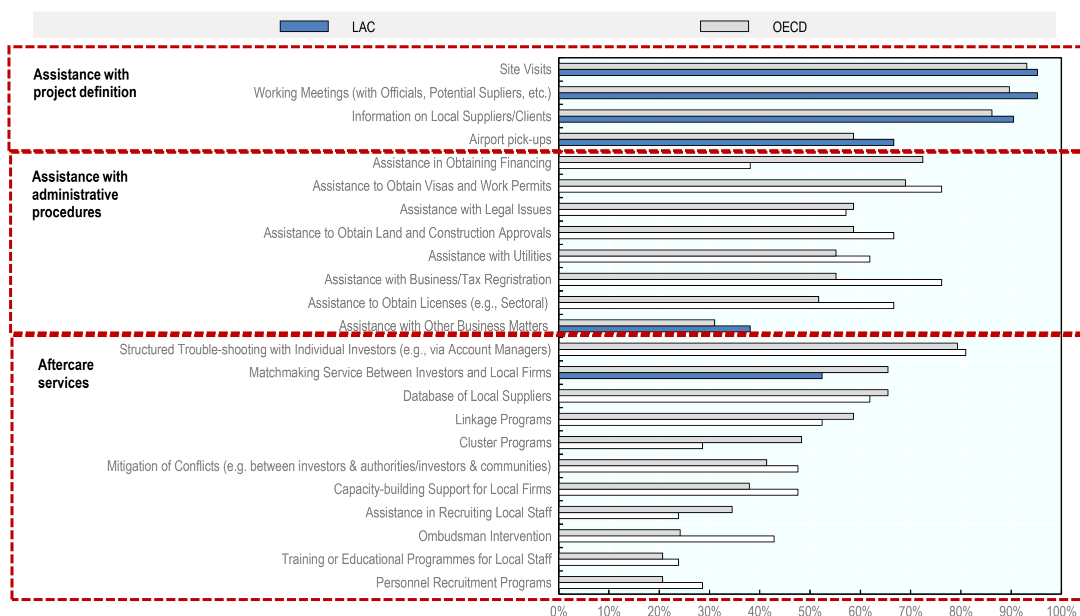
Studies suggest that the impact of IPAs may be particularly strong when such agencies bridge information asymmetries, for example, by providing high-quality- and timely information to facilitate installation of firms or assisting them with administrative procedures (e.g. Volpe Martincus et al., 2019). This is also confirmed by existing surveys in Uruguay; for example, three quarters of surveyed foreign investors have particularly appreciated the provision of relevant information on the country, sectors and markets as well as related services by Uruguay XXI (Foreign Investors Survey, 2018). The level of their satisfaction with such information and related services has been particularly high. Therefore, investment facilitation assistance provided by the IPA, including aftercare services, may be particularly important. In this context, it is worth

considering what investment facilitation services Uruguay XXI offers relative to other agencies and what recent reforms have been undertaken in this regard to reflect on options available in the future.

Figure 7.12 provides an overview of the share of IPAs that undertake particular investment facilitation and aftercare services in OECD and LAC. In particular, while some activities are undertaken equally frequently by OECD and LAC agencies (and across IPAs) – such as provision of assistance with project definition – other types of activities tend to be a differentiating factor. For example, the assistance with access to financing, cluster programmes and recruiting local staff are frequently provided to firms by OECD IPAs but less so by agencies in the region. In the case of Uruguay, before the aftercare unit was created in 2018, relatively little attention had been given to investment facilitation and aftercare.

Figure 7.12. The share of IPAs conducting different investment facilitation and aftercare services in Uruguay relative to OECD and LAC

In %



Note*:* The bars representing activities that Uruguay XXI did not conduct at the time of survey are highlighted in white.
Source*:* IDB-OECD Survey of Investment Promotion Policies (2017)

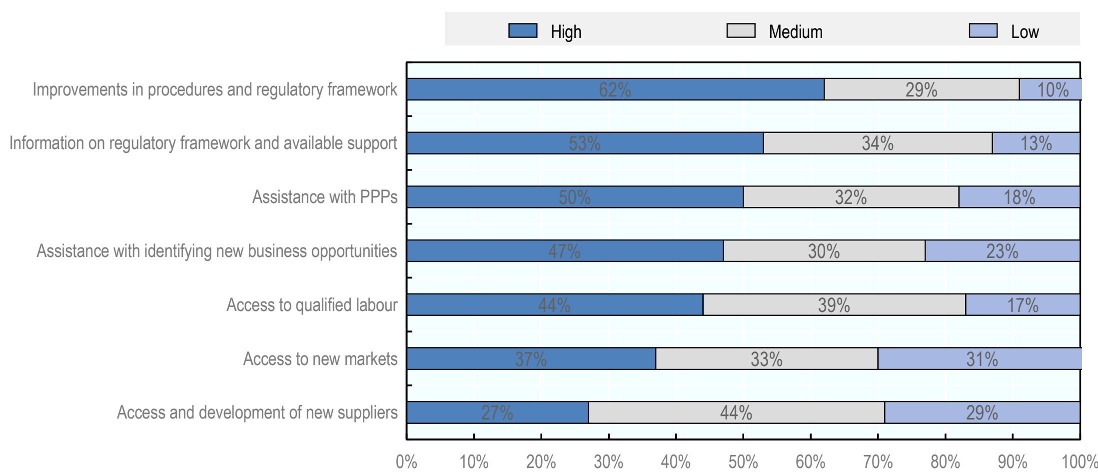
In particular, while all activities related to project definition were being offered to investors by Uruguay XXI, such as providing information on local suppliers and clients, organising site visits, airport pick-ups and investor meetings with potential providers; and provides some assistance in dealing with administrative procedures mostly by liaising with the responsible government bodies to facilitate resolution of problems. This can be further facilitated with the planned creation of a single window for investment. In addition, in the area of aftercare, while the agency was tracking the expansion and reinvestment plans of firms as well as providing *ad hoc* support to individual investors, no structured trouble-shooting or other types of support of this type was available until the new specialised unit was created. Hence, the recent and ongoing strengthening of agency's capacities in this area is a positive development and can boost its ability to further assist investors.

Meanwhile, this is an area where many IPAs in LAC are assisting investors, in particular in regards to business registration, obtaining licences and work permits. In addition, foreign investors in Uruguay have expressed a particular interest in obtaining these kind of services (Figure 7.13).[26] Thus, the creation of the aftercare unit in Uruguay XXI is a potentially important step forward. On the one hand, it may allow the agency to be more

proactive in its support provided to firms as the assigned account managers specialised in specific sectors continue developing their contacts and relationships in those industries.[27] On the other hand, it can also further strengthen its policy advocacy function (Figure 7.14). Finally, the current plans on the establishment of the single window for investment, under the responsibility of Uruguay XXI (as outlined in the Plan for Productive Transformation) can help boost significantly the agency's ability to assist firms' in business establishment and obtain relevant permits, responding to the demand raised by investors themselves.[28] It can also help advance the broader investment facilitation agenda in the country, which is one of the remaining challenges for doing business in Uruguay – discussed next.

Figure 7.13. Importance of different aftercare services to foreign investors in Uruguay

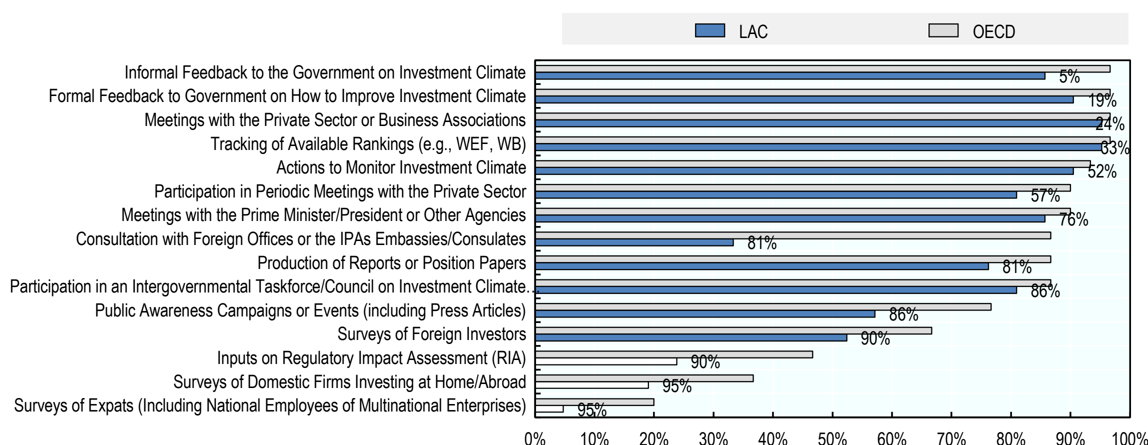
In %



Note: The survey took place in July-October 2018; 900 companies were contacted and 261 responded. The graph shows answers to the question: "How important would it be for your company to provide the following aftercare services?"
Source: Foreign Investors Survey (2018)

Figure 7.14. The share of IPAs conducting different policy advocacy activities in Uruguay relative to OECD and LAC

In %



Note: The bars representing activities that Uruguay XXI did not conduct at the time of survey are highlighted in white.
Source: IDB-OECD Survey of Investment Promotion Policies (2017)

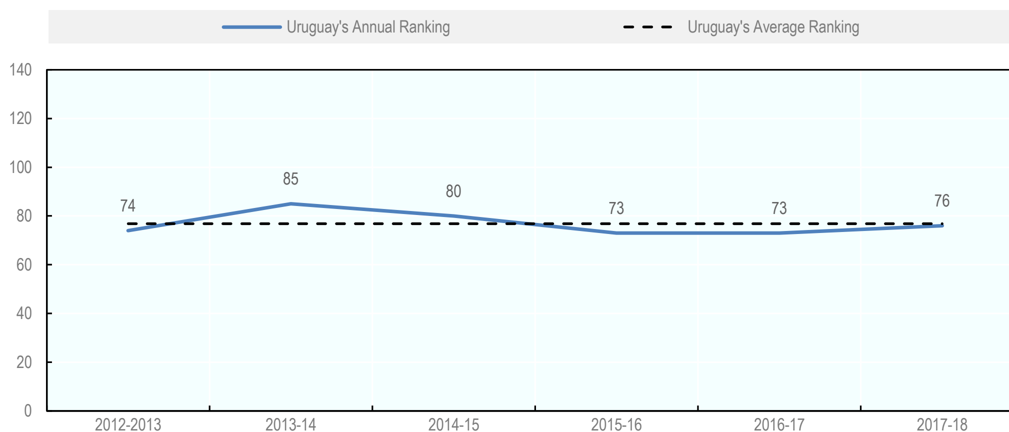
Investment facilitation and administrative simplification efforts

Uruguay could reduce administrative burden to further improve business climate

As highlighted above and captured in the available business surveys, the ease of obtaining permits and broader regulatory quality appear to be remaining challenges to doing business in Uruguay. Performance in this area weighs on Uruguay's position in cross-country rankings, such as the World Bank's *Doing Business* or WEF's *Global Competitiveness Report,* already mentioned in earlier chapters. While these types of rankings are mostly indicative, and should not be taken at face value, they may point to the general tendencies and areas of above-average and below-average performance.

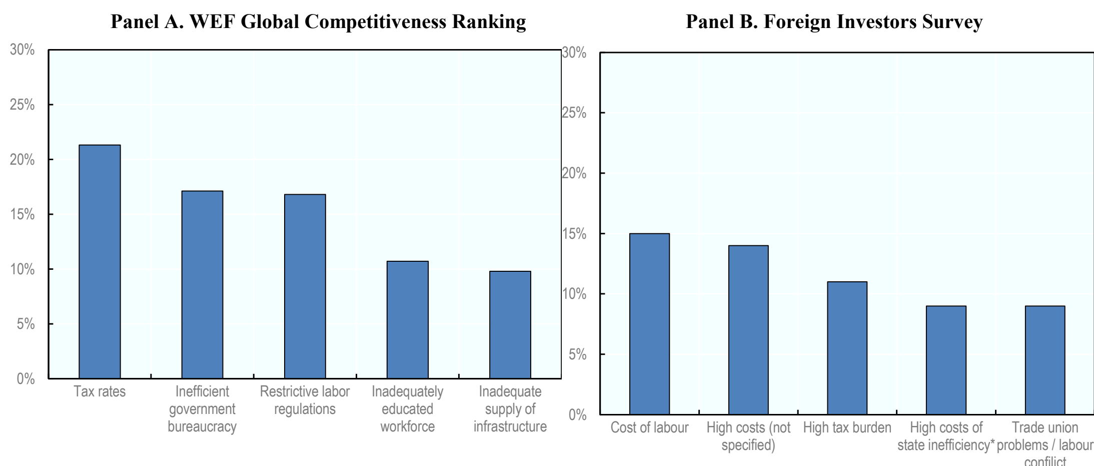
In this context, one can observe, for example, that Uruguay's ranking on WEF's Index has not changed significantly over the past few years, oscillating around 76th place out of some 140 economies (Figure 7.15). Regarding the areas of strength, Uruguay has systematically scored above the regional average for the quality of institutions, political stability, control of corruption, transparency and accountability as well as the quality of infrastructure (WEF, 2012-2018).[29] Meanwhile, bureaucratic procedures and restrictive regulations, on top of high tax costs, are highlighted as areas of potential attention in the WEF ranking (Figure 7.16, Panel A). These correspond to the areas raised as problematic by foreign investors operating in the country in the Foreign Investors' Survey (2018) (Figure 7.16, Panel B). Potential areas of further attention by the government are also highlighted in the World Bank's *Doing Business* ranking (Figure 7.17). In particular, Uruguay scores poorly in dealing with construction permits (155 out of 190 economies), registering property (115) and trading across borders (152) – the latter, however, being likely linked to the methodology of the Index itself – showing much higher scores in the area starting a business (65) or resolving insolvency (70). The areas where further progress could be achieved will be discussed below to highlight steps that can be taken and recent initiatives.

Figure 7.15. Overview of Uruguay's score on WEF's Global Competitiveness Index, 2012-18.



Note*:* The number of economies included in the ranking changes each year, ranging between 137 and 148.
Source*:* WEF Global Competitiveness Reports 2012-2018

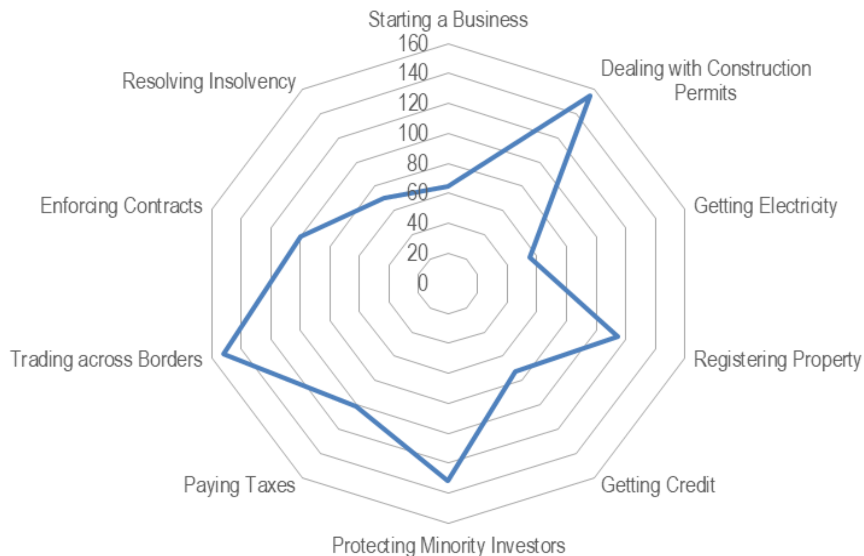
Figure 7.16. Main reasons for concern regarding business climate in Uruguay



Note*:* The *Foreign Investors Survey* was conducted by Uruguay XXI on behalf of the Ministry of Economy and Finance in July-October 2018. 900 companies were contacted and 261 responded. Figure above shows answers to the question: "Why are you dissatisfied with Uruguay as a place to develop your business activities?"
Source*:* WEF's *Executive Opinion Survey 2017* and Uruguay XX's *Foreign Investors Survey 2018*

Figure 7.17. Overview of Uruguay's score on World Bank's Doing Business Indicators, 2019

1= top performance; 190=worst performance



Source*:* World Bank's *Doing Business Indicators* (2019)

… by addressing specific remaining administrative bottlenecks …

While in the area of resolving insolvency[30] and starting a business (the latter being analysed below), Uruguay has made important progress, several other areas may require government's further attention. In particular, dealing with construction permits continues to be highlighted as problematic in the international rankings as well as by businesses consulted in this *Review*. In particular, the number of procedures and the time it takes

to obtain construction permits remain above the OECD and LAC averages (Table 7.3). When one considers each step in the process, it is the request to obtain a report on fire risk from the National Fire Department *(Dirección Nacional de Bomberos*) that takes most time (i.e. 90 days on average in 2019, according to World Bank, 2019). The inspections by municipalities can also at times add additional delays to the process. This is not to say that no reforms were undertaken in this area: several amendments to the Building Code have been introduced to modernise the role of the fire brigades in the process and the introduction of an e-permit has helped reduce the number of procedures in place (from 30 in 2009 to 19 in 2019). Still, the average time it takes to obtain a construction permit (265 days) remains above OECD and LAC averages and investors report that both times and procedures can differ significantly in different parts of the country.

Table 7.3. Dealing with construction permits in Uruguay relative to OECD and LAC countries

Indicator	Uruguay	Latin America & Caribbean	OECD high income
Procedures (number)	19	15.5	12.7
Time (days)	265	191.2	152.3
Cost (% of warehouse value)	1	3.6	1.5
Building quality control index (0-15)	9	9	11.6

Source: World Bank's *Doing Business Indicators* (2019)

Registering property is another area where Uruguay scores relatively low. There has been some moderate progress over time: for example, procedures were streamlined by eliminating the requirement to obtain the municipality's approval for property transfers in 2009. Rather than requiring a certificate for every transaction, the municipality instead checks a list of the properties subject to pre-emption rights and contacts only the parties concerned. Nonetheless, the time needed to register property has remained stable at 66 days, which is above the OECD and LAC averages (Table 7.4). Similarly, the associated cost in Uruguay (7% of the property value) is above that of comparison countries.

Table 7.4. Registering property in Uruguay relative to OECD and LAC countries

Indicator	Uruguay	Latin America & Caribbean	OECD high income
Procedures (number)	9	7.4	4.7
Time (days)	66	63.7	23.6
Cost (% of property value)	7	5.9	4.2
Quality of the land administration index (0-30)	22.5	12	23.2

Source: World Bank's *Doing Business Indicators* (2019)

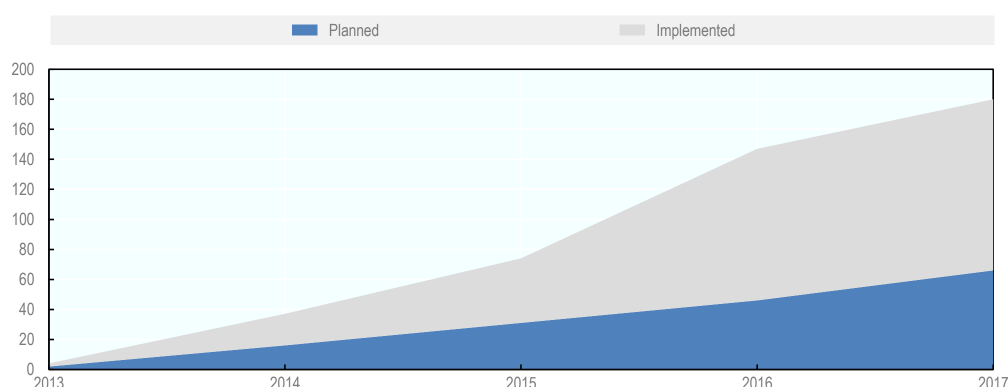
In this context, the government could consider developing specific projects to address the issues outlined above, for example as part of the Plan on Productive Transformation or related initiatives.

… building on the momentum of trade facilitation reforms

One area where the country's score on *Doing Business* does not seem to capture adequately the full extent of Uruguay's progress is the ease of trading across borders. Uruguay has introduced a series of important trade facilitation measures, which helped substantially improve the efficiency and predictability of its border procedures over time. For example, with the support of the IDB (through different programmes), the government has overhauled its Customs Code,[31] undertaken a comprehensive modernisation programme of the Customs administration,[32] established and expanded its Single Window for Trade (VUCE), and introduced a certification programme for Authorised Economic Operators (AEOs), offering certain users access to simplified customs procedures.[33] Uruguay also ratified the *WTO Trade Facilitation Agreement* in 2016 (WTO, 2017).

In particular, as part of the Customs' modernisation programme, an electronic customs declaration and risk-based inspection management system have been introduced, reducing substantially the share of goods inspected and the associated delays.[34] The establishment and systematic expansion and evolution of the Single Window for Trade (VUCE) under the responsibility of Uruguay XXI, supported by the IDB, has also played an important role (see Box 7.5 and Figure 7.18). Today, it covers two thirds of all relevant documentation and integrates 24 different agencies[35] According to the authorities, the programme has generated private sector saving of over USD 6.5 million by 2018, achieved through reduced waiting time, journeys and staff time involved in the processing of required documentation (WTO, 2018).[36] In addition, 93% of its users described VUCE service as good or very good; and, according to the OECD *Single Windows Indicators*, Uruguay's single window is one of the better performing ones in LAC, even if its coverage could be improved further (OECD, 2018b). The programme is currently undergoing an impact evaluation, supported by the IDB, that can shed light on further enhancements and provide lessons learned for the operationalisation of other one-stop shop solutions in the country.

Figure 7.18. Number of administrative procedures covered in the Uruguay's Single Window for Trade (VUCE), 2013-2017

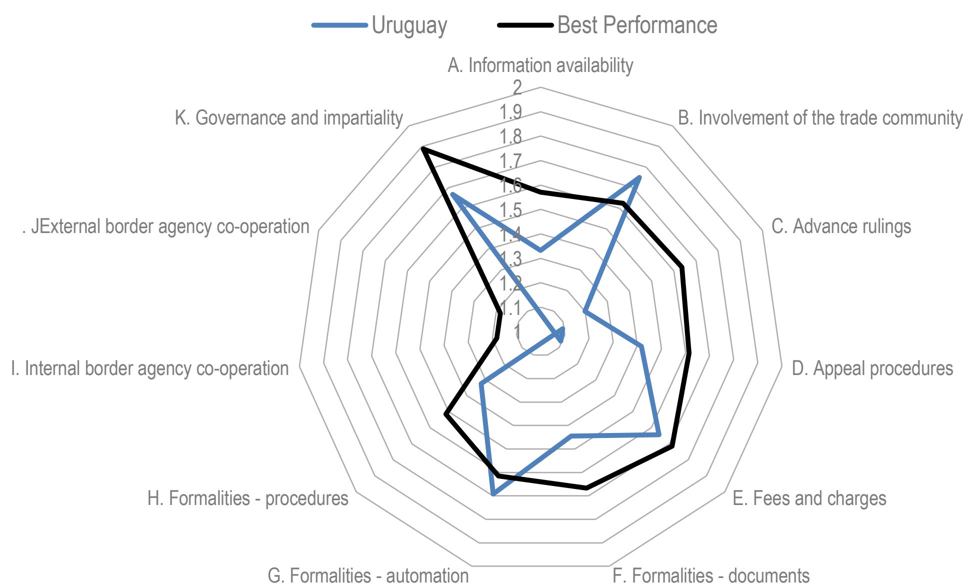


Source*:* VUCE (2019)

All these various steps have led to a decrease in the average time spent by economic operators at the border. The average customs clearance time in Uruguay was eight hours in 2018.[37] Users located in the SEZs and industrial parks as well as those benefiting from the AEO status also benefit from further simplified procedures and special facilities. In addition, Uruguay is also close to best performance on various aspects measured by the OECD *Trade Facilitation* indicators, notably automation of formalities, governance and impartiality, and involvement of the trade community (Figure 7.19). Still, the evaluation of VUCE can offer insights on possible improvements, for example in relation to its scope, inter-operability and in facilitating inter-agency cooperation.[38] In addition, as average time spent at the border can vary substantially depending on the channel through which goods are processed (Volpe Martincus, 2016) and has been found to impact firms' exports, this area requires the government's continuous attention to ensure policy coherence. This is particularly important considering that new exporters tend to be subject to physical inspections relatively more frequently, and studies show that the effect can be so large as to cancel out the effect of trade promotion assistance provided by Uruguay XXI.[39]

Last but not least, through the Global Services Programme (*Programa de Apoyo a los Servicios Globales de Exportación*), approved in 2011 and implemented over several years with the support of the IDB to assist the development and internationalisation of key services sectors[40] as well as other support measures (e.g. action plans within the Plan on Productive Transformation), the government is also aiming to facilitate trade in services that accounts for a large and growing share of Uruguay's GDP and exports.

Figure 7.19. Overview of Uruguay's scores on OECD Trade Facilitation Indicators



Note: For information on the methodology, please consult the OECD website: www.oecd.org/trade/topics/trade-facilitation/documents/trade-facilitation-indicators-methodology.pdf
Source: OECD Trade Facilitation Indicators, www.oecd.org/trade/topics/trade-facilitation

Box 7.5. Facilitating trade in goods in Uruguay: The case of the Single Window for Trade

The Single Window for Trade in Uruguay (Ventanilla Única de Comercio Exterior, VUCE) was born as a part of the National Customs modernisation process that begun in 2007, and was implemented with the technical and financial support of the Inter-American Development Bank (IDB). The VUCE project was launched in 2012, led by the National Customs Authority and the Commission for Foreign Trade Affairs (CIACEX), and formally enshrined in law under the responsibility of the country's national Investment Promotion Agency (Uruguay XXI) by the end of 2013.

From 2013 to 2015, VUCE conducted an in-depth analysis of applicable business processes, the underlying regulations and technological solutions that allowed the design for the electronic platform (www.vuce.gub.uy) that would centralise relevant foreign trade operations. In 2016, VUCE went live, allowing for the conduct of the first trade-related process, and has kept growing ever since. By 2019, it has integrated more than 70% of processes and reached a high volume of user participation. Today, VUCE covers more than 140 processes and 24 participating agencies, and involves cohesive collaboration between the public and the private sectors through the existence of appropriate operating procedures.

According to the IDB, from the start, the implementation of VUCE involved an articulation of long-term objectives relating to trade facilitation, system control, and electronic government, among others. Each objective was carefully defined in a multi-stakeholder process to help understand stakeholders' expectations and introduce relevant performance measurement- and management control systems that were crucial to build a culture of continuous improvement. In addition, when integrating new processes into the platform, a baseline time and cost were established. This allowed for a systematic measurement

of improvements over time. According to the IDB, the impact of VUCE is notorious in terms of increases in border procedures' efficiency by reducing time and costs of the associated business operations. In addition, important progress has been achieved in terms of interoperability. For example, electronic certificates of origin allows for exchanges with several different countries; VUCE is also currently working on other interoperability projects related to ePhyto certificates.

There are multiple ongoing projects that add new services to the platform and reach new user segments. For example, the implementation of TUExporta system simplifying export operations for micro and small firms is showing early results, according to the IDB. More generally, the implementation of a single window of any kind is a dynamic process. As such, it is necessary to continuously review its objectives and new challenges, and adapt the course of action accordingly, taking into account customers' needs and expectations. For this reason, VUCE measures twice a year customer- and user satisfaction to integrate the new insights into the platform's roadmap, allowing for further improvements.

Overall, the case of the implementation of the Single Window for Trade in Uruguay shows that, far from being a technological challenge alone, it a process of cultural and organisational change. In this regard, political support and stakeholders´ engagement are key aspects for successful execution and continuous improvements. In this respect, the IDB has highlighted the importance of both long-term goals and tangible short-term results to continue motivating actors to be part of project. Going forward, the experience of VUCE may prove valuable when implementing other one-stop solutions in the country, such as the planned Single Window for Investment (Ventanilla Única de Inversiones, VUI).

Source: IDB

… reducing administrative burden through a single window for investment

As far as starting a business is concerned, Uruguay has made important improvements in the past two decades. In particular, the implementation of an online platform for business registration "Business a Day" (*Empresa en un Dia*) has significantly shortened the time needed to start a company in Uruguay from 43 days in 2006 to 6.5 days in 2019 –below both the OECD and LAC averages (see Table 7.5). Yet, as mentioned earlier in this chapter, the application for various permits and undergoing administrative procedures is highlighted as problematic by business. In this context, the government has proposed the establishment of a Single Window for Investment (*Ventanilla Única de Inversiones*, VUI), under the responsibility of Uruguay XXI, as part of the Plan on Productive Transformation and Competitiveness.[41]

As a first stage of implementation of VUI, Uruguay XXI has launched a call for an expert to undertake a mapping exercise of such solutions in different countries to inform its own choice on the eventual design, coverage and location of the mechanism, which is a highly welcome development.[42] Indeed, the existing evidence points to a high diversity in this type of solutions in different countries and points to non-trivial choices related to organisation, modes of operation and resource-allocation for such a mechanism (see Table 7.6 and World Bank, 2009). In addition, Uruguay's own experience in establishing and expanding over time the coverage of VUCE, can also be serve as a key input into the reflection on the appropriate way forward. A mapping of the various administrative steps required by firms in different sectors will be required to consider which of those steps could eventually be undertaken by VUI. This is, turn, can be an occasion for a broader administrative simplification. If implemented appropriately, VUI could potentially facilitate establishment of new investment projects, going beyond the sheer business registration. The government is currently planned to launch VUI in 2020, with all major permits to be covered by 2022.

Table 7.5. The ease of starting a business in Uruguay and benchmark economies, 2019.

Indicator	Uruguay	Latin America & Caribbean	OECD high income	Best Regulatory Performance
Procedure (number)	5	8.2	4.9	1 (New Zealand)
Time (days)	6.5	28.5	9.3	0.5 (New Zealand)
Cost (% of income per capita)	22.6	37.8	3.1	0.0 (Slovenia)

Source*:* World Bank's *Doing Business Indicators* (2019)

Table 7.6. Overview of different characteristics of one stop shops for business registration

Type of arrangement	No. of countries	No. of procedures	No. of days	World Bank's *Doing Business* ranking
A Commercial Registry with other bodies on the same site	7	7	24	99
B Commercial Registry which liaises with other bodies	20	6.7	19	61
C One-Stop Shop (not a Commercial Registry) which liaises with other bodies	13	6.3	27	98
D Integrated registration function	12	5.8	13	49
E Online registration facility	15	5.2	14	48
All countries with one-stop shops	7	7	24	99
F Other countries	20	6.7	19	61

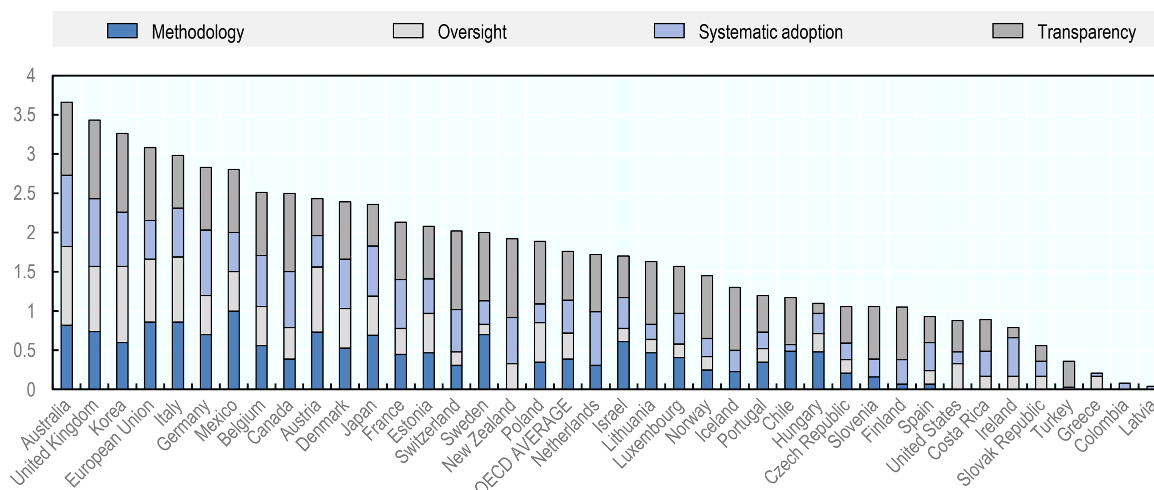
Source*:* World Bank (2009)

…and a more general administrative and regulatory reform

The quality of regulation has a significant influence on the climate for business and investment. Poorly designed or weakly applied regulations can slow business responsiveness, divert resources away from productive investments, hamper entry into markets, reduce job creation and generally discourage entrepreneurship (OECD, 2015a). In this context, the challenge for governments is, on one hand, to balance their need to use administrative procedures as a source of information and as a tool for implementing public policies, and on the other, to minimise the interferences implied by these requirements in terms of the resources required to comply with them (OECD, 2009). There are various tools at the disposal of the governments to reduce administrative burden as well as to improve the quality of new regulations. These include periodic reviews of the stock of regulations, simplifying administrative procedures and introducing e-government services on top of developing better rules on creating new regulations and oversight of regulatory processes. They are summarised in the OECD *Recommendation on Regulatory Policy and Governance* and are subject to the *OECD Regulatory Policy Reviews* (Box 7.6).

The government of Uruguay has recently started taking steps to reduce the administrative burden in a more systematic fashion. For example, there is an ongoing *ex post* review of the stock of regulations with a view of their eventual simplification. In this context, Transforma Uruguay is undertaking two projects to map out all the administrative procedures under the responsibility of one ministry (Ministry of Industry) and all those affecting one sector (pharmaceutical sector). Once the pilot stage is concluded, the mapping process may be extended to regulations under the responsibility of other government bodies and to those affecting other sectors. This approach, gradual in nature, is indeed in line with best practices insofar as it allows for learning and adjustments as well as limiting costs associated with across-the-board review of the stock of regulations. Indeed, countries vary significantly in the use of *ex post* reviews of existing regulations (Figure 7.20), with Australia and United Kingdom being often quoted examples of best practices that may also serve as potential reference for Uruguay (OECD, 2018).[43]

Figure 7.20. Composite indicators: *ex post* evaluation of primary laws, 2018



Source: Indicators of Regulatory Policy and Governance (iREG), www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm

Box 7.6. Recommendation of the OECD Council on Regulatory Policy and Governance

On 22 March 2012, the Council of the OECD adopted the Recommendation of the Council on Regulatory Policy and Governance (OECD, 2012). The Recommendation was the first international instrument to address regulatory policy, management and governance as a whole-of-government activity that can be addressed by sectoral ministries, regulatory and competition agencies to support the implementation and advancement of systemic regulatory reform to deliver regulations that meet public policy objectives and have a positive impact on the economy and society. These measures are integrated in a comprehensive policy cycle in which regulations are designed, assessed and evaluated ex ante and ex post, revised and enforced at all levels of government, supported by appropriate institutions. The principles provide countries with the basis for a comprehensive assessment of the performance of the policies, tools and institutions that underpin the use of efficient and effective regulation.

Through its work programme, the Regulatory Policy Committee of the OECD supports countries to implement the principles in the Recommendation. In particular, the OECD Regulatory Policy Reviews assess regulatory management capacities in different countries, including policies, tools and institutions for ensuring regulatory quality, using the Recommendation as an assessment framework. Several countries, including economies from the Latin America and the Caribbean region have undergone such reviews, or have otherwise been advised by the OECD on the possible reforms. For example, most recently Argentina underwent a review of its regulatory policy (OECD, 2019a) and Peru was advised on the implementation of regulatory impact assessment (RIA) at the central government level (OECD, 2019b). The government of Uruguay could consider undertaking a similar review to support its efforts to reduce administrative burdens faced by firms and improve the overall regulatory quality in the country.

Another approach that has been gaining ground in recent years is offsetting new regulations by reducing the existing ones (Trnka and Thuerer, 2019). While regulatory offsetting approaches (e.g. stock-flow linkage rules or net regulatory burden reduction targets) can provide a strong motivation for regulators to evaluate the worth of regulations in place, they need to be applied cautiously and after considering both costs and benefits of a regulation (OECD, forthcoming). For example, the Netherlands adopted quantitative

targets for administrative burden reduction, while several countries adopted the “one-in, one-out” approach (e.g. United Kingdom, Germany and France).

Digitisation is another powerful tool at the hands of the government to automate certain processes and reduce the need for physical displacement to comply with regulations. In this context, progress in the use of e-services– including e-taxation, e-procurement, e-court, e-invoicing and others – as led by AGESIC (*Agencia de Gobierno Electrónico y Sociedad de la Información y del Conocimiento*) in Uruguay, and available on a dedicated website (www.gub.uy/tramites) – can facilitate administrative procedures and reduce territorial discrepancy in the application of regulations.[44] It is important to remember that while digitisation principally facilitates access, the review and simplification of the underlying regulations can significantly reduce the administrative burden itself. It is, hence, encouraging that the government has started by mapping the applicable regulations to undertake the appropriate streamlining and offer digital services, both as part of the administrative simplification effort, thus-far led by Transforma Uruguay, and thanks to the plans to establish a single window for investment by Uruguay XXI.

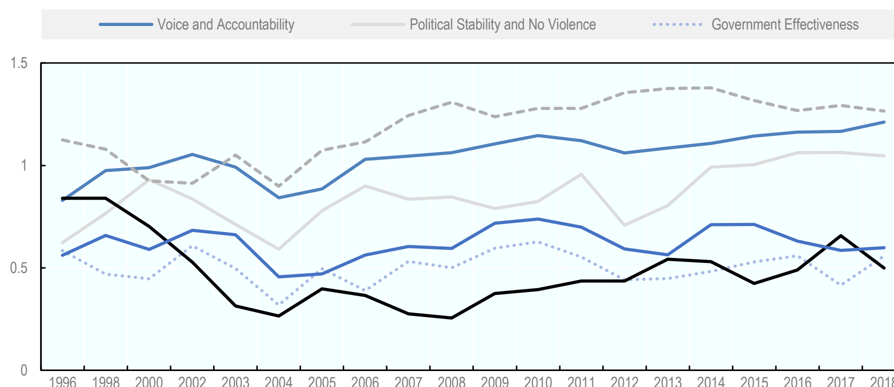
Last but not least, while the individual initiatives aiming at simplifying and automating procedures, as those described above, can help improve firms’ interactions with public administration, a systematic approach to improving the overall process of creating new regulations is necessary to avoid accumulating burdensome regulations in the future. Progress in this regard is complex and requires several legal changes as well as improving the capacity and oversight of different regulatory bodies. Indeed, while Uruguay has made impressive progress on several aspects of World Bank’s *World Governance Indicators*[45], notably control of corruption or voice and accountability, improving regulatory quality and government’s efficiency has been much more elusive (Figure 7.21).[46]

There are several tools at the government disposal that could help assist in the process of improving the overall regulatory quality in the country. Besides the use of *ex post* evaluation mentioned earlier, these include systematic use of stakeholder consultations and regulatory impact assessment (RIA) when developing new laws and regulations. They can help assess the intended and unintended consequences of proposed regulations and consider alternatives. Currently, there is no obligation to undertake *ex ante* RIA on proposed regulations in Uruguay. Meanwhile, RIAs is obligatory for all regulations in most OECD countries, as well as an increasing number of LAC countries (see Table 7.7).While several agencies have relevant mandates (e.g. AGESIC and OPP), there is also no single agency that is responsible for oversight of regulatory practices of all public institutions, including to provide required guidance and training. In fact, there appears to be some confusion as to what *ex ante* RIA is (see Box 7.7), and who would be responsible.

Considering that RIAs can allow the government to better control the inflow of new regulations, there might be value in adopting it as part of the process of strengthening the rules on creating new regulations and reflecting on the adequate institutional set-up for their oversight. Progress in this area may be particularly important for small and medium sized enterprises (SMEs), which tend to be disproportionally affected by the overtly burdensome administrative burdens (OECD, 2015a; OECD, 2009). It could be, hence, considered an important complementary measure to other actions taken by the government to proactively support SME development (see Box 7.8). Considering the weight of SMEs in the local economy (over 99% in terms of total number of firms and two-third of reported employment, OECD/CAF, 2019), reducing barriers to SMEs’ business activities through administrative reform can be a powerful lever to facilitate internationalisation and economic growth. The case of Mexico could provide inspiration. The amendment to the Federal Law of Administrative Procedure (LFPA) in 2000 established the Federal Commission for Regulatory Improvement (COFEMER) as the oversight body, and outlined the responsibilities of line ministries and tools for regulatory improvement, such as RIA; and further reforms were made in 2010 and 2012.[47] More generally, undertaking an OECD *Regulatory Policy Review* can also help outline the available options.

Figure 7.21. Overview of World Governance Indicators scores for Uruguay, 1996-2018

Estimate



Note: Estimate of governance (ranges from approximately -2.5 (weak) to 2.5 (strong) governance performance).
Source: World Bank's World Governance Indicators database (2019)

Box 7.7. Regulatory Impact Assessment (RIA)

Regulatory impact assessment (RIA) is both a tool and a process designed to help inform political decision makers on whether and how to regulate to achieve public policy goals. Improving the evidence base through an ex ante impact assessment is one of the most important regulatory tools available to governments.

The aim is to improve the design of regulations by assisting policy makers identify and consider the most efficient and effective options — including non-regulatory options — before making a decision. One method of doing so is by analysing the expected costs and benefits of regulation and of alternative means of achieving policy goals and to identify the approach that is likely to deliver the greatest net benefit to society. The consideration of a range of alternative approaches to traditional "command and control" regulation — including complementary measures such as co-regulation — helps to ensure that the most efficient and effective approaches are used in attaining policy goals. Experience shows that governments must lead strongly to overcome inbuilt inertia, risk aversion and a "regulate first, ask questions later" culture. At the same time, care must be taken when deciding to use light-handed approaches such as self-regulation, to ensure that public policy objectives are achieved.

To that end, the OECD Recommendation of the Council on Regulatory Policy and Governance provides that member countries should "Integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals" (OECD, 2012).

Source: OECD (2019)

Table 7.7. The use of Regulatory Impact Assessment (RIA) in Uruguay and OECD and LAC

	Uruguay	LAC (7 countries)	OECD (34 countries)
Requirement to conduct RIA	No	All (2); Major (0);Some subordinate regulations (1);Never (4)	All (22); Major (6);Some subordinate regulations (4);Never (2)
RIA conducted in practice	No	All (1); Major (0);Some subordinate regulations (3);Never (3)	All (16); Major (8);Some subordinate regulations (7);Never (3)
RIA quality check by government body outside the ministry preparing regulation	No	Yes (2);No (5)	Yes (25);No (9)
Written guidance on the preparation of RIA provided	No	Yes (6);No (1)	Yes (33);No (1)

Note: Data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru.
Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016; Indicators of Regulatory Policy and Governance (iREG), www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm

Box 7.8. SME support schemes in Uruguay

Recognising the importance of small and medium sized enterprises (SMEs) in the economy, there are several programmes aimed at supporting their business activity in Uruguay:

Automatic tax exemptions for investments by SMEs: The Tax Reform Law establishes automatic exemptions to investments for SMEs. In particular, it grants exemptions to the Corporation Income Tax (IRAE) of up to 40% to investment in certain movable property, and up to 20% in the case of investment in construction and expansion of hotels, motels and inns and real estate intended for industrial or agricultural activity. It sets a max. annual sales thresholds in line the SME definition in Decree 504/007 to access the exemption.

DINAPYME – a specialised agency for SME support: Article 305 of Law 16.170 creates the National Direction of Handicrafts and Small and Medium Enterprises (Dirección Nacional de Artesanías y Pequeñas y Medianas Empresas, DINAPYME), which will be in charge of the execution of programmes for development and support of SMEs. An interested company must commit to participate actively in the diagnostic and preparation of a development plan together with a technical advisor of DINAPYME that will visit the company. Support activities include: strategic planning, financial-, commercial- and marketing management, human resources, logistics, quality control, support in internationalisation; and can be provided in the amount of up to 60-80% of total costs, depending on the size of the company. In addition, to apply to the different existing programs for SMEs, companies must obtain an SME certificate from DINAPYME.

Additional support and financing through ANDE and FONDES: Law 18.602 of 2009 creates the National Development Agency (*Agencia Nacional de Desarrollo*, ANDE). The purpose of the Agency is to contribute to productive economic development via support to SMEs. The programmes are developed with special emphasis on the promotion of SMEs, and include instruments facilitating provision of financing, e.g. special credit lines, a system of guarantees and products offered through alliances with established financial institutions. In addition, the agency also provides financial and technical support for new business as well as grants for suppliers and SME development. In 2015, the Development Fund (FONDES, *Fondo para el Desarrollo*) was also created to support the financing of projects that contribute to economic development.

Activities of Uruguay XXI: Ever since its creation in 1996, Uruguay XXI had as part of its official mandate providing export promotion assistance to firms, including SMEs. Until 2016, the agency led a programme "Proexport", assisting firms wishing to participate in sectoral fairs, events and missions abroad. In 2017, the programme was substituted by "Proexport+", implemented in cooperation with several institutions, including UANDE, ENFIO ANII and DINAPYME and business associations, allowing eligible SMEs to obtain broader support for a series of activities included in the internationalisation plan that is developed at the start of the programme (e.g. capacity-building for entrepreneurs and staff, market studies, marketing, certification or product development). The assistance provided can reach up to USD 40 000 that can represent up to 80% of firms' internationalisation costs. In addition, through the cooperation of Uruguay XXI, MEF and VUCE, a new simplified exports regime for SMEs was introduced in 2018, allowing SMEs certified by DINAPYME to export more easily small quantities of merchandise, below the value of USD 2000 (more information can be found on a dedicated website: www.tuexporta.gub.uy)

Administrative simplification and digitisation led by AGESIC: The agency helps rationalise and improve the efficiency of bureaucratic processes. As such, it identifies administrative requirements, analyses their necessity and supports their digitisation and interoperability of systems so as to the same information does not have to be shared more than once with the public administration. Currently, information on nearly 3 000 administrative procedures are available on a dedicated website (www.tramites.gub.uy). In addition, data is being gathered on the time required to comply with administrative procedures to register property (Transforma Uruguay, 2019)

Centres of Entrepreneurial Competitiveness in different regions (*Centros de Competitividad Empresarial*, CEE): Starting in 2018, special centres were established under the umbrella of Transforma Uruguay to support to SMEs, entrepreneurs, and cooperatives in different regions. The Centres undertake tailored diagnostic of the current needs of the client and possible ways of breaching the gaps. The centres provide capacity-building support and advice as to where to obtain external financing and link the companies and entrepreneurs with public bodies that provide relevant services and programmes as well as specialised service providers for which they can subsidise up to 80% of costs for SMEs.

Source*:* Uruguayan authorities, including Uruguay XXI, Transforma Uruguay, Ministry of Economy and Finance, AGESIC and ANDE

As explained elsewhere in this *Review*, Uruguay displays high level of transparency in terms of public access to information and availability of applicable laws and regulations.[48] Many public documents and laws and regulations are available on the websites of different institutions. Still, there is no transversal legal obligation to undertake public consultations on the proposed legislation.[49] As such, practices vary from institution to institution and depending on the specific topic.[50]

Businesses have been regularly calling for more frequent consultations on draft regulations and laws. A crucial step towards improving the framework for consultations was taken in 2008 with the adoption of the Law on the Right of Access to Public Information (No. 18.381). The law provides for general access to public information, defined as all information held by a government entity unless considered classified. The law requires government agencies to make public their organisational charts, responsibilities, salaries, and budget allotment and to produce regular reports. Authorities effectively implemented the law; there were no public outreach activities to encourage its use. Uruguay is ranked 19th in the most recent Global Open Data Index (it was 13th in 2014), and fourth for Latin America. In addition, to ensure fair access of stakeholders to the government, over the past two decades Uruguay has created new procedures and institutional arrangements to accommodate a wider set of views and opinions. For example, the Consultative Committee on Corporate Development includes representatives of business as well as trade unions and academia (Box 7.9) and tripartite social dialogue has been institutionalised through the Economic and Social Council (*Consejo Económico Social*), established by the 1943 Constitution and reinforced by the 1966 Constitution.

More generally, Uruguay has a multi-decade history of tripartite social dialogue, negotiation between employers and employees, and developments in labour and social protection. A catalogue of the different initiatives is also available online (*Catálogo de Participación Ciudadana*).[51] Examples of public consultations include the Investment Law (Decree 455), the SEZ Law, the Social Housing Law (Ley de VIS), the Project Law on Innovative Procurement (*Proyecto de Compras Públicas Innovadoras*), and the National Plan for Productive Transformation and Competitiveness (*Plan Nacional de Transformación Productiva y Competitividad*) or establishing priorities for secondary education reform in 2015-17. Some examples also exist at the sub-regional level albeit with varying degrees of success in implementation.[52]

Overall, progress in systematising the procedures for prior consultation on all draft laws and regulations can help the government ensure that the different stakeholders, including investors have due access to the policy-makers, costs and benefits are dully assessed and alternatives are considered. Over time, the more systematic use of consultations and RIAs may help the government reduce the problem of a growing stock of burdensome administrative procedures over time.

Box 7.9. The Consultative Committee on Corporate Development

The Consultative Committee on Corporate Development (Consejo Consultivo de Desarrollo Empresarial, CCDE) is a platform for public-private inter-institutional exchange and dialogue on policies for micro-, small- and medium-sized enterprises (MSMEs). Its origins can be found in Project N° 45 of the National Plan for Productive Transformation and Competitiveness (Plan Nacional de Transformación Productiva y Competitividad). CCDE's functions include:

- Inform about policies, programs, instruments and projects intended to help MSMEs grow.
- Recommend appropriate measures to adapt policies, programs, instruments and procedures to the characteristics and needs of MSMEs.
- Consolidate a space for public dialogue that spurs collaboration among public institutions, among private institutions, and between public and private entities.

CCDE's members represent the public sector (relevant Ministries, agencies and Transforma Uruguay), corporate chambers (CCE, CIU, CNCS, CEDU, ANMYPE, UEU, CUTI, CNFR, CUDECOOP, CAMBADU), trade unions (PIT-CNT) and other stakeholders. Secretariat tasks are jointly performed by DINAPYME, ANDE, Instituto Nacional de Empleo y Formación Profesional, Instituto Nacional de Cooperativismo (INACOOP) and Secretaria de Transformación Productiva y Competitividad.

Outlook and policy recommendations

Investment attraction is a transversal policy area that spans different activities and requires coordination of various public and private bodies. It aims not only to promote a country as an attractive business location but also aims to remove undue obstacles to investment activity and facilitate firms' business decisions. In the past, the approach to investment attraction in Uruguay relied heavily on the provision of investment incentives (reviewed in Chapter 6). With time, the government has attempted to transition from a volume-based approach to investment attraction and an indiscriminate use of such incentives to a more refined model that takes into account the attributes of investment to be attracted and broader development and societal objectives.

This process is ongoing and will involve a gradual reengineering of the system, including through streamlining of current incentive schemes and reducing progressively reliance on special arrangements. Strong commitment to decreasing administrative burdens and undertaking a more systematic reform of the regulatory quality system on top of further pursuit of specific trade and investment facilitation efforts, could help the government move in that direction. The recent strategic planning initiatives and changes to the institutional set-up for investment

attraction can assist in this process and help ensure that support for firms' internationalisation, a prerogative in the country of limited size, remains high on the political agenda and is continued by future administrations.

Policy recommendations

- *Ensure continuity in the implementation of strategic plans and the necessary support for firms' internationalisation and investment promotion and facilitation reforms.* Continuity can be achieved through the completion of the already foreseen projects under the current Plan on Productive Transformation and Competitiveness 2017-2021 and the use of similar tools going forward. Due to the small size of the Uruguayan economy, locally-established firms are faced with an imperative of seeking larger markets. As such, programmes to support firms' global insertion should be well-articulated and coordinated, spanning trade and investment promotion, facilitation, capacity-building and linkage programmes. In its current reflection on the future institutional set-up for coordination in this area, the government should ensure that the responsible body has the technical capacity and the ability to convene all the relevant stakeholders to implement key reforms.
- *Consider further streamlining of various investment incentives schemes and potentially phasing-out some of them.* As argued in Chapter 6, further progress can be achieved by embedding current investment incentives in the respective underlying laws to which they relate (e.g. CIT, VAT, Customs laws). This will help ensure greater transparency and level the playing-field across different firms, while helping to shield the allocation of incentives from electoral cycles. In addition, more frequent use of sunset clauses as well as a review and evaluation of the effectiveness of existing incentives will help the government assess their relevance, and assist in a potential decision on reducing or discontinuing some of them.
- *Continue strengthening the activities of the national investment and trade promotion agency* – Uruguay XXI. The agency has grown dynamically over the past years, and has assumed new functions. It has also proven successful in managing the single window for trade (VUCE), and is currently developing a single window for investment (VUI). It has also just established a new aftercare unit, boosting the agency's ability to provide tailored assistance to investor seeking expansions and reinvestment in the country. This work should be continued, in particular in light of recent positive results of evaluation of the agency's activities.
- *Focus efforts on effectively streamlining administrative procedures and addressing specific regulatory bottlenecks.* Procedures for obtaining construction permits and registering property remain particularly problematic, and could be improved. Meanwhile, the significant progress in business registration and trade facilitation could be capitalised on when rolling out VUI and advancing with the mapping and streamlining of regulations in specific sectors. The *ex post* review of existing regulations can help address, in the short and medium term, investors' complaints about burdensome bureaucratic procedures, in particular if key bottlenecks are successfully identified and addressed.
- *Consider a wider reform to improve the overall regulatory quality and reduce administrative burden.* Improving the overall regulatory quality can be the next step to ensure long-term improvement in the underlying regulations and reducing the administrative burden. While the country shows de facto high levels of transparency and access to information on the applicable laws and regulations, it lacks an overarching legal basis and institutional solutions to ensure good regulatory practices across different institutions, such as the obligation to undertake prior stakeholder consultation and regulatory impact assessment. Undergoing an OECD *Regulatory Policy Review* could potentially help the government outline available reform options in this regard.

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Notes

[1] Information provided by Uruguay XXI as part of the *Review*.

[2] Notably, it declare protection and promotion of investment by foreign and domestic firms as a matter of national interest (Article 1 of Law 16.906)

[3] Among others, it establishes the principle of non-discrimination between foreign and domestic investors (Article 2); posits that foreign investment transactions do not require an additional prior approval or registration other than those required by domestic firms (Article 3); guarantees fair treatment of investment (Article 4) and their free transfer of capital (Article 5).

[4] Both documents have been elaborated during 2015-2019, and further information can be found on the dedicated government's website: *www.estrategiadesarrollo2050.gub.uy*

[5] It is included under the pillar on sustainable productive transformation out of the two total of three (two others relating to social transformation and gender). Also, see a press release: www.opp.gub.uy/es/noticias/opp-presento-la-estrategia-de-desarrollo-2050

[6] National Development Plan of Uruguay, p. 51-60.

[7] All information regarding the plan can be found at: www.transformauruguay.gub.uy/es/plan-nacional

[8] Dedicated roadmaps are available for the following sectors: food products, creative industries, forestry and wood sector, information and communications technologies (ICT) and logistics.

[9] Consultations with different institutions and the public took place in September and October 2017 (see www.transformauruguay.gub.uy/es/detalle-de-contenido/proceso-de-consulta).

[10] In addition, the Ministry of Transport and Works, in particular for all the legislation related to the national transport and logistics, is also relevant albeit not represented in the Committee.

[11] Other studies, taking into account other forms of public support for investment (e.g. financial instruments and public budget) report a number exceeding 3% (Bértola, et al., 2014).

[12] For example, while promoted activities are governed by the COMAP regime, some sector-specific schemes are fully independent (e.g. forestry); and the regime of FEZs and industrial parks are governed by separate Laws, the latter being currently under reform. Moreover, some sectors also benefit from dedicated Free Economic Zones (e.g. thematic ones dedicated to audio-visual, leisure and entertainment services and associated activities), and other forms of financial support (e.g. recently created fund for the audio-visual sector). See Chapter 6 for a more detailed description.

[13] For example, see Decree 218/018 and the set of measures announced by the government on 9th September 2019, which includes support measures for 14 different sectors and activities. Further information available on the website of the Ministry of Economy and Finance: www.gub.uy/ministerio-economia-finanzas/comunicacion/noticias/paquete-medidas-estimulo-actividad-economica

[14] The former number raises to seven if the electoral year is also counted. Besides sectoral decrees, the count includes laws pertaining to free zones, industrial parks and free ports.

[15] Most recently, as part of negotiations with UPM, the largest investors in the country, regarding the opening of its second production plant in Uruguay, the government had to concede a creation of a dedicated free zone for the use of the company.

[16] For example, the government could consider consolidating all tax-related provisions within the legal statutes from the incentives provide relief (e.g. income tax-, VAT, and customs law), and then amending the other existing laws and decrees to include references to those provisions in the relevant articles. Embedding such provisions in the Law will also reduce reliance on *ad hoc* decrees to provide additional incentives according to the political cycle fluctuations. Similarly, the government should consider bringing all companies under one single regime to avoid customised regimes provided to individual companies or groups of thereof. In addition, it could make a more systematic use of sunset clauses to avoid continuous expansion of the incentives system. Finally, continuous progress in monitoring and evaluation of the schemes can help the government review their adequacy and propose possible phase-outs or rationalisations.

[17] For example, the action plan for audio-visual sector foresees a creation of fund to support local film production and a programme facilitating obtaining of financing for local projects. The action plans are available on the Transforma Uruguay's website: *www.transformauruguay.gub.uy/es/plan-nacional-1/plan-nacional-de-transformacion-productiva-y-competitividad*

[18] These are agribusiness, logistics (and infrastructure), and global services, while other available opportunities, e.g. in manufacturing, tourism and retail, are also listed. For more information, see *Uruguay XX*'s website: *www.investinuruguay.uy/en/sectors*

[19] The earlier literature on the effects of trade promotion also finds a significant effect of export promotion on firm behaviour (e.g. Volpe Martincus and Carballo, 2010; Lederman et al., 2010)

[20] In 2018, Uruguay XXI had a budget of USD 5.3 million while the median IPA in LAC region had a total budget of USD 5 million.

[21] According to the survey of foreign investors conducted in 2018, 3%% of surveyed firms used some service of Uruguay XXI. Those firms have shown very high levels of satisfaction with services provided by the agency, i.e. about 90% and above.

[22] For more information and progress in the implementation of the project, see the *Transforma Urugay*'s relevant website on the Plan on Productive Transformation and Competitiveness: *www.transformauruguay.gub.uy/es/visualizador-de-proyecto-detalle?id=39*

[23] For further information, see Uruguay XXI website: www.uruguayxxi.gub.uy/en/who-we-are/llamados-licitaciones/business-developer-abroad/

[24] Once the country size and level of development are controlled for, the number of entities the IPA cooperates increases with its targeting-intensity (Volpe Martincus and Sztajerowska, 2019).

[25] For example, to assist in this task, the unit responsible for competitive intelligence has developed a guide for staff on how to use the system and encouraged junior staff to assist more senior staff members in providing the required detail.

[26] For example, Foreign Investors Survey (2018) shows that investors value, and consider as highly important, not only the provision of information on the regulatory framework but also the agency's help with procedures and advocating for improvements in the regulatory framework (i.e. policy advocacy).

[27] For example, in 2017, the share of companies proactively approached by the agency, rather than assisted at the request of the company or a lead transferred from other parts of the government or third parties, was 33%; it has increased to 40% in 2018.

[28] As part of the plan, the government is aiming to provide a fully digital single window for investment, managed by Uruguay XXI in cooperation with AGESIC and other relevant government bodies, which should be operational by 2020 and have the majority of permits integrated by 2022. For more information, see the government's website: *www.transformauruguay.gub.uy/es/proyectos-por-areas-de-interes/clima-de-negocios*

[29] For example, in 2018, Uruguay ranked among top 25 most corruption-free countries (Transparency International, 2018). In terms of scope for improvement, labour market efficiency is one of the areas where Uruguay scored the lowest in the 2018 *Global Competitiveness Report,* ranking 121st out of 161 economies.

[30] The Act governing the insolvency regime in Uruguay has balanced business reorganisation and debtors' rights, which have been the pillars of the traditional Uruguayan insolvency regime, with newer international trends seeking more efficient proceedings and creditor protections. Overall, the recovery rate has been relatively high and stable over time.

[31] The new Customs Code (CAROU, Law No. 19.276 of 2014) formalised a series of trade facilitation measures, including the AEO programme and binding consultations and advanced rulings by the Customs administration on the applicable customs regulations.

[32] See DNA (2007) and WTO (2018) for a further discussion its elements.

[33] Being an AEO allowing certain users to benefit from simplified customs procedures and other facilities if they are approved by the Customs administration as complaint with certain requirements. For the official definition and further information, see Article 7 of the WTO Agreement on Trade Facilitation or the website of the World Customs Organisation (*www.wcoomd.org*). As of 2018, Uruguay had 50 AEOs certified covering different types of users.

[34] The release of goods that pass through the green channel is authorised immediately. Goods that pass through the amber channel are subject to document checks and, in general, the average clearance time is 0.8 days; while goods that pass through the red channel and are subject to document checks and/or physical inspection, have an average clearance time of 1.7 days (WTO, 2018).

[35] For more information, please consult VUCE's website: *www.vuce.gub.uy*.

[36] The programme has been estimated to generate a saving of more than 400 000 man-hours of low-value tasks and a saving of about USD22 per procedure conducted in VUCE (WTO, 2018: 19).

[37] The customs clearance time is measured between the request of the verification channel and the release of the goods by customs. The data is based on information provided by the authorities.

[38] The creation of the Inter-ministerial Committee for Trade Facilitation and the creation and increased coverage of VUCE over time go in that direction (Decree 252/15 and 156/2017).

[39] Volpe Martincus (2016), using data for 2002-2011, finds that if shipments outside of the green channel had been authorised to leave customs within one day, exports would have been 5.9% larger; and note that this gain corresponds to more than six times the annual budget allocated to Uruguay's national customs agency (DNA) and more than 100 times the annual budget of Uruguay XXI's. In addition, according to estimates in Volpe Martincus (2016), average 16% (57%) of new (all) exporting firms supported by Uruguay XXI had transactions inspected over 2010–2015, and evidence suggests that the positive impact of trade promotion assistance on firms' exports was weakened enough as to not even be significant in Uruguay.

[40] See the IDB's website for the initial project description and all the documentation related to monitoring and evaluation: *www.iadb.org/es/project/UR-l1060*. The programme has now been absorbed by, and this work continues through, the newly-created aftercare unit within Uruguay XXI.

[41] For further information on the project, see *www.transformauruguay.gub.uy/es/proyectos-por-areas-de-interes/clima-de-negocios*

[42] The information is available on Uruguay XXI's website: *www.uruguayxxi.gub.uy/es/quienes-somos/llamados-licitaciones/llamado-consultor-senior-ventanilla-unica-de-inversiones*

[43] In most countries, such reviews are undertaken on an *ad hoc* basis, while some countries introduced an obligation of periodic reviews of such type, including through the use of sunset clauses in the regulations themselves. Only 26% systematically require periodic *ex post* evaluation for existing primary laws and 21% for subordinate regulations (OECD, 2018c)

[44] Data provided by the government authorities as part of this *Review*.

[45] Data available at: www.databank.worldbank.org/Source/worldwide-governance-indicators. See Kaufmann et al. (2010) for the description of the methodology.

[46] For example, the country is close to the levels of regulatory quality encountered in Peru and Costa Rica, nearly 70th percentile rank globally, but it fairs far behind Chile (that close to 90th percentile) and more high-income economies.

[47] For example, the reforms allowed for a distinction between regulations that are expected to have moderate- and high impacts. An online tool – the Regulatory Impact Calculator – was developed to enable regulators to assess their proposed regulation at an early stage of the process. The RIA Manual was further modified to introduce additional types of RIAs, to focus on competition impact analysis, risk analysis, or a combination of both. Finally, COFEMER was empowered to request an *ex post* RIA to ministries and decentralised bodies that issued technical standards accompanied by high-risk RIAs (OECD, 2015b).

[48] This is regulated by Law 18.381 of 2008 and Decree 232/010 of 2010.

[49] This information is based on the answers provided by the government as part of this *Review*.

[50] For example, when regulation is deemed to have environmental impact, Law 16.466 of 1994 obliges a Ministry in question to publish the regulation in advance with the view of interested parties being able to submit comments and suggestions.

[51] It is available on the dedicated portal: www.catalogo-participacionciudadana.portal.gub.uy.

[52] For example, in Montevideo, the city budget has been prepared through an inclusive process since 2009.

8 Promoting and enabling responsible business conduct as a strategic choice

Responsible Business Conduct (RBC) is a key element of a healthy business environment – one that attracts quality investment, minimises risks for businesses, ensures stakeholder rights are respected and ultimately leads to broader value creation. This chapter reviews Uruguay's policies to promote RBC and their alignment with the OECD *Guidelines for Multinational Enterprises*. It also summarises Uruguay's plans for establishing a National Contact Point (NCP), a key mechanism allowing the government to promote and implement the Guidelines and providing a mediation and conciliation platform for resolving practical issues that may arise.

Governments that adhere to the *Declaration* aim to encourage the positive contributions that businesses can make on economic and social progress. They commit to promote Responsible Business Conduct (RBC) principles and standards, as set out by the OECD *Guidelines for Multinational Enterprises* (the *Guidelines*). The *Guidelines* are the most comprehensive set of government-backed recommendations on RBC currently in existence (See Box 8.1). Observance of the *Guidelines* is supported by their unique implementation mechanism – the National Contact Points (NCPs).

Box 8.1. Understanding the OECD Guidelines for Multinational Enterprises

Addressed by Adherents to the OECD Declaration on International Investment and Multinational Enterprises to businesses operating in or from their jurisdictions, the Guidelines set out principles and standards in all major areas related to RBC, including information disclosure, human rights, employment and industrial relations, environment, bribery and corruption, consumer interests, science and technology, competition, and taxation.

Their purpose is to ensure that business operations are in harmony with government policies, to strengthen the basis of mutual confidence between businesses and the societies in which they operate, to improve foreign investment climate, and to enhance the contribution of the private sector to sustainable development. The Guidelines, together with the UN Guiding Principles and the fundamental ILO Conventions, are one of the major international instruments on RBC.

The Guidelines do not aim to introduce differences of treatment between multinational and domestic enterprises - they reflect good practice for all. Adherents wish to encourage the widest possible observance of the Guidelines to the fullest extent possible, including among small- and medium-sized enterprises even while acknowledging that these businesses may not have the same capacities as larger enterprises.

The Guidelines are supported by a unique implementation mechanism of National Contact Points (NCPs), agencies established by adhering government to promote and implement the Guidelines. The NCPs assist enterprises and their stakeholders to take appropriate measures to further the implementation of the Guidelines. They also provide a mediation and conciliation platform for resolving practical issues that may arise.

RBC is a key element of a healthy business environment – one that attracts quality investment, minimises risks for businesses, ensures stakeholder rights are respected and ultimately leads to broader value creation. RBC principles and standards set out an expectation that businesses should avoid and address adverse impacts of business activities, while contributing to sustainable development in countries where they operate. RBC emphasises the integration and consideration of environmental and social issues into core business operations. A key element of RBC is risk-based due diligence, a process through which businesses identify, prevent and mitigate actual and potential adverse impacts, and account for how these impacts are addressed. RBC expectations extend to business activities throughout the entire supply chain and linked to business operations, products or services by a business relationship.

While it is the role of businesses to behave responsibly, Governments have a primary duty to protect the public interest and an important role in promoting and enabling RBC. The RBC chapter in the OECD *Policy Framework for Investment* is a useful reference for designing and implementing a strong RBC policy framework. This entails establishing and enforcing an adequate legal framework that protects the public interest and underpins RBC, while monitoring business performance and compliance with the law. Setting and communicating clear expectations on RBC and providing guidance on what those expectations mean is important, while encouraging and engaging industry and stakeholders in collective initiatives and providing recognition and incentives to businesses that exemplify good practice is encouraged. It also

entails ensuring that RBC principles and standards are observed in the context of the government's role as an economic actor.

This chapter summarises Uruguay's plans for establishing an NCP, followed by a review of Uruguay's general policies for enabling RBC; policies in specific areas covered by the *Guidelines*; RBC in the context of the role of the state as an economic actor; and an outlook and policy recommendations.

Uruguay's plans for establishing an NCP

According to the *Decision of the OECD Council on the Guidelines*, adopted in 2000 and amended in 2011, all Adherents to the Declaration are required to set up an NCP. NCPs have a mandate to further the effectiveness of the *Guidelines* by undertaking promotional activities, handling inquiries, and contributing to the resolution of issues that arise if the *Guidelines* are not observed by businesses in specific instances. NCPs provide one of the few government-based, non-judicial grievance mechanisms with such an effective and broad application.

Adherents are required to make human and financial resources available to their NCPs so they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices. In accordance with the Procedural Guidance of the Decision of the Council on the *Guidelines*, NCPs are expected to operate in accordance with the "core criteria" of visibility, accessibility, transparency and accountability.

In June 2019, the OECD Secretariat, together with the NCPs from Canada and Chile and the former WPRBC Chair (and current Dutch Ambassador to Uruguay), held a workshop with Uruguayan stakeholders to discuss RBC policies and NCP functioning and learn from peers. In addition, the Uruguayan authorities have engaged with OECD institutional stakeholders (BIAC, TUAC, and OECD Watch) to request advice on the draft plans for the NCP.

Based on this experience and engagement, Uruguayan authorities have set out the draft plan for the NCP as follows.

Institutional arrangements

NCP Structure

The Uruguayan authorities plan to establish an NCP by Executive Decree, to be promulgated in the last quarter of 2020. The Decree will include details on the composition of the NCP and the process for appointing NCP members. The NCP will report annually to the Parliament.

Uruguay envisions an NCP consisting of an inter-ministerial commission and an Executive Secretariat, assisted by a multi-stakeholder advisory body. The inter-ministerial commission will oversee the implementation of the NCP work plan, be in charge of reporting, external representation and co-operation, and make decisions on the resolution of specific instances. The Executive Secretariat will deal with administrative matters, organise promotional activities and be the main point of contact for external stakeholders, including in the context of submission of specific instances. The Executive Secretariat's mission will also be of a technical nature, as it will notably assist the NCP in the handling of specific instances. Technical expertise in the field of RBC and human rights will be one of the requirements in hiring the Executive Secretariat staff. The multi-stakeholder advisory body will provide recommendations regarding promotional activities and the management of specific instances. The stakeholder advisory body will be informed about the submission and conclusion of specific instances (this information will also be made publicly available) and may provide general advice on case-handling. The advisory body will not be involved in the handling of individual cases.

The inter-ministerial commission will be composed of representatives from the Ministry of Economy and Finance (MEF); the Ministry of Labour and Social Security (MTSS); the Ministry of Foreign Affairs (MRREE); the Ministry of Housing, Territorial Planning and Environment (MVOTMA); and the Office of Planning and Budget (OPP). These ministries and agencies were selected for their expertise on topics relevant to RBC such as environment, employment, labour relations, consumer rights, competition, and relationship with the private sector within the framework of implementation of the 2030 Agenda for Sustainable Development. Human rights expertise in the advisory body will be provided by the National Secretariat of Human Rights and the National Human Rights Institution. The inter-ministerial commission will count five members (one per government entity) and an alternate from the same ministry or agency, for each member. The selection process for each representative will be at the discretion of its ministry. The inter-ministerial committee will make final decisions on specific instances. Should additional expertise be needed for the handling of a particular case, the NCP will consider setting up ad hoc technical committees comprising representatives of other relevant ministries, giving priority to ministry representatives active on the advisory body, or experts hired specifically for the case at hand. The inter-ministerial commission will be headed by the representative from the MEF Commercial Policy Advisorate, who will act as the head of the NCP. The choice of locating the head of the NCP and the Executive Secretariat in MEF was dictated by the transversal nature of the Ministry, and by the fact that it has the power to convene the various actors involved. The head of the NCP, like the other members of the inter-ministerial committee, will have one vote on NCP decisions. The head of the NCP will be the manager of the Executive Secretariat's staff, and will convene the meetings of the inter-ministerial committee and advisory board. The inter-ministerial commission will be convened every two months, or upon request by one of its members.

An Executive Secretariat, composed of a part-time (20 hours per week) Executive Secretary and a full-time, dedicated Assistant, will be located in the General Directorate of Commerce of the MEF. Depending on the workload of the NCP, it may be possible to increase the staff of the Executive Secretariat at a later stage. Both the Executive Secretary and the Assistant will be selected through a competitive recruitment process led by the inter-ministerial commission.

The advisory body will be composed of a broad range of stakeholders and chaired by the head of the NCP. Organisations participating in the advisory body will be grouped by category – namely, civil society, labour unions, business organisations, academia and other relevant public sector institutions. Although there may be several organisations per category, each category of organisation will count as one vote. It would then be for all organisations within each category to coordinate on voting decisions.

Upon authorisation of the inter-ministerial committee, the Executive Secretariat will invite stakeholder organisations to join the advisory board. In the initial structure, it is envisioned that the Executive Secretariat will request participation from the following bodies: Ministry of Livestock, Agriculture and Fisheries; Ministry of Industry, Energy and Mining; Uruguay XXI; National Secretariat of Human Rights; National Secretariat of Environment, Water and Climate Change; National Human Rights Institution and Ombudsman's Office; Public Board of Transparency and Ethics (JUTEP); the Central Bank of Uruguay's Information and Financial Analysis Unit (Asset Laundering Prevention); Representative of Congress of Governors; academia representative; Representative of the PIT-CNT (single trade union centre of Uruguay); Representative of business organisations (DERES / ACDE); Civil society representative with competency in the subject.

After the initial structure is established, the inter-ministerial committee or the Executive Secretariat will be able to propose that additional organisations join the advisory body as relevant. In addition, an online mechanism will be created to allow organisations that are not represented in the initial structure to request participation in the advisory body. These processes are meant to ensure the widest possible participation of stakeholders. All new organisations will have to be validated by the NCP based on criteria of competence in the field of RBC and the *Guidelines*. The advisory board may be consulted if necessary.

Uruguayan authorities have reported that local stakeholders have been consulted throughout the process of defining the structure of the NCP. A consultation workshop bringing together a wide range of stakeholders including NGOs, trade unions and government agencies was held in June 2019. Following this workshop, the MEF sent a questionnaire to 24 stakeholder organisations to gather views on the structure of the NCP and its advisory body. Six answers received from one business organisation, and four government agencies and one individual RBC expert were analysed by the MEF and used as input to develop a draft proposal for the structure of the NCP.

Stakeholder engagement

Throughout the planned process of establishing the NCP, efforts will be made to directly involve actors from government agencies, notably in the drafting of the Decree that will formally establish the NCP. Other stakeholders will be consulted through a consultation workshop prior to the approval of the Decree. Uruguay indicated that it intends to implement the following timeline for the process of preparing and approving the decree:

- September 2020: first draft of the decree elaborated by MEF and submitted to the future members of the inter-ministerial commission.
- Early October 2020: consultation workshop held with prospective members of the advisory body
- Late October 2020: revision of the draft based on comments received.
- November 2020: formal adoption process initiated.
- December 2020: decree adopted.

Once the NCP is formally established, the Uruguayan authorities plan to organise a workshop gathering members of the advisory body and other interested stakeholders, to consult on the rules of procedures and the draft work plan of the NCP. The final version of the rules of procedure, integrating inputs gathered through the workshop, will be disseminated through relevant channels including website and social media. Going forward, the broad membership base of the advisory body is expected to facilitate ongoing engagement with diverse stakeholder groups.

A dedicated webpage for the NCP will be created in the first semester of 2021. The webpage will include information on the *Guidelines* and the due diligence guidance instruments, rules of procedure and contact information (phone and email) available in both Spanish and English. Links to the NCP's website will be available on the website of each Ministry represented within the NCP. The website will also serve as a platform to publish recommendations issued by the advisory body, as well as information related to specific instances. In particular, both initial assessments and final statements will be made public within five working days of their respective completion dates. Information on past and future promotional events will also be available on the website.

Resources

The NCP will have a dedicated budget, to be defined and included in the next Budget Law Project for the period 2020-2024. Until the NCP budget is approved, resources will be temporarily allocated from the MEF to cover at least the hiring of one full-time and one part-time member, the creation of a webpage within the MEF website, attending two NCP meetings at the OECD in Paris, and organising promotional activities. Efforts will be made to allocate resources to mediation training for the members of the inter-ministerial commission and the Executive Secretary.

Handling of specific instances

The Executive Secretariat will be the main contact point for the submission of specific instances. Upon reception, specific instances will be transmitted to the inter-ministerial commission, which will handle cases and make decisions related to the resolution of specific instances. The inter-ministerial commission will aim to reach consensus but whenever a vote is necessary decisions will be made by simple majority.

The Executive Secretariat will inform the advisory body every time a specific instance is submitted. The Executive Secretariat will also inform the Advisory Body every time a specific instance is concluded, and submit the main conclusions before publication on the website.

As indicated above, the NCP will have the possibility to form ad hoc technical committees whenever specific expertise is required for the resolution of a specific instance. These ad hoc committees may be composed of government representatives, giving priority to government representatives who are members of the advisory body and have specific knowledge relevant to the specific instance concerned, or of experts hired specifically for the case at hand. Whenever a decision is made to set up an ad hoc technical committee, the NCP will notify the advisory body, which may provide advice on the composition of the committee.

For each specific instance handled by the NCP, the Executive Secretariat will prepare a report. The report will include a description of the claimant’s submission, procedure carried out by the NCP, a technical assessment, and the NCP's conclusions. The report shall be endorsed by all NCP members, or a mention should be made in the report in the event that unanimous endorsement cannot be achieved. The report will then be published on the NCP website within five working days (see also section on *Stakeholder Engagement*).

Promotional activities and next steps

The Uruguayan government has elaborated a draft plan for various activities the first year of functioning of the NCP. The first year will mainly focus on the administrative aspects of the establishment of the NCP and the development of rules of procedure through a consultative process. The members of the Executive Secretariat will be appointed by the MEF immediately after the NCP is formally established and not later than the first quarter of 2021, either through an open competitive process or through a direct appointment based on technical competence. Once all NCP members are selected or appointed, the NCP will draft the rules of procedure as well as terms of reference for the advisory body. The NCP will convene the first meeting with the advisory body to present the draft rules of procedures and terms of reference and a work plan in the second quarter of 2021. Budget allocations will be made in the second half of 2020.

The NCP will set up a website in the first half of 2021, on which the *Guidelines* will be made available in English and Spanish. A public launch event is planned also in the first semester of 2021 to introduce the NCP and raise awareness on RBC. Additionally, a workshop on RBC and the *Guidelines* (including the Procedural Guidance) will be held. While this event will be addressed primarily at the member organisations of the Advisory Body, it will be open to the participation of any institution interested in RBC. The Executive Secretariat will organise such workshops at least once a year and will publicise them widely.

Uruguay indicated that the Executive Decree would state that the NCP will only start handling specific instances after its rules of procedure have been approved so as to guarantee predictability for the parties. This is planned for the first semester of 2021. The status of any specific instance received before that date is unclear. Uruguay could consider prioritising the adoption of its Rules of Procedures (RoP), so as to be able to receive cases as quickly as possible after its creation, or accept to receive cases immediately and handle them based on draft versions of the RoP, clearly explaining the situation to the parties.

Policies to promote responsible business conduct

This section addresses Uruguay's commitment to implement the *Guidelines* and the OECD Council Recommendations related to the Investment Declaration which concern RBC.[1]

There exists a growing interest in RBC in Uruguay among businesses, governments and other stakeholders.[2] The most-commonly used term "social responsibility" seems to align broadly with the concept of RBC as outlined in the *Guidelines* covering the areas of environment, labour, human rights, anti-corruption and transparency. Multinational enterprises operating in Uruguay with strong RBC policies have traditionally been the main driving force for RBC promotion in the country. The Government's understanding of sustainability as a way to create value and enhanced competitiveness has been growing and has been reflected in recent policies. Maintaining the increasing interest in RBC, as well as raising understanding on supply chain due diligence, also among domestic companies and SMEs will be key.

Uruguay has a solid legal framework and strong institutions underpinning RBC. It has put in place policies and regulations in various areas covered by the *Guidelines*, and trust in the government is high.[3] The small size of the country and government have facilitated collaboration between different ministries and government agencies and have contributed to a relatively high degree of policy coherence.

A number of national strategies and policies have been launched to promote sustainability and cooperation with the business sector, particularly in the framework of the 2030 Agenda and the Sustainable Development Goals (SDGs).[4] The "National Development Strategy for 2050" consists of a set of strategic guidelines to achieve the "Uruguay 2050 Vision". Sustainable development is at the heart of this strategy.[5] The private sector plays a strategic role within the 2050 Strategy particularly regarding the need to adopt and develop technologies for sustainability and face challenges such as climate change in an articulated manner with the Government and other relevant stakeholders.[6]

In 2016, the Government enacted the Law on the National Productive Transformation and Competitiveness System – known as "Uruguay Transforma" (Uruguay Transforms).[7] The Law puts in place a Government technical support body (Ministerial Cabinet of productive transformation and competitiveness) responsible for proposing to the Executive Branch objectives, policies and strategies related to sustainable economic development, aimed at strengthening productivity and competitiveness, including related to science, technology and innovation.[8] The Secretariat of this body works within the Office of Planning and Budget (OPP), which is also responsible for the implementation of the National Development Strategy for 2050.

Businesses have been active in promoting a common understanding and implementation of RBC standards in the country. Early initiatives include the creation, in 2010, of the Uruguayan chapter of the Global Compact with 24 national and multinational member companies[9] and the mandate to incorporate social and environmental considerations into sustainable business strategies. However, in recent years Global Compact Uruguay has had a limited activity.[10] The Corporate Social Responsibility Development Project (DERES), an initiative of the Catholic University of Uruguay, aims to promote Corporate Social Responsibility (CSR) through different actions and activities, such as the organisation of conferences and seminars and the development of toolkits, trainings and campaigns[11]. DERES was one of the founding organisations of the Local Network of the Global Compact, which has currently more than 100 partner companies.[12] The Uruguayan Institute of Technical Standards (UNIT) has held several conferences and workshops based on the international standard ISO 26000 (UNIT-ISO 26000), with the aim of integrating Social Responsibility into organisations. [13] In addition, the UNIT has also launched and promoted a special printed edition of the standard, which includes a compendium with the most relevant related topics on CSR.[14]

Business associations are increasingly engaging in policy dialogue on RBC. The Chamber of Industry of Uruguay (CIU), established in 1898, is the largest representative industrial businesses entity.[15] With the mission to seek business/industrial strengthening and to facilitate the insertion of its partners in international markets, the CIU includes, among its areas of work, "Environmental management" and

"Social-Labour Relations", as well as subgroups of work on "Sustainable Production and Energy Efficiency". These are intended to actively collaborate with public authorities in the development of appropriate environmental regulations; support the sustainable development of the industrial sector; and tend to the development and continuous improvement of policies, programs and performance of companies in coherence with regional and international standards.[16]

Likewise, the National Chamber of Commerce and Services of Uruguay17 has a dedicated strategy to promote CSR in alliance with private and public actors such as the Inter-American Development Bank (IADB), the Presidency of the Republic (OPP and CIEDUR), DERES, and UNICEF, among others. Under its CSR strategy, the Chamber fosters alliances for the dissemination, communication and development of CSR policies by companies, particularly through awareness raising and training workshops with the collaboration of DERES (with whom they signed a cooperation agreement in 2007 for this purpose).[18] Finally, the Confederation of Business Chambers (CCE), a cross-sectoral organisation constituted in 2016, facilitates coordination, representation, promotion and defence of the principles and common and general interests defined by its members.[19] Although they do not have a specific CSR strategy, they include among their objectives contribution to the economic, cultural and technological development of the country and the elevation of social progress.[20]

Policies in specific areas covered by the OECD Guidelines

The scope of RBC is broad and cross-cutting as business can have both positive and negative impacts on society. The review of Uruguay's context and policy reference framework to implement the *Guidelines* also concerns the legal and regulatory framework in place in all areas covered by the *Guidelines*, as well as the commitment to the various international instruments cited in the *Guidelines*.

Non-financial disclosure

Clear and complete corporate information is important to a variety of users, from shareholders to workers, local communities, governments and society at large. Chapter III of the OECD *Guidelines* calls for timely and accurate disclosure on all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company. The *Guidelines* also encourage disclosure in areas where reporting standards are still evolving such as, for example, social, environmental and risk reporting.

The Fiscal Transparency Law (Law 19,484 of 2017) is the main instrument governing disclosure by companies in Uruguay. It was issued to comply with the international standards of International Tax Transparency, Prevention of Money Laundering and Financing of Terrorism.[21] The Fiscal Transparency Law particularly focuses on the disclosure of financial information of all the resident and non-resident companies that operate in Uruguay, who must provide complete information – among other aspects – about their final beneficiaries and shareholders. Companies that do not comply with the provisions of the Law face significant financial penalties, which vary according to the seriousness of the infraction (for example, omitting the duty to inform; giving incomplete information or giving inaccurate information).

The Fiscal Transparency Law also extends the responsibility to provide information to all entities linked to the parent company, even if they are not under the supervision of the Central Bank of Uruguay. Following this regulation, the Central Bank of Uruguay (CBU) has released guidelines and forms for Uruguayan resident and non-resident companies to identify and report to the CBU their ultimate beneficiaries and their respective percentages of participation, as well as the chain of ownership. The CBU also set forth mechanisms for holders of nominative shares or quotas of Uruguayan entities to communicate their identification information and percentage of participation to the CBU.[22]

The Fiscal Transparency Law does not cover disclosure of non-financial information, nor are there any other provisions in Uruguay's regulatory framework that require companies to report on social and environmental impacts of their operations or business relationships. However, there are examples of companies that have voluntarily incorporated non-financial reporting standards, including environmental and social governance reporting. Particularly, 39 companies in Uruguay have implemented the Global Reporting Initiative (GRI) standards, although many did not do so consistently (only for one or two years).[23]

Human rights

Enterprises can have an impact on virtually the entire spectrum of internationally recognised human rights. Chapter IV of the *Guidelines* draws on and is aligned with the UN Guiding Principles on Business and Human Rights. States have a primary duty to protect human rights. However, businesses are expected to respect human rights independently of the state ability and/or willingness to fulfil its human rights obligations. Failure either to enforce relevant domestic laws or to implement international human rights obligations, or the fact that the state may act contrary to those laws and obligations, do not diminish the obligation of businesses to respect human rights.

Uruguay is a Party to the key international instruments on internationally-recognised human rights, including the UN Universal Declaration of Human Rights, the UN International Covenant on Civil and Political Rights, and the UN International Covenant on Economic, Social and Cultural Rights.[24]

Human rights are protected by the Constitution. Articles 7, 72 and 332 expressly acknowledge their protection. The National Institution for Human Rights and Ombudsman's Person (INDDHH) is an independent institution responsible for the defence, promotion and protection in all its extension of the human rights recognised by the Constitution and international law. Its mission refers to suggesting corrective means, making non-binding recommendations and intervening in complaints for human rights violations, without entering into the jurisdictional, executive or legislative functions that correspond to the respective powers.[25] Additional offices and special bodies exist within the State administration, for example the Secretariat of Human Rights – attached to the Presidency – which is the governing body that aims to incorporate a human rights approach in government policies, fulfilling the functions of promotion, design and coordination, as well as monitor and evaluate the correspondent policies and programs.[26]

Uruguay obtains a score of 98/100 in the 2019 ratings by Freedom House, making it one of the countries in the world with the highest level of freedom, political rights and civil liberties. Freedom of assembly and association is guaranteed by law and, according to Freedom House, generally respected in practice. A wide array of community organisations and national and international human rights groups are active in civic life.[27]

The Special Rapporteur on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment, from his mission in 2017, widely recognised the high standards of Uruguay both in protecting human rights and the environment. However, he recommended that the Government provide greater financial and technical support to INDDHH so that it can continue to address the relationship between human rights and environmental issues.[28]

Uruguay has made significant progress in a number of human rights policy areas, in particular regarding gender equality that is enshrined in Law 16,045 barring discrimination in the workplace, while Article 321 of the Penal Code makes domestic violence a distinct offence. Despite the legal provisions, in some cases women still have to confront inequality such as in employment or wage inequality. The Global Gender Gap Report 2018, for instance, ranks Uruguay 77th out of 149 countries in terms of women economic participation and opportunity.[29]

The Committee on the Elimination of Discrimination Against Women (CEDAW), in its concluding observations made for Uruguay in 2016, highlighted the positive progress made by the country in the matter, but also made a particular call (among other aspects) to apply the principle of equal remuneration

for work of equal value. [30] The Committee also called to establish a system to inform about good practices to eliminate gender pay inequality and promote women's access to decision-making positions, particularly through the preferential promotion of women and leadership training.

On the other hand, following his visit to Uruguay in 2017, the UN High Commissioner for Human Rights highlighted “inhumane” prison conditions, widespread violence against women and continuing impunity for violations committed during military rule among the challenges that the country faces regarding human rights.[31]

Employment and industrial relations

Chapter V focuses on the role of the *Guidelines* in promoting observance among enterprises of the international labour standards developed by the ILO, notably the fundamental principles and rights at work as recognised in the ILO 1998 Declaration on Fundamental Principle and Rights at Work. Other issues to be observed within the framework of applicable law, regulations and international labour standards concern the provision of adequate information to workers on performance and changes in company operations affecting workers, ensuring consultation and cooperation between employers and workers, observing employment and industrial relations standards, as well as providing adequate conditions of work covering wages and occupational safety and health at work.

Uruguay has ratified all eight fundamental Conventions of ILO and all four Governance Conventions.[32] In 2012, Uruguay made history by being the first country to ratify ILO Convention No. 189 (C189) on decent work for domestic workers. The applicable legal norms for hiring workers in Uruguay are set out in the Constitution, specific Laws and Decrees, Acuerdos de Consejos de Salarios (the Agreements of the tri-partite Wage Councils), and regulations from the Ministry of Labour. Article 57 of the Constitution establishes the right for employees to participate in collective action, the right to strike and the right to organise unions. The ITUC-CSI Global Rights Index (2018) rates Uruguay in the first group (where there are sporadic violations of rights).[33]

Unions are numerous and politically influential. The Inter-Union Workers Plenary - National Workers Convention (PIT-CNT) is the main trade union, to which virtually all occupational unions are affiliated. PIT-CNT currently has more than 400 thousand affiliated workers.[34] A recent development is the establishment of the Trade Union Confederation of Uruguay (CSGU), on the basis of split groups of the PIT-CNT (which, up to then, had affiliated all Uruguayan unions). The Uruguayan trade union movement plays an important role in the dialogue on labour policy, as well as other subjects which contribute to development and social inclusion.

The labour market is characterised by comprehensive regulations that promote equality and inclusiveness, but also introduce some rigidities that may unwillingly discourage hiring (IMF 2011, Chapter 3). The Ministry of Labour (MTSS) monitors the implementation of labour laws and regulations and provides technical assistance to employers and employees to ensure their corresponding rights.[35] The MTSS also promotes the inclusion of the most vulnerable in the labour market, together with the Instituto Nacional de Empleo y Formación Profesional (INEFOP), a tripartite entity in charge of strengthening employment and implementing vocational training policies.[36] A recent example of a MTSS-INEFOP joint initiative is the law establishing incentives for the creation of new jobs,[37] which seeks to promote youth employment[38] and creates a temporary programmeof employment subsidy.[39] Likewise, the Ministry of Social Development (MDS) promotes strategies for inclusion such as “Uruguay Trabaja” (Uruguay works)[40], which aims to develop social integration processes and promote employability of vulnerable persons, with limited educational levels and long-term unemployment. Public programs promote the development of skills aligned with employers’ needs, while direct policies protect women’s rights in the workplace and regulate issues such as maternity leave or breastfeeding rooms in the workplace.[41]

Informality concerns about 24% of workers, down from over 40% in 2004.[42] According to the Economic Commission for Latin America and the Caribbean (ECLAC), the drop occurred during the economic boom, as most job creation was in the formal sector of the economy. Several additional policies reinforced the formalisation process, including the resumption of tripartite collective bargaining negotiations in 2005 (which had been abandoned in the 1990s), an increase in the minimum wage, and tax and health reforms.

The Uruguayan legal framework seeks to protect workers also in cases of labour outsourcing (subcontracting, intermediation and supply) and extend corporate responsibility in this regard to the entire supply chain. The 2008 Labour outsourcing and joint liability law (No. 18.251)[43] mandates compliance with labour and social security obligations, including by any company that uses subcontractors, intermediaries or labour suppliers. According to the law, the main employer should exercise his/her right to be informed by the subcontractor, intermediation businessperson or the employment supplier firm about the compliance with labour, pension and insurance obligations. When this right is exercised, the liability for any failure to respect the above-mentioned obligations will be vicarious. Likewise, the law establishes that when the subcontractor, intermediation businessperson or employment supplier firm fails to pay any of the obligations, the main employer is entitled to withhold the payment to them, paying directly the workers and the public offices (for pensions and insurance obligations).[44]

The system of collective bargaining and conflict prevention remains an important component of peaceful industrial relations and contributes to sustainable development in Uruguay. However, it has raised some controversies, in particular with respect to its alignment with the ILO Right to Organise and Collective Bargaining Convention (No. 98, 1949). The ILO Committee on Freedom of Association has examined the issue since 2010 (Case No. 2699, which was still ongoing at the time of writing this Review) and the Committee of Experts also presented observations in 2010, 2011, 2012, 2015 and 2018. The Government and social partners still differ in their appreciation of progress made, especially regarding the role of the Ministry of Labour in the collective bargaining process, the duty of information in that framework, and the powers of the Higher Tripartite Council. A related problem is the widespread phenomenon of workplace occupation and picket lines, which act as disincentive to investment. On all these accounts, there may be value in reinforcing consultation mechanisms between social partners and presenting legislative proposals in the medium term.

Environment

Chapter VI calls on enterprises to take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. This entails sound environmental management that aims to control both direct and indirect environmental impacts; establishing and maintaining appropriate environmental management systems; improving environmental performance; being transparent about the environmental impacts and risks, including also reporting and communicating with outside stakeholders; being proactive in avoiding environmental damage; working to improve the level of environmental performance in all parts of their operations, even where this may not be formally required; and training and education of their employees with regard to environmental matters.

Uruguay is a Party to major multilateral environmental agreements, including the UN Convention on Biological Diversity (Uruguay signed the Convention at the Rio 92 Summit, and ratified it by Law (No. 16,408) on November 5, 1993); Uruguay has also ratified the Cartagena (2011) and Nagoya (2014) Protocols of the Convention and has signed the Nagoya-Lumpur Supplementary Protocol[45]. The country is also a Party to the UN Framework Convention on Climate Change (ratified on 18 August 1994) and its Kyoto Protocol (ratified on 5 February 2001)[46]. Uruguay is also a Party to the Paris Agreement (ratified on 19 October 2016). Uruguay has also signed and ratified the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazu Convention), which will enter into force once all the signatory countries ratify it.[47]

Article 47 of the Constitution establishes the protection of the environment as a matter of general interest and mandates all persons to abstain from any act that causes depredation, destruction or serious contamination to the environment. DINAMA (National Environment Directorate of the Ministry of Housing, Territorial Planning and the Environment) is responsible for implementation of environmental protection policies. In 2016, the National Environmental System, composed of various state agencies, was created to strengthen and co-ordinate public policies related to climate change. The Decree also created the National Environmental Cabinet, with the function of developing an integrated and equitable environmental policy, and the National Secretariat of Environment, Water and Climate Change to ensure coherence and alignment of climate and environmental policies.[48]

The environmental performance, as measured in the 2018 Yale Environmental Performance Index, is relatively satisfactory. Uruguay is ranked second in South America (after Colombia), 17th outside the OECD, and 47th globally. One of the main environmental concerns linked to agricultural activities in Uruguay is the use of pesticides. According to DINAMA, during the last 20 years technological innovation and the expansion of agriculture (especially associated with soybean cultivation) have increased the pressure on natural resources.[49] Water resources have been the most affected by the use of pesticides. Several recent investigations have detected the widespread presence of pesticide residues in at least two of Uruguay's main rivers.[50] In response to this, a Capacity Building Project for the environmentally appropriate management of pesticides is currently led by the National Environment Directorate, and financed with funds from the Global Environment Facility (GEF), with the technical support of FAO.[51]

The above had already been highlighted in 2017 by the Special Rapporteur on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment, during his visit to Uruguay. He stressed that expanding agricultural production through the use of fertilizers, agro-chemicals, and irrigation can cause environmental harm, including to water quality.[52] However, he also acknowledged that the government has made continuous efforts to adopt a solid legal and institutional framework for the protection of the environment, including at the constitutional level, demonstrating the country's long-standing commitment to maintaining a healthy environment and sustainable development.

Combating bribery, bribe solicitation and extortion

Chapter VII of the OECD *Guidelines* recognises the important role of the private sector in combating bribery and corruption. Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage, and should also resist the solicitation of bribes and extortion.

In comparison to other emerging economies, in Latin America but also globally, in Uruguay corruption is not perceived as a major issue. According to Latinobarómetro 2017, in particular, only 1% of the population considers it as the gravest problem facing the country, as against as 31% of Brazilians, 13% of Mexicans, and 12% of Chileans. Uruguay was ranked 23rd among 180 countries in the Transparency International's Corruption Perception Index (CPI) in 2017. Uruguay's ranking is higher than all non-OECD countries that are Adherents to the OECD *Guidelines*, as well as various OECD countries such as Chile (27th), Israel (34th), Poland (36th), Italy (53rd), Turkey (78th), or Mexico (138th).[53]

According to the 2017 World Economic Forum Executive Opinion Survey, corruption is rarely cited as a problematic factor for doing business in Uruguay (WEF, 2018). Although the sum lost in illicit financial flows from 2004 through 2013 is far from insignificant, USD 956 million per year on average, it is dwarfed by the estimated figures in other developing and emerging economies.[54]

Uruguay enacted a law against corruption in the public sector in 1998, which prohibits public officials from accepting bribes or facilitating payments.[55] The acceptance of a bribe is a felony under the penal code. The legal framework against anti-money laundering (Laws 17.835/2004 and 18.494/2009 and Decree 226/10) includes corruption as a predicate offence. Uruguay is a Party to the Inter-American Convention

against Corruption (IACAC, ratified on 28 October 1998) and to the United Nations Convention against Corruption (UNCAC, ratified on 10 January 2007). Uruguay has not signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

An ecosystem of anticorruption institutions has been set up. The public prosecutor's office (Fiscalía) is independent from government and has prosecuted some high-level Uruguayan officials for corruption in recent years. The Transparency and Public Ethics Committee (JUTEP) is the government office responsible for dealing with public sector corruption. Other institutions involved in preventing and combating corruption are the National Anti-money-laundering Secretariat, the Directorate-General for Combating Organised Crime, the Financial Information and Analysis Unit, and the special money-laundering parliamentary commission. Different stakeholders act in prevention and deterrence, including the private sector, community and civil society organisations, and the media. Uruguay's continuous efforts to upgrade the fight against bribery and solicitation have also been acknowledged by the OAS Anticorruption Mechanism (MESICIC) (OAS, 2016).[56]

There is still scope for strengthening the transparency and accountability mechanisms in place in state-owned enterprises (SOEs), which represent a sizeable share of the corporate sector, in order to minimise opportunities for corruption.[57] In this context, the Review of implementation of the United Nations Convention against Corruption recommended that non-monetary advantage be taken into account and that economic advantage, or advantage of an intangible nature as part of undue advantage, be criminalised.[58]

Compared with reforms aimed at strengthening integrity in the public sector, corruption prevention in the corporate sector has received significantly less attention in the public debate. For sure, rules on disclosure of ownership and control, governance by shareholders and supervisory boards and regulations governing accounting and auditing are in place (World Bank, 2006). Formal requirements are indeed necessary, but global good practices suggest that other actions may be necessary, such as providing interested parties (employees in particular) with specific information and training on anti-corruption compliance and business ethics. In this respect, local business should not spare efforts to develop ethics codes and other corporate measures aimed at preventing bribery and corruption.

Raising awareness of the channels for internal reporting is essential to ensure the effectiveness of any compliance programme. As discussed further in Chapter 8 of this *Review*, promotion of RBC principles and standards could play a role in preventing corruption. The OECD *Guidelines* recognise the important role of the private sector in combating bribery and corruption, and recommend that enterprises develop and adopt adequate internal controls, ethics and compliance programmes or measures for preventing and detecting bribery, on the basis of a risk assessment addressing the individual circumstances of an enterprise. The *Guidelines* also include recommendations for enterprises to introduce safeguards in their own policies to protect bona fide whistle-blowing activities. The OECD *Due Diligence Guidance for Responsible Business Conduct* provides practical guidance that can help enterprises avoid and address risks of corruption that may be associated with their operations, supply chains and other business relationships. So far, mainly large companies operating internationally, such as Conaprole, the dairy cooperative, have taken measures to actively promote ethical business internally (see Box 8.2).

Box 8.2. Promoting integrity in the corporate sector: the case of Uruguay's main exporter

Conaprole (*Cooperativa Nacional de Productores de Leche*), founded in 1936, is the largest private company in Uruguay, the country's main exporter and the third-largest dairy company in South America. It collects milk from more than 2 000 medium and small producers who are the owners of the cooperative.

The Ethics Code of Conaprole – publically available and downloadable online – considers integrity, transparency, respect (covering equal opportunities and diversity), teamwork and excellence as the corporate values that make it possible to compete. The cooperative explicitly highlights its responsibility to respect human, labour and environmental rights, and build trust with local communities. The Code outlines the company's obligations vis-à-vis its employees, clients and consumers, among others.

An Ethics Committee, composed of top managers, provides strategic orientation. Specific provisions concern gifts from customers and clients (that are prohibited), access to information, financial and non-financial contributions to political parties, conflicts of interest, and whistle-blowing.

Source: Conaprole's Ethics Code (*Código de Ética*)

Consumer interests

Chapter VIII of the *Guidelines* calls on enterprises to apply fair business, marketing and advertising practices and to ensure the quality and reliability of the products that they provide. This includes co-operating fully with public authorities to prevent and combat deceptive marketing practices and to diminish or prevent serious threats to public health and safety or to the environment deriving from the consumption, use or disposal of their goods and services. It also includes supporting efforts to promote consumer education in order to improve the ability of consumers to make informed decisions, better understand the economic, environmental and social impacts of those decisions, and support sustainable consumption.

Consumer interests are safeguarded by the Constitution and the Consumer Defence Law (Law 17.250)[59] of 2000. The Directorate for Consumer Defence (*Dirección del Area de Defensa del Consumidor*), housed in the Ministry of Economy and Finance, is responsible for its implementation and through information and advice to consumers about their rights and obligations and controlling effective compliance with regulations.[60] The Directorate is also mandated to facilitate alternative mechanisms for the solution of conflicts originated in consumer relations, and advise the Ministry of Economy and Finance in the formulation and application of policies on consumer protection

Consumer welfare is also served through promoting fair, market-based corporate practices. The Law of Defence of Fair Competition[61] (No. 18.159 of 2007) expressly aims to promote the well-being of current and future consumers and users, through the promotion and defence of competition, while stimulating economic efficiency, economic freedom and equal market access conditions. The law prohibits the limitation, restriction or unjustified agreement of the production, distribution and technological development of goods, services or productive factors, to the detriment of competitors or consumers. The Ministry of Economy and Finance, through the Commission for the Promotion and Defence of Competition *(Comisión de Promoción y Defensa de la Competencia)*, guarantees its compliance through the imposition of monetary sanctions, recommendations and/or warnings.

Uruguay has also developed a "Consumer Defence Manual" which is the result of the joint effort of the Commission, the Secondary Education Council, the Council of Professional Technical Education (CETP), and the National Direction of Impressions and Official Publications (IMPO).[62] The Manual aims to provide sufficient information to consumers to report inappropriate behaviours by companies that act dishonestly,

abusively, or misleadingly with consumers, or that compete unfairly to capture the market – according to the behaviours typified in the Consumer Defence Law.

Science and technology

Chapter IX of the OECD *Guidelines* for MNEs recognises that enterprises are the main conduit of technology transfer across borders. It aims to promote technology transfer to host countries and contribution to their innovative capacities.

The Ministry of Industry, Energy and Mining (MIEM), develops and implements policies for the promotion of institutional and corporate good practices and initiatives in science, technology and innovation.[63] Through incentives like the National Energy Efficiency Award (to promote savings and efficient use of energy in different sectors); and the energy efficiency contest for educational centres, it seeks to raise awareness about responsible practices regarding the efficient use of resources; promote the incorporation of energy efficiency measures; and generate references that promote the responsible use of resources both from institutions and businesses, as well as from the community.

Uruguay also has a specialised center (Industrial Extension Center - CEI) to promote public policies to strengthen innovation and competitiveness of SMEs within the following sectors: food, metallurgical, plastics, chemical and wood.[64] The CEI offers technological and comprehensive diagnoses tailored to each SMEs situation, accompanied by an action plan which also sets out the financial support instruments available to lower the implementation cost, with the ultimate goal of stimulate demand for technology and innovation that positively contributes to the economy and society.

Competition

Chapter X of the *Guidelines* focuses on the importance of MNEs carrying out their activities in a manner consistent with all applicable competition laws and regulations, taking into account the competition laws of all jurisdictions in which their activities may have anti-competitive effects. Enterprises need to refrain from anti-competitive agreements, which undermine the efficient operation of both domestic and international markets. An important aspect of enterprises responsibilities in this regard is co-operation with competition authorities and promotion of awareness and training among employees on the importance of compliance, particularly among senior management.

The main legislation regulating competition is the Law of Defence and Promotion of Fair Competition (No. 18,159) of 2007 which expressly prohibits abuse of dominant position, as well as all practices, behaviours or recommendations, individual or concerted, that have the effect or purpose to restrict, limit, hinder, distort or prevent current or future competition is expressly prohibited. This law was reformed in 2019 (by Law 19.833), introducing notably a number of practices that are prohibited “per se” (in themselves), referring to concerted practices between competitors and characterised by being harmful to competition and consumers. These include agreements on prices or other commercial conditions; agreements to limit the production of goods or services; agreements to distribute markets; coordination in tenders or price contests; and the same practices carried out through a union or business association.

The Commission on the Promotion and Defence of Competition is a body that depends on the Ministry of Economic Affairs and Finance and is in charge of the implementation of the Law of Defence of Fair Competition. A UNCTAD voluntary peer review of Uruguay’s competition law and policy framework undertaken in 2016 highlighted that despite efforts, improvements could be made at both regulatory and institutional level to enhance protection and promotion of competition. This could include improving legal certainty, clarity and predictability as well as enhancing enforcement of the law. The peer review also concluded that the Commission on the Promotion and Defence of Competition would be strengthened by increased autonomy and resources.[65]

Taxation

Chapter XI of the *Guidelines* calls on enterprises to comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate and make timely payments of their tax liabilities.

Uruguay is one of the few countries in the region that applies corporate taxes following the source principle: investments located and activities performed outside Uruguayan territory are not subject to taxation, regardless of nationality, domicile or residence of the parties participating in the transactions, and regardless of the place where the agreements are subscribed.[66]

In 2009, the OECD welcomed the formal endorsement by Uruguay of its tax information exchange standards. In particular, as of 1 December 2016 Uruguay is a Party to the amended Convention on Mutual Administrative Assistance in Tax Matters expanding its capacity to fight international tax avoidance and evasion. So far, the country has fully aligned with OECD standards by entering into more than 10 tax information exchange agreements and more than 15 double taxation agreements.[67] Uruguay also become a Participant in the Committee on Fiscal Affairs, and agreed to start the automatic exchange of information in September 2018.

The State as an economic actor

The State is the largest economic actor in Uruguay and therefore plays an important role in the promotion and implementation of RBC. According to the OECD Policy Framework for Investment (PFI), governments should exemplify RBC in their own role within the economy. This applies to all its activities, as employers, procurement agencies, business partners and commercial actors, including the practices of state-owned enterprises. It also extends to services from public agencies providing support to companies, as well as its donor activities. Not only is this in the public interest, it also enhances the government's legitimacy in making recommendations on RBC to private businesses.[68]

State-owned enterprises

The *Guidelines* apply to all entities within the enterprise and all sectors whether private, state or mixed. Moreover, the *Recommendation of the Council on Guidelines on Corporate Governance of State-Owned Enterprises* (*SOE Guidelines*) recommends that SOEs should "observe high standards of responsible business conduct" and states that "expectations established by the government in this regard should be publicly disclosed and mechanisms for their implementation be clearly established." The *SOE Guidelines* further recommend measures to report on foreseeable risks, including in the areas of human rights, labour, the environment, and risks related to corruption and taxation[69].

SOEs – known as "Entes Autónomos y Servicios Descentralizados" (Autonomous Entities and Decentralised Services) – play an important role in the economy. The largest state-owned enterprises include the oil, cement, and alcohol company ANCAP, telecommunications company ANTEL, electric utility UTE, water utility OSE, and Uruguay's largest bank BROU.[70] Uruguayan SOEs are required to publish an annual report which is delivered (among others) to the Office of Planning and Budget (OPP) and the Ministry of Economy and Finance (MEF). The data set with information on public companies is published by the Office of Planning and Budget (OPP), but does not include non-financial information. Certain SOEs report regularly on a voluntary basis on environmental and social issues, notably on specific programmes, see in particular ANTEL and UTE.[71] Further promoting and ensuring implementation of RBC principles and standards within SOEs could contribute to increased transparency and set an example for the uptake of responsible business practices by businesses at large.

Public procurement

Governments can also promote RBC principles and standards, through the engagement with enterprises that are recognised as behaving responsibly. The OECD Recommendation of the Council on Public Procurement[72] encourages the use of secondary policy objectives, including responsible business conduct standards, for public procurement processes.

Public procurement in Uruguay is governed by Decree No. 150/012 "Financial accounting and financial administration of the state (TOCAF),"[73] and implemented according to the Public Procurement Manual[74], regulated, under the responsibility of the State Purchasing and Contracting Agency (ACCE). In 2015, general government public procurement accounted for approximately 6.3% of GDP and 19.1% of general government expenditure, which is below the OECD average of 12% and 29% respectively.[75]

The Uruguayan government has recently taken significant measures to position public procurement as a tool to foster RBC standards and principles through encouraging public entities and SOEs to include sustainability criteria in public procurement tenders. The Sustainable Public Procurement Policy is regulated under Decree 402/018 adopted in 2018,[76] and seeks to protect inter alia human rights, labour rights and environmental standards through public procurement.

To implement the Decree, the *Sustainable Public Procurement Programme*has been established by ACCE in March 2019 with the following specific objectives[77]:

- design and implementation of a National Policy for Sustainable Public Procurement (SPP) and strengthening the existing legal framework to fully incorporate sustainability criteria in public procurement;
- development of a set of tools, guides and documents, based on sustainable criteria and the life cycle approach for products and services, to be implemented in the Public Procurement System of Uruguay;
- strengthening of the capacity of public buyers and national suppliers for an optimal incorporation of sustainability criteria in their activities;
- design and implementation of a monitoring system to control compliance with sustainability standards.

No information is yet available on results achieved or progress made.

Trade and investment policy

Trade and investment policy can be important vehicles for governments to promote responsible business practices. By including considerations such as the protection of the environment, the implementation of labour standards, the fight against corruption, and the respect for human rights in trade and investment agreements, governments can promote responsible behaviour in global supply chains and the contribution of their trading and investment partners to sustainable development.

To date, Uruguay has concluded a number of trade[78] and investment agreements[79] to seek increased market access and attract international investment. A study of these agreements show that RBC-related language is increasingly included in their texts.

The latest free trade agreement (FTA) concluded by Uruguay with Chile in 2016 contains RBC-related language, with two chapters dedicated to labour and environmental issues that include specific articles on responsible business conduct.[80] Likewise, the latest FTA negotiated by the Southern Common Market (MERCOSUR) established by Argentina, Brazil, Paraguay and Uruguay – in the framework of which Uruguay has concluded most of its trade agreements – also includes RBC-related language.[81]

The MERCOSUR and the EU reached a political agreement on 28 June 2019 for a comprehensive trade agreement[82] whose goal is, among others, to "strengthen worker's rights[,] […] ensure environmental

protection, [and] encourage companies to act responsibly […]”[83] To that effect, the trade agreement contains a dedicated chapter on trade and sustainable development aimed at enhancing the integration of sustainable development concerns in the Parties' trade and investment relationships.[84] In this chapter, the Parties agree that they should not lower labour or environmental standards in order to attract trade and that the agreement should not constrain their right to regulate on environmental or labour matters.[85] They also undertake to promote the implementation of international labour standards[86] and multilateral environmental agreements.[87] The EU and the MERCOSUR also recognise the importance of responsible management of supply chains through responsible business conduct practices and agree to support the dissemination and use of the main relevant international instruments in the field (the OECD *Guidelines*, the UN Guiding Principles on Business and Human Rights, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy) and to provide a supportive policy framework for their implementation.[88] The parties to the future trade agreement also commit to promote the OECD Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.[89] [90]

RBC-related language appeared early on in Uruguay's international investment agreements (IIAs). The bilateral investment treaty (BIT) concluded with Canada in 1997 for instance already contained a provision specifying that the treaty shall not constrain the signatories' right to adopt and enforce measures designed to protect the environment.[91] Several IIAs concluded later on by Uruguay include RBC-related language in their preambles and in various parts of the main body of the treaty.[92]

Particularly noteworthy is the BIT concluded by Uruguay and Japan in 2015 which contains RBC-related language in the preamble as well as in several articles. These provisions seek to discourage the loosening of environmental, labour, health and/or security standards and regulations in order to attract investment.[93] They also specify that the treaty shall not constrain the signatories' right to adopt and enforce public interest measures (such as measures necessary to protect health, human, animal or plant life, to ensure the conservation of natural resources, or to protect personal data).94 In addition, they establish the signatories' commitments to take measures and make efforts to prevent and combat corruption in relation to the subject matters covered by the IIA.95

The increasing inclusion of RBC-related language in Uruguay's trade and investment agreements is a welcome development. Not only does it enhance policy coherence and the government's legitimacy in making recommendations on RBC, but it also improves Uruguay's positioning as a country committed to sustainable development and responsible business practices, thereby fostering its competitiveness.

Outlook and policy recommendations

There is a strong legal framework underpinning RBC in Uruguay. Policies and regulations are in place and Uruguay has committed to the various international instruments cited in the *Guidelines*. The country enjoys a high level of human and labour rights protection and a developed system of social dialogue is in place. Compared to other emerging economies in Latin America but also globally, corruption is relatively low and the rule of law is well respected. While environmental protection is actively pursued by the Government, expanding agricultural production through the use of fertilisers, agro-chemicals, and irrigation has caused environmental impacts, including to water.

The government has been active in promoting responsible business practices and has engaged with stakeholders, including the private sector on social and environmental issues. Overall awareness of RBC issues is rising both among public and private sector entities, but led mainly by multinationals. Initiatives have nevertheless so far focused on more traditional CSR approaches and philanthropy: further efforts are needed to mainstream a risk-based approach to RBC. Developing a national, overarching framework specifically aimed at promoting RBC could also help engage a wider range of stakeholders, including SMEs, NGOs and trade unions and promote further policy coherence.

The existing high level of coordination and collaboration across government agencies and ministries due to the small size of both the country and government, and the fact that a number of RBC related issues, including environment, human rights and sustainability, are directly under the purview of the presidential office, offer significant advantages for the purpose of seeking coherence among all government policies on RBC.

The State plays an important role in the economy and measures have been taken recently to lead by example on RBC. In particular, notable efforts are under way to implement the use of public procurement as a strategic tool to foster sustainability. Further promoting and ensuring implementation of RBC principles and standards within SOEs could also contribute to increased transparency and set an example for the uptake of responsible business practices by businesses at large. Additionally, RBC standards in Uruguay have also been promoted through the country's trade and investment agreements which increasingly include environmental and social standards. Uruguay could further evolve into an economy that promotes sustainability to enhance competitiveness.

Uruguay has set out and consulted on the plans for establishing the NCP, both with Uruguayan stakeholders as well as OECD institutional stakeholders. Uruguay envisions an NCP consisting of an inter-ministerial commission and an Executive Secretariat based in the Ministry of Economy, assisted by a multi-stakeholder advisory body. The Government plans to establish the NCP by Executive Decree in the first semester of 2020. While this timeline is ambitious, the Government foresees a longer time frame to operationalise the NCP after its creation through elaborate consultation processes to develop the terms of reference for the multi-stakeholder advisory body and the rules of procedure for handling specific instances. This would result in the NCP not being able to handle cases until approximately one year after its creation. With the support of the Secretariat, these processes could be expedited so as to ensure that the NCP is able to fully function as quickly as possible after its creation.

Policy recommendations

- Establish an effectively functioning NCP to further the effectiveness of the *Guidelines* in accordance with the Decision of the Council on the *OECD Guidelines for Multinational Enterprises*, and in this regard ensure that the NCP will be fully functioning as soon as possible after its formal establishment by Executive Decree.
- Undertake a capacity building exercise for the NCP within 12 months of adherence in line with the Action Plan to Strengthen National Contact Points for Responsible Business Conduct (2019-2021) [DAF/INV/RBC(2018)13/FINAL]. In that context, report back to the WPRBC on the progress made in implementing the recommendations from the capacity building exercise to improve the effective functioning of the NCP.
- Promote the use of the OECD due diligence guidances by enterprises operating in or from Uruguay, actively support the use of due diligence by these enterprises, and ensure the widest possible dissemination of the various sector guidance and their use by various stakeholders.
- Promote further policy coherence and improve coordination on RBC-related policies within the government.

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Annex A. Uruguay's exceptions to the National Treatment instrument

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Fisheries: Commercial fishing and aquaculture performed in internal waters and in the territorial sea within a distance of 12 miles, measured from the base lines, are reserved exclusively to licensed Uruguayan-flagged vessels.

Authority: "Ley N° 19175 Declaración de Interés General. Conservación, Investigación y El Desarrollo Sostenible de Los Recursos Hidrobiológicos y Ecosistemas); Decreto Nº 426/994 Reglamenta La Ley N° 16.387 De 27/6/993 Ley N° 13833 Ley de Pesca. Permisos Pesqueros".

Air transport: The provision of air transport and auxiliary services require local incorporation.

Authority: "Decree-Law No. 14.305, Código Aeronáutico; Decreto N° 325/974 Normas de Política Aeronáutica. Aprobación); Decreto N° 39/977 Código Aeronáutico. Reglamentación De La Sección II. Capitulo II. Título IX); Decreto N° 280/002 Servicios De Asistencia En Tierra A Aeronaves. Candysur Sociedad Anónima".

Rail transport: Railway - In order to provide railway passenger and cargo services, a railway operator must obtain a licence (*Licencia de Operación Ferroviaria*) from the *Dirección Nacional de Transporte*, which issues a resolution granting the licence. In the past, there was a requirement for the railway operator to be majority owned by Uruguayan nationals. According to the authorities, this has been derogated since 2005. The current regulatory regime established in Decree No 262/13, and recently supplemented by Decree No. 280/018, requires only that it the operator be a railway company incorporated in Uruguay (no foreign ownership restriction).

Authority: Law N° 18834; Decree N° 262/013; Decree N° 280/018; Resolution Nº 1.767/003.

Insurance services: Local incorporation is required for the provision of insurance services.

Authority: Law N° 16426 and Decree N° 354/994

Media services: Foreign participation is prohibited in free over-the-air television and AM/FM radio broadcasting services.

Authority: Law No. 19.307 on Audiovisual Communication Services of 29 December 2014.

Media services: Foreign participation is limited to 49% in pay-TV broadcasting services.

Authority: Law No. 19.307 on Audiovisual Communication Services of 29 December 2014.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by Territorial Subdivisions

I. Investment by established foreign-controlled enterprises

None.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

Annex B. Measures reported for transparency by Uruguay

A. Measures Reported for Transparency at the Level of National Government

I. Measures based on public order and essential security considerations

a. Investment by established foreign-controlled enterprises

Rural Land: Foreign state-owned enterprises are, subject to government approval, allowed to hold only minority and not controlling rights in agricultural and forestry companies or in companies holding ownership rights over rural land and forestry.

Authority: Law N° 19283

b. Corporate organisation

None.

c. Government purchasing

None.

d. Official aids and subsidies

None.

II. Other measures reported for transparency

a. Investment by established foreign-controlled enterprises

None.

b. Corporate organisation

Domestic road transport: The State reserves itself the provision of national and international passenger services (both regularly scheduled and non-regularly scheduled), but grants concessions and permits to private enterprises. Only Uruguayan nationals or enterprises may be granted such concessions and permits. Uruguayan enterprises are those (i) managed, (ii) controlled, and (iii) in which more than 50% of the capital is owned by Uruguayan nationals domiciled in Uruguay.

Authority: Decree Nº 285/006 (22 August 2006)

International road transport: Only enterprises with more than 50% of their share capital owned and effectively controlled by Uruguayan nationals may provide international cargo and passenger transport.

Authority: MTOP Resolution S/N of 10 May 1991.

Railway: Among the requirements for obtaining the licence to provide railway passenger and cargo transport services (*Licencia de Operación Ferroviaria*) from the *Dirección Nacional de Transporte* are: (a) at least 51% of the paid-in capital of the railway operator must be owned by Uruguayan nationals domiciled

in Uruguay or by Uruguayan enterprises that meet the same requirement for paid-in capital; and (b) at least 51% of the railway operator's board of directors or managing board must be composed of Uruguayan nationals domiciled in Uruguay.

Authority: Decreto N° 262/013 APROBACION DEL REGLAMENTO DE OPERADORES FERROVIARIOS; Resolución Nº 1.767/003 de 27/11/2003: MARCO JURIDICO REGULATORIO DEL SECTOR FERROVIARIO; WTO (2018), TRADE POLICY REVIEW: URUGUAY, MINUTES OF THE MEETING, Addendum"

c. Government purchasing

None.

d. Official aids and subsidies

None.

B. Measures Reported for Transparency at the Level of Territorial Subdivisions

None.

C. Activities Covered by Public, Private, Mixed Monopolies or Concessions

At the level of national government

1. Public monopolies

- Electricity generation, transmission and distribution
- Natural gas transport
- Water distribution
- Wastewater treatment and sewage

2. Mixed monopolies

None.

3. Concessions

- Airports
- Ports

At the level of territorial subdivisions

I. Public monopolies

None.

II. Private monopolies

None.

III. Concessions

Annex C. Additional tables and figures

Table A C.1. Product structure of merchandise trade in 2017, by processing stage

In %

	EXPORT			
	URU	CHL	CRI*	
Capital goods	2.09	2.53	24.48	
Consumer goods	17.18	10.53	31.18	
Intermediate goods	24.08	40.25	14.07	
Raw materials	56.64	46.69	30.27	
Total (USD billions)	7.889	69.229	9.908	
	IMPORT			
	URU	CHL	CRI*	
Capital goods	23.86	29.52	24.67	
Consumer goods	45.77	43.37	47.62	
Intermediate goods	21.95	15.54	21.86	
Raw materials	8.42	11.36	5.86	
Total (USD billions)	8.458	65.062	15.322	

Note: * Data from 2016, the latest available year.
Source: World Integrated Trade Solution database

Table A C.2. Trade structure by geographical destinations

EXPORTS	1999			2008			2017		
	URU	**CHL**	**CRI**	**URU**	**CHL**	**CRI**	**URU**	**CHL**	**CRI**
Latin America	53.47	21.90	16.12	40.31	22.29	26.93	31.83	16.62	32.25
Of which Mercosur [a]	*43.37*	*9.90*	*0.26*	*25.95*	*8.47*	*0.85*	*23.53*	*8.29*	*0.46*
North America	8.88	19.12	52.58	4.24	14.42	38.83	6.37	16.45	41.82
Europe & Central Asia	21.59	27.66	23.77	27.94	25.81	18.18	16.44	14.94	22.09
Asia	7.61	25.01	6.73	7.36	32.71	14.93	21.71	48.65	3.27
Rest of the world	8.45	6.31	0.80	20.15	4.77	1.13	23.65	3.34	0.57
China	2.65	2.29	0.12	2.89	13.21	6.29	18.78	27.58	0.49
Brazil	24.89	4.49	0.17	16.63	6.00	0.61	16.46	4.97	0.35
Argentina	16.48	4.75	0.06	8.52	1.55	0.11	5.54	1.40	0.08
United States	6.87	18.00	51.94	3.68	12.48	38.23	5.81	14.44	40.96
Japan	1.05	14.60	2.03	0.74	9.83	0.94	0.12	9.31	1.14

IMPORTS	1999			2008			2017		
	URU	**CHL**	**CRI**	**URU**	**CHL**	**CRI**	**URU**	**CHL**	**CRI**
Latin America	50.95	32.38	22.26	53.34	30.18	28.49	39.18	24.96	22.56
Of which Mercosur	*43.54*	*24.19*	*2.35*	*43.22*	*17.40*	*3.19*	*33.79*	*13.71*	*2.91*
North America	12.71	24.42	55.92	8.08	20.60	39.28	11.54	19.23	38.28
Europe & Central Asia	22.23	22.40	10.52	19.86	14.68	12.92	17.20	16.21	11.49
Asia	9.16	16.05	9.52	14.31	26.85	15.60	28.26	36.21	23.32
Rest of the world									
China	2.77	4.74	0.99	10.01	13.03	5.66	20.03	23.83	13.59
Brazil	19.41	6.95	1.67	17.84	8.44	2.75	19.47	8.02	2.15
Argentina	23.70	14.50	0.58	24.81	8.05	0.42	12.58	4.50	0.41
United States	11.27	21.50	54.76	5.95	18.96	38.24	10.91	18.05	37.28
Japan	2.07	4.55	5.02	0.98	5.07	5.38	0.76	3.27	2.71

Note: [a] Mercosur includes Argentina, Brazil and Paraguay and excludes Venezuela.
Source: World Integrated Trade Solution database

Table A C.3. Private property in Uruguay's Constitutions

Constitution	Article	Text (in Spanish)
1830	144	"El derecho de propiedad es sagrado e inviolable; a nadie podrá privarse de ella sino conforme a la ley. En el caso de necesitar la Nación la propiedad particular de algún individuo para destinarla a usos públicos, recibirá éste del Tesoro Nacional una justa compensación".
1918	169	"El derecho de propiedad es sagrado e inviolable. A nadie podrá privarse de él sino conforme a la Ley, en los casos de necesidad o utilidad pública, recibiendo del Tesoro Nacional una justa compensación."
1934	31	"La propiedad es un derecho inviolable, pero sujeto a lo que dispongan las Leyes que se establecieren por razones de interés general. Nadie podrá ser privado de su derecho de propiedad sino en los casos de necesidad o utilidad públicas establecidos por una Ley y recibiendo siempre del Tesoro Nacional una justa y previa compensación."
1942	31	"La propiedad es un derecho inviolable, pero sujeto a lo que dispongan las leyes que se establecieren por razones de interés general. Nadie podrá ser privado de su derecho de propiedad sino en los casos de necesidad o utilidad públicas establecidos por una ley y recibiendo siempre del Tesoro Nacional una justa y previa compensación. Cuando se declare la expropiación por causa de necesidad o utilidad públicas, se indemnizará a los propietarios por los daños y perjuicios que sufrieren en razón de la duración del procedimiento expropiatorio, se consume o no la expropiación; incluso los que deriven de las variaciones en el valor de la moneda".
1952	32	"La propiedad es un derecho inviolable, pero sujeto a lo que dispongan las leyes que se establecieren por razones de interés general. Nadie podrá ser privado de su derecho de propiedad sino en los casos de necesidad o utilidad públicas establecidos por una ley y recibiendo siempre del Tesoro Nacional una justa y previa compensación. Cuando se declare la expropiación por causa de necesidad o utilidad públicas, se indemnizará a los propietarios por los daños y perjuicios que sufrieren en razón de la duración del procedimiento expropiatorio, se consume o no la expropiación; incluso los que deriven de las variaciones en el valor de la moneda".
1967	7	"Los habitantes de la República tienen derecho a ser protegidos en el goce de su vida, honor, libertad, seguridad, trabajo y propiedad. Nadie puede ser privado de estos derechos sino conforme a las leyes que se establecen por razones de interés general".
	32	"La propiedad es un derecho inviolable, pero sujeto a lo que dispongan las leyes que se establecieren por razones de interés general. Nadie podrá ser privado de su derecho de propiedad sino en los casos de necesidad o utilidad públicas establecidos por una ley y recibiendo siempre del Tesoro Nacional una justa y previa compensación. Cuando se declare la expropiación por causa de necesidad o utilidad públicas, se indemnizará a los propietarios por los daños y perjuicios que sufrieren en razón de la duración del procedimiento expropiatorio, se consume o no la expropiación; incluso los que deriven de las variaciones en el valor de la moneda"

Source*:* OECD based on publically available legal documents

Table A C.4. Tax incentives for specific sectors

Sector	Benefits	Legal basis
Automobile	Imports subsidy equivalent to 10% of the *free-on-board* value of the exports of cars and car components	Decree 316/992
Biotechnology and bioengineering	CIT credits for R&D in biotechnology • 90% for income generated 2012-2017 • 75% for income generated 2018-2019 • 50% for income generated 2020-2021	Decree 011/13 amended by Decree 315/018
Call centres	CIT exemption for 10 years: • 70% exemption if they hire more than 100 skilled workers • 100% exemption if they hire more than 150 skilled workers	Decree 207/008
Condominiums	Similar benefits to those granted to hotels for the developer	Decree 404/010
Construction of immovable goods for sale or rent	Projects greater than 123 million indexed units (95 million if located in Montevideo). Projects had to be submitted before December 2018. Benefits last until December 2021 • Exemption of customs duties • VAT credit • CIT exemption for 20-30% of the eligible investment (depending on the size of the investment)	Decree 329/016 Decree 326/017 Decree 48/018
Forestry	The commercial exploitation of planted forests is exempt from CIT, net wealth tax and rural cadastral taxes.	Law 15,939 Law 18,083
Maritime and electronics industries	CIT credit: • 100% net income generated 2009-2014 • 75% net income 2015-2016 • 50% net income 2017-2018 Requirements in terms of employment	Decree 532/009 Decree 127/011
Non-traditional renewable energies	Exemptions from CIT with different percentages on net income and terms (depending on the type of activity).Terms varied from 5 to 13 years.	Decree 354/009
Parking	Construction and rent or sales of parking slots in Montevideo: • Exemption from customs duties • VAT credit • CIT exemption for 20% -50% of the eligible investment for a maximum of 10 years depending on the characteristics of the investment • Exemption from net wealth tax for movable goods (and immovable goods for 8 years)	Decree 110/016
Shared service centres provided by an entity belonging to a multinational to other branches	• 90% CIT credit in the first 5 years if more than 150 high skilled workers (75% Uruguayan) are hired for at least 2 years • 90% CIT credit in the first 10 years if more than 300 high skilled workers (75% Uruguayan) are hired for at least 5 years • Exemption from net wealth tax	Decree 251/014 Decree 361/017
Software	Software production is exempt from CIT	Decree 150/007 Decree 244/018 Law 19,535
Tourism	• investment in infrastructure is exempt from net worth tax for 10 years special depreciation schedules solely for touristic projects (excluding hotels) • VAT credits for goods and services bought locally and used in construction and equipment investment	Decree 175/003

Source*:* Ons and Garcia (2016[1]) and own elaboration

Table A C.5. Number of days required to start a business in Uruguay, 2019.

No.	Procedures	Time to Complete	Associated Costs
1	Select and reserve the company name from a list of names provided by the One-Stop Shop online portal *Agency* : National Audit Office The entrepreneur must select the company's name from a list of names offered by the One-Stop Shop online portal at https://empresaeneldia.portaldelaempresa.gub.uy/Apia/index.htm	Less than one day (online procedure)	Included in procedure 5
2	Open a bank account and deposit the initial capital *Agency* : Bank The entrepreneurs need to open a bank account and deposit the initial capital. The bank fees vary by bank. When Act No.18.083 (Tax reform law) became effective, the minimum amount of authorized capital for corporations was eliminated. Consequently, as of July 1, 2007 founders of corporations are free to set the amount of capital.	1 day	USD 200 (Varies by bank)
3	Notarize company's bylaws and signatures *Agency* : Notary The company's bylaws and signatures must be notarized. The fee to notarize the company's articles of association and its signatures depends on the company capital: the fee is usually calculated as 0.5% of the capital plus notary taxes of 15.5%, with a minimum fee of 40 adjustable units (Unidad Reajustable-UR). The UR is published on a monthly basis, and as of May 2018, its value is UYU 1069.99.	1 day	0.5% of capital, minimum 40 U.R. + 15.5% notary tax
4	Register the company at the One-Stop Shop (Empresa en el Día) *Agency* : One-Stop Shop (Empresa en el Día) Companies are registered at Empresa en el Día (one-stop shop). All documents have to be presented and all registration fees have to be paid at the one-stop shop. Corporations with bearer shares as well as trusts and investment funds shall submit to the Central Bank of Uruguay and affidavit informing "the issuing entity" about their shareholding.	3 days	Included in procedure 5
5	Pay fees and taxes in any local Payment Agency *Agency* : Payment Agency The company must pay the fees and taxes at a local payment agency. As of May 2018, the current fees are as follows: UYU 2,530 (company registration fee) + UYU 2,530 (book registration fee) + UYU 5,350 (approval of the public deed) + UYU 8,088 (publication in the Official Gazette) + UYU 32,341 (ICOSA tax) + UYU 1070 (name registration) + UYU 160 (professional stamp on Form 0380).	1 day	See procedure details

Source: Government of Uruguay and World Bank *Doing Business* indicators (2005-2019).

OECD Investment Policy Reviews

URUGUAY

In July 2020, the Investment Committee recommended to Council to invite Uruguay to become the 50th adherent to the OECD Declaration on International Investment and Multinational Enterprises. This *OECD Investment Policy Review of Uruguay* documents the progress made in recent years to align investment policies with the national development strategy in pursuit of the Sustainable Development Goals (SDGs). The *Review* also assesses remaining challenges in improving the business climate, in particular the actions needed to establish an enabling responsible business environment and ensure full application of the Declaration. Uruguay's success in attracting more and better investment will make its economy more resilient and better prepared to accelerate the recovery after COVID-19.

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