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Safeguarding health in bilateral investment treaties: the Uruguayan experience

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Abstract

Background The proliferation of International Investment Agreements (IIAs), as the result of globalization, has been identified as one of the factors contributing to policy inertia or chill on meaningful public health policy action. Health safeguards, i.e., specific clauses to protect the State's right to regulate, have been increasingly included in IIAs to protect health policy. However, an in-depth understanding of the processes involved in the diffusion of health safeguards in IIAs globally and the factors acting as barriers and facilitators for their uptake is still lacking. In this context, the present study intends to fill this research gap by analysing the uptake of health safeguards in the context of Uruguay, a developing Latin American country. The objectives were to: (i) examine the evolution of the inclusion of health safeguards in the Bilateral Investment Treaties (BITs) signed by Uruguay until 2024, (ii) analyse how Uruguay has approached BITs after the Philip Morris ISDS case, (iii) explore Uruguayan stakeholders' perspectives on the inclusion of health safeguards in BITs, (iv) identify barriers and facilitators for the uptake of health safeguards in the BITs.

Results Documentary analysis of the BITs signed by Uruguay showed an ascending trend in the inclusion of health safeguards, reaching 100% since 2010. Interviews with key stakeholders suggested that health safeguards diffused from abroad through transnational transfer networks. While Uruguay has not faced challenges in including health safeguards in recent BITs, the renegotiation of old generation BIT agreements with developed countries has proven to be difficult. A wide range of factors that act as facilitators and barriers for the inclusion for health safeguards in the BITs were identified, which were related to both the national and intergovernmental levels.

Conclusions Results contribute to the understanding of the factors that influence the evolution of the interface between investment agreements and public health policy by analysing the adoption of health safeguards in BITs. Strong recommendations from international organizations to renegotiate old generation BITs may contribute to overcoming the existing power dynamics and support developing countries in the protection of their regulatory space.

Keywords International investment agreements, Right to regulate, Public health, Public health exception clauses, Foreign investment, Health safeguards

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Background

Addressing the commercial determinants of health, defined as "*strategies and approaches used by the private sector to promote products and choices that are detrimental to health*" [1], through regulatory actions has been identified as a priority to achieve the sustainable development goals [2]. However, the implementation of transformative and effective policies remains scarce worldwide [3]. The proliferation of International Investment Agreements (IIAs), as the result of globalization, has been identified as one of the factors contributing to this policy inertia or chill on meaningful public health policy action [4–7].

Bilateral investment treaties (BITs), the most common form of IIAs, are treaties signed by two States to promote and protect cross-border investments [8]. They provide a series of protections to foreign investors under international law, including fair and equitable treatment and the right to obtain compensation in case of direct and indirect expropriation [9]. A key feature of most BITs is the inclusion of an Investor-State dispute settlement (ISDS) mechanism which enables investors to use a form of private international arbitration to pursue compensation from States if governments implement measures that infringe the dispositions of the treaties [10]. This mechanism has been used to challenge health policy measures globally, such as taxation, health insurance, water provision, environmental protection, and anti-tobacco regulations [11, 12].

The BITs signed in the 90s and beginning of 2000s, usually regarded as old generation BITs, included few provisions to protect the states' regulatory and policy space, i.e., their ability to regulate, the scope and content of the policies and the mechanisms they can use to design and implement policies for achieving certain objective [13]. Three key mechanisms explain this potential negative effect of BITs. First, IIAs can limit the range of policy options available to governments for protecting and promoting health [14]. For example, shifting from public to private provision of health care services as a consequence of the implementation of a BIT can increase inequities with respect to access [15]. Further, provisions protecting patents for medicines can weaken national pharmaceutical policies [16]. Second, BITs can generate regulatory chill: out of fear of capital fright or ISDS cases, governments can alter, modify, or fail to enact effective public health policies [4, 5, 17]. This effect can extend beyond the country directly involved in an ISDS case, as other governments may delay or avoid introducing health policies while awaiting the outcome of similar cases elsewhere [18]. Third, ISDS mechanisms can also enable a high level of industry influence on national health policies by providing them with a strategy to require open participation in decision making [19].

In the wake of a growing number of ISDS cases, new generation BITs emerged in the decade of 2010s to protect the States right to regulate [13]. These BITs include more detailed and precise clauses [20]. One of their innovations has been the inclusion of health safeguards, i.e., specific clauses to protect the State's right to regulate [14]. Health safeguards can be classified in three main groups: defensive, neutral, and progressive [21]. Defensive clauses intend to shield regulatory and policy space through the inclusion of clause-specific clarifications, exclusions and exceptions. Meanwhile, neutral clauses intend to respect and avoid the erosion of existing health policies. More recently, progressive clauses have emerged as an innovation to impose health-related obligations to foreign investors. This type of safeguards has been used in developing countries such as Brazil and Bangladesh [21, 22].

Recognizing the threat to health of IIAs, the United Nations Trade and Development (formerly known as UNCTAD) and the World Health Organization (WHO) have identified the protection of health policy within IIAs as a priority [13, 15]. Previous studies have analysed the inclusion of health safeguards in BITs [6, 14, 21, 23–25]. However, an in-depth understanding of the processes involved in the diffusion of health safeguards in BITs globally and the factors acting as barriers and facilitators for their uptake is still lacking. In this context, the present study intends to fill this research gap by analysing the uptake of health safeguards in the context of Uruguay, a developing Latin American country.

Study context and objectives

This study focuses on Uruguay, a small developing country located in the southeastern region of South America, between Argentina and Brazil. It has a population of 3,444,263 inhabitants and an area of 176,215km^2 [26]. With a gross domestic product (GDP) of 23,090 US dollars per capita, it is categorized as a high-income country [27]. It stands out in the region by its low inequality (Gini index = 0.408), high human development index (HDI = 0.809) and political stability [28, 29]. Although Uruguay is classified as a high-income country based on GDP, it remains behind high-income nations in Europe, North America, and Oceania in key areas such as industrialization, infrastructure development, and labour market conditions [30]. As a result, it is generally categorized as a developing country or a developing market economy rather than a fully developed nation [30]. This distinction reflects structural economic challenges, including a reliance on primary industries, less advanced manufacturing sectors, and gaps in technological innovation and infrastructure compared to more industrialized economies.

Foreign direct investment has played an important role in the growth of the Uruguayan economy, contributing to the development and strengthening of its productive structure [31]. The country has made numerous efforts to attract foreign investors and is regarded as one of the least restrictive developing countries for foreign investment [32]. According to the most recent data, in 2023 foreign direct investment corresponded to 3.7% of the GDP (3,551 million US dollars) [33].

As part of the efforts to attract direct foreign investment, Uruguay approved an investment law in 1998, which declares national and foreign investment of national interest and establishes equitable treatment for foreign investors [34]. In addition, IIAs have been one of the strategies implemented by the country to attract foreign investment. It currently has 32 IIAs in effect with 34 developed and developing countries [35], including BITs with the most relevant countries in terms of direct foreign investment between 2022 and 2023: Spain, Finland, Switzerland, USA, Netherlands, Singapore, Canada, Germany [32, 33, 35].

Compared to other Latin American countries, Uruguay has limited experience with ISDS: it has only faced five ISDS cases, four of which have been decided in favour of the State and one is still pending [11]. Despite its relative limited experience with arbitration, the country has faced a high-profile case relevant for health public policy. Uruguay, recognized as a global leader in tobacco control [36], introduced in 2008 a new policy banning different presentations per brand families and mandating health warnings to occupy at least 80% of the package [37]. In response, in 2010, Philip Morris (PM) started an ISDS case against Uruguay claiming that the act constituted a form of indirect expropriation, allegedly infringing the dispositions of the Switzerland-Uruguay BIT (1988) [11]. In 2016, the tribunal dismissed all claims and ordered Philip Morris to pay the trial's and Uruguay's legal costs [38]. Considering that governments' approach to BITs may be shaped by their experience with arbitration [4, 39], this high-profile ISDS case could have influenced the country's approach to BITs. Previous research has shown that the case introduced policy chill to the anti-tobacco regulation in the country [4, 40]. However, no information has been published on its potential influence on IIAs and particularly the inclusion of health safeguards.

In this context, the objectives of the present work were to: (i) examine the evolution of the inclusion of health safeguards in the BITs signed by Uruguay until 2024, (ii) analyse how Uruguay has approached BITs after the Philip Morris ISDS case, (iii) explore Uruguayan stakeholders' perspectives on the inclusion of health safeguards in BITs, (iv) identify barriers and facilitators for the uptake of health safeguards in the BITs.

Theoretical framework

The research draws on the diffusion of innovations theory [41]. The uptake of health safeguards in BIT is conceptualized as a policy innovation, i.e., "a novel practice used for policy design and development that result in better problem solving of complex issues" [42]. The diffusion of innovation theory is complemented with insights from theories of policy learning [43, 44], as well as international negotiation theories to account for the fact that BITs are the result of the negotiation between two countries [45, 46].

The theoretical framework suggests that the inclusion of health safeguards, has been gradually adopted by states as a consequence of a diffusion process, i.e., it has been communicated through communication channels over time among states. Therefore, the uptake of the innovation by a State is influenced by: (i) a national network of agents, including State agencies, State officials, and civil society organizations; (ii) internal determinants of policy arrangements, i.e., internal factors of a country that determine willingness to adopt a policy innovation and the characteristics of the implemented public policies, including socio-economic characteristics and institutional structures [41, 46, 47]; (iii) international networks through which diffusion occurs, including State-State interactions, international organizations and transnational bodies [43, 48]; (iv) intergovernmental negotiations between states, which are influenced by power and authority dynamics [46, 49]. This framework recognizes that the decision to adopt health safeguards within a BIT involves negotiation on two levels. First, the national level, where primarily the domestic governance dynamic needs to be investigated (in terms of actors, interests, ideas and discourse, and institutions). Second, on the intergovernmental level, where the negotiation process and the power dynamic between states become highly relevant [46].

Examining the uptake of health safeguards in the Uruguayan context enables the understanding of how diffusion took place in a global context and to identify factors that have acted as barriers and facilitators. Results are expected to provide insights to support the development of resources and tools to support the uptake of strong health safeguards in IIAs.

Methods

The present study uses a combination of documentary analysis and semi-structured interviews with key stakeholders related to BITs in Uruguay. The study was approved by the ethics committee of the School of Chemistry of Universidad de la República (Uruguay) (Protocol Number 101900-000149-23).

Documentary analysis

All the BITs signed by Uruguay were extracted from the Electronic Database of Investment Treaties (EDIT), a free and comprehensive repository of full-text investment treaties developed by the University of Bern and the University of Ottawa [50]. The Spanish version of the treaty was used in the analysis, which was extracted from the website of the Uruguayan government. For each of the treaties, a search for words related to health was performed using the search tool of the software (or manually if the treaty was only available as a scanned document). Drawing on Thow et al. [21], only explicit references to health were considered. The following Spanish words were considered: salud, sanidad, sanitaria/sanitario (health, sanitary in English, respectively). The clauses including health-related words were extracted and manually classified using the framework developed by Thow et al. [21]. The detailed type and intent of the clauses were analysed with support from an investment law colleague, and changes over time were examined.

Interviews with key stakeholders

Seven semi-structured interviews with key stakeholders were conducted: 6 individual interviews and one group interview with four people. Thus, a total of ten participants were involved in the research. The criterion for inclusion was having worked, either currently or in the past, as a government official in Uruguayan institutions related to international investment agreements.

Potential participants were identified through official government documents available online and an active snowball recruitment process. Participants were asked to provide the contact details of other people that they considered useful to interview. Active snowball sampling has been recommended for policy research with key stakeholders due to the tight networks of actors and the professional nature of the study (Bell, 2009). Three potential participants were contacted by email but did not respond to the invitation. No new information was gained after the fifth interview and the snowballing did not identify additional key informants.

A semi-structured interview guide was developed by the research team to address the research objectives and exploring themes identified in the theoretical framework (Supplementary Material Table 1). Six interviews were conducted in person and one through the Zoom platform. The interviews were conducted in Spanish and lasted between 19 and 49 min (Mean = 36.4 min, SD = 11.2 min). Participants provided written informed consent. The interviews were audio recorded and verbatim transcribed with the assistance of the software Whisper [51].

The interview transcripts were analysed in Spanish using content analysis based on inductive-deductive coding with the assistance of the open-source software Taguette [52]. An initial coding frame was developed by one of the researchers after repeatedly reading the interviews. The coding frame was revised by a second researcher and changes were agreed by consensus. Codes with overlapping content were merged into categories considering the postulates of the theoretical framework. Categories and quotes within each category were selected and translated to English by one of the researchers, fluent in Spanish and English, and back-translated by a second researcher, also fluent in both languages, to ensure accuracy and consistency. They are identified by a participant number.

Results

Inclusion of health safeguards in the BITs signed by Uruguay

Uruguay has signed a total of 39 BITs with 35 countries between 1985 and 2022. Almost half of them ($n = 18$, 46%) were signed in the 1990s (Fig. 1). The number of BITs has decreased since the early 2000s, with only 5 treaties signed in the last 15 years (2010–2024). Only one of those BITs (Australia, 2019) is a renegotiation of an older treaty.

References to health were present in 14 treaties (36%). Except for four treaties, all the BITs signed before 1997 did not include any reference to health. In the early 2000s, an ascending trend in the percentage of BITs including references to health was observed, reaching 100% since 2010 (Fig. 1). The treaties differed in the number of clauses with references to health, ranging from one to five. Earlier treaties contained only one reference to health, whereas the 5 treaties signed from 2010 included multiple references (three to five).

Table 1 shows an overview of the different types of health-related clauses included in the BITs signed by Uruguay. The clauses correspond to two of the three typologies identified by Thow et al. [21]: defensive (i.e., they shield health policy space) and neutral (i.e., they manage the boundaries between investment and health). No progressive clauses imposing health-related obligations to investors were identified. Examples of clauses within each of the typologies included in the BITs signed by Uruguay are presented in Supplementary Material Table 2.

All the treaties including health safeguards included at least one defensive clause. Two categories of defensive health-related clauses were found: (i) clause-specific clarifications that protect the right to regulate ($n = 10$), and (ii) exceptions that excuse acts otherwise inconsistent with the treaties' provisions ($n = 10$). The most frequent type of clause-specific clarification posited that non-discriminatory health-related measures do not constitute an indirect expropriation and therefore do not entail the

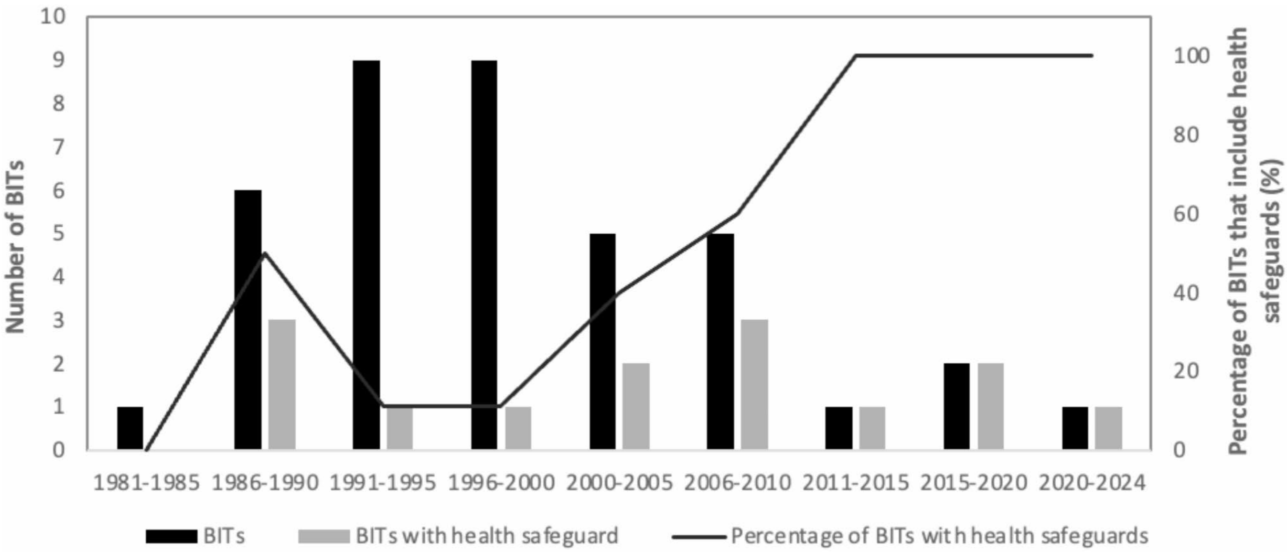

Fig. 1 Number of Bilateral Investment Treaties (BITs) signed by Uruguay, and number and percentage of BITs including health safeguards over time, 1985–2024

Table 1 Types of health-related clauses included in the bilateral investment treaties (BITs) signed by Uruguay

Typology	Category of health-related clause	Type of health-related clause	Definition	BITs where the clause is included
Defensive (shield-type)	Clause-specific clarifications	Health-related measures are not discriminatory to foreign investors	Health-related activities are excluded from the provisions of the BIT related to national treatment to foreign investors and most favoured nation	Germany (1987)
		Health-related measures are not performance requirements to foreign investors	Requirements for foreign investors to comply with certain behaviours in the health sector regarding the establishment, expansion, management, conduct, operation, sale or other disposition of an investment are not performance requirements	Mexico (2003), USA (2005), Chile (2010)
		Non-discriminatory health-related measures are not indirect expropriation	Explicitly recognizes that non-discriminatory health-related measures shall not be regarded as a form or indirect expropriation	USA (2005), India (2009), Korea (2009), Chile (2010), Japan (2015), United Arab Emirates (2018), Australia (2019), Turkey (2022)
	Exceptions	Health-related general exceptions to the dispositions of the BIT	The dispositions of the BIT shall not prevent a party from implementing non-discriminatory health measures	Canada (1997), Japan (2015), United Arab Emirates (2018), Australia (2019), Turkey (2022)
		Health sector reservations	Activities related to the health sector are not included within the provisions of the BIT	Netherlands (1988), Switzerland (1988), Poland (1991), Canada (1997), Mexico (2003), Chile (2010), Japan (2015)
Neutral	Preventing erosion of existing level of health protection	BIT objectives compatible with public health	The BIT specifies that its objectives should be compatible with public health	USA (2005), Korea (2009), Japan (2015), United Arab Emirates (2018), Australia (2019), Turkey (2022)
		Health-related measures shall not be relaxed	The BIT specifies that parties shall not encourage foreign investors by relaxing health-related measures	Japan (2015)
	Coordination across policy sectors	Health is included in the definition of specific laws	The definition of labour or environmental laws included in the BIT includes a specific reference to health	USA (2005)
		Tribunals can appoint health experts	The BIT provides a procedure to allow the tribunal to appoint health experts in ISDS disputes	Mexico (2003), USA (2005), Chile (2010)

obligation to compensate foreign investors. This type of defensive health safeguard was found in eight BITs, including all the BITs signed since 2010 (Table 1). The specification that health-related measures are not performance requirements to foreign investors was present in 3 BITS signed between 2003 and 2010. Meanwhile, clarifications on the exclusion of health-related activities from the provisions of the BIT related to national treatment to foreign investors and most favoured nation was found in only one of the oldest BITs (Table 1). Regarding exceptions to the provisions of the BITs, general exceptions specifying that BIT shall not prevent a party from implementing non-discriminatory health measures were identified in five of the BITs, including the four most recent treaties. Meanwhile, 5 treaties, signed between 1988 and 2015, included health sector reservations, specifying that activities related to the health sector are not included within the provisions of the BIT.

Neutral health-related clauses were identified in eight BITs. These clauses are mainly included in the preamble and intend to prevent erosion of the existing level of health protection (Table 1). The most common type of clause, included in six treaties, specifies that the objectives of the BIT are compatible with public health. The rest of the neutral health-related clauses were less frequent (Table 1).

Stakeholders' perspectives on the inclusion of health safeguards in the BITs

Uruguay's general approach to IIAs and health safeguards

Attracting foreign investment was described by interviewees as an essential part of the economic development strategy of the country. BITs have been used as a tool to attract foreign investment by providing clear and stable conditions to investors.

> *Uruguay is a recipient of investments. They are very necessary for the growth of the economy, so this is one of the factors that we cannot lose sight of (ID5).*

> *Uruguay has always been a country that provides guarantees in terms of protection to those who come to make a bet for the country and this has not changed. For me the most important thing, it has not changed over the years…Uruguay has always defended foreign investment, Uruguay, regardless of who has been in government, has always bet on attracting investments (ID10).*

Two Ministries are involved in the development of BITs: the Ministry of Foreign Affairs and the Ministry of Economy. The Ministry of Foreign Affairs is usually in charge of identifying potential countries of interest and accompanying the negotiations from a diplomatic point of view. Meanwhile, the Ministry of Economy leads the technical analysis of the treaties and the negotiations. Other Ministries and governmental organizations are only involved when consultations on specific topics are required. The Ministry of Health is usually not involved; the data suggest that the organization is not perceived to have authority on trade and investment matters, even when those are related to safeguarding public health.

> *We [Ministry of Foreign Affairs] identify priorities in terms of which countries we are interested in starting this exercise with. What we also do is the diplomatic accompaniment of that negotiation. We help in everything related to the articulation with the countries with which we are negotiating with, on the one hand. Once the negotiation is concluded, we take care of the coordination of the final stage of the agreement, which has to do with identifying opportunities for signing and so on (ID1).*

> *From a technical and political point of view, the Ministry of Economy is responsible for negotiating the substance of the agreements. Sometimes political decisions are taken at a different level through presidential visits, because the Chancellor visits a country, but in general the methodology is that we are asked if we have a real interest in initiating a negotiation and in general, we are listened to (ID1).*

> *You always need to consult with those who know more about certain topics. For example, in intellectual property, I always consult with the intellectual property people (ID3) .*

According to the interviewees, Uruguay currently only signs BITs when concrete or potential investments are involved. This criterion, together with the fact that BITs with the most relevant countries in terms of foreign investment in the country are already in place, explains why only a limited number of treaties have been signed in the last 15 years.

> *The first thing we analyse is whether there is a real interest in negotiating these agreements. In general, Uruguay is a country that receives investments, so what we analyse is whether there are investments here by the counterpart or potential investments (ID3).*

> *The reference criterion [for signing BITs] is the economic and commercial importance of that partner, of that country, both in terms of trade and investment (ID5).*

> *The investment we are considering has to be of a size that the political level considers adequate to give them that certainty. If not, we do not negotiate, right? (ID1)*

> *Uruguay was looking for a solid base of investment agreements and, little by little, we have reached a very reasonable limit [in terms of number of countries], having BITs with the main countries of interest (ID10).*

Although Uruguay does not have a template to elaborate BITs, the country always requires specific clauses in the treaties to minimize potential negative economic consequences and protect the right to regulate. The interviewees emphasized the importance of providing certainties to foreign investors while preserving the right to implement public policies for health, environmental or security reasons. For this purpose, the interviewees referred to provisions granting general exceptions and clause-specific clarifications (e.g., related to the most favoured nation treatment or indirect expropriations).

> *The priorities are to generate an environment that provides certainties for investors and for us, as a country to have regulatory freedom (ID1).*

> *We don't have a specific template. What we do have are specific clauses that we always propose (ID3).*

> *All the agreements include the right to regulate and then there are exceptions that are basic, that are included in all the agreements for health matters, for environmental matters, security exceptions… Uruguay is now making emphasis on having these exceptions (ID8).*

> *The text should explicitly say any measure that may be contrary to the agreement, if it is implemented for health-related matters, there is no responsibility on the State. The text clearly states that the State has a wide margin to freely regulate on these matters without violating the dispositions of the treaty (ID1).*

> *Also, in relation to expropriations we put a special clause that says that health-related measures do not imply an indirect expropriation (ID2).*

The Uruguayan approach to the inclusion of health-related clauses was described as a shield to protect the right to regulate and minimize potential negative economic consequences. Three of the interviewees stated that progressive clauses were not necessary given that the country has clear national regulations that both national and foreign investors should comply with. Two of them indicated that progressive clauses are sometimes used as a means to introduce restrictions to foreign investors in an attempt to protect domestic industries.

> *In other words, what we are trying to do, let's say, is to prevent damage, right? (ID1)*

> *We put emphasis on exceptions and clarifications so that the State can freely regulate in some areas without an investor coming to initiate a dispute. Even if you win, it implies a cost for the State [the ISDS case], so we make it explicit in the text [that health-related measures do not constitute violations to the BIT] (ID2).*

> *As long as these standards are clearly established in the national regulations, I do not know how far it is necessary [to include health-related obligations to investors in the BIT] (ID6).*

> *Many times, and this concerns us, these clauses are included for introducing restrictions and not to achieve the objective [of preserving health] (ID5).*

In relation to ISDS, interviewees stated that Uruguay has a flexible position and accepts different alternatives. ISDS procedures were described as a positive approach from a diplomatic point of view as they enable the prevention of conflicts with other states.

> *We have always been very open to the issue of dispute settlement. We have always admitted ICSID, UNCITRAL is admitted too, apart from domestic courts (ID6).*

> *Normally we accept to have, for example, an ad hoc international tribunal that is formed at the time the dispute arises. Of course, first we ask for consultations, don't we? I mean, first they have to go to consultations, but if we do not agree, well, we accept ICSID or UNCITRAL (ID2).*

> *For us it is important that when disputes arise, they are encapsulated in the procedure they have and that they do not become a conflict between states (ID5).*

Two of the interviewees recognized disadvantages of allowing ISDS in the BITs but highlighted that it would not be feasible for the country to change the approach it has used until now. This was primarily because changes in the approach to ISDS could be perceived by foreign investors as a sign of instability of the political and economic environment.

> *I think it is not a decision you can make at this stage of the game. I think the problem would have been if Uruguay, after decades of accepting a form of dispute settlement and a certain scope for dispute settlement, decided to take a step backwards, it would give an Argentine-style signal and that would be very bad for the country in terms of stability… I wonder if 30 years ago should we have done things differently, but I don't think it would be a good thing for the country to change its position now (ID10).*

> *You can be more cautious, you can always find ways to limit actions or to give more guarantees to the State or to reserve space for action for the state, but I believe that a categorical change in Uruguay would not be good (ID7).*

Uptake of health safeguards in Uruguay

According to the interviewees, health safeguards started to be included in the BITs signed by Uruguay after other countries faced ISDS cases. These negative experiences raised awareness of the potential negative consequences of BITs at the international level, leading to policy learning and innovation in treaty text. Health-related clauses were discussed in the context of broader changes in treaty design, which implied more detailed clauses and clarifications.

> *Since the early 2000s, international lawsuits started to take place. Companies started to take countries to ICSID or CITRAL and countries started to win or lose, depending on the case. So then it was said, well, these treaties that the chancelleries tell you to sign when there is nothing else, they are not so innocuous (ID1).*

> *It became clear at the global level that these agreements are not innocuous, they do have risks, and the greatest risks are for the State (ID4).*

> *The case of the vulture funds in Argentina, which involved 900 lawsuits more or less, had a great influence [in the uptake of health safeguards]. But it was something happening at a global level (ID2).*

The technical staff of the Ministry of Economy was identified as the key internal actor responsible for introducing health safeguards in the country, which were part of a broader innovation related to treaty design. According to the interviewees' accounts, they started to become aware of the implications of old generation BITs and the importance of clause-specific clarifications and exceptions by attending forums and courses, organized by international organizations such as UNCTAD and OECD. These international organizations were the key external actors fostering diffusion of new generation BITs, and particularly health safeguards, in the country.

> *There was more awareness, there was training. I remember that in 2004, I think, I went to an investment course, from UNCTAD, and the truth is that I said, how did we sign these things [BITs]? Someone had started to think about what they implied (ID2).*

> *The team that has always led investments…they have always attended conferences, where the interesting topics are discussed. We were a rara avis (ID1).*

> *OECD has been one of the drivers of all these changes (ID4).*

The technical staff of the Ministry of Economy became key stakeholders for communicating the innovation (i.e., health safeguards and other changes in treaty design) at the national level. The interviewees reported challenges to convince other key stakeholders, such as technical staff of the Ministry of Foreign Affairs and non-technical decision makers at the political level, about the importance of including safeguards in the BITs, particularly when large investments were involved. In this sense, two of the interviewees referred to the BIT with Finland in 2002, as an example where a technical analysis to check the inclusion of safeguards requested by the technical staff of the Ministry of Economy was rejected at the political level. Lack of awareness about the importance of safeguards was mentioned as a reason for this rejection.

> *[Name of the company], in the early 2000's, required an investment agreement to continue the [installation] process, right? The person who trained me, who managed investments here, told me that he said, well, let's study it [the BIT], and they told him 'No, no. Look, the Finns have already sent it [the treaty] and that's it, let's sign it (ID1).*

One internal factor and two external actors further contributed to the diffusion of the inclusion of health safeguards in the BITs. At the internal level, in 2004 the Ministry of Economy gained increased leadership in the negotiation of BITs as a consequence of a change in the national governing party. According to one of the interviewees, this change also involved reducing the relative importance of BITs as part of the country's strategies to attract foreign investment. One interviewee attributed the change to the left-wing ideology of the new government, whereas another one stated that political orientation was not a relevant factor underlying the change.

> *I would say that the milestone was the first broad government of Frente Amplio [name of the Uruguayan left-wing political party], let's say. But not because of an ideological issue, but because of the fact that Economy took the reins of these negotiations (ID2).*

> *I believe that with the arrival of the left-wing party, there was also a more ideological reflection that made us think more about betting on more general frameworks and differentiating Uruguay in other ways without necessarily signing these agreements (ID10).*

Mexico and USA were identified as external actors contributing to the diffusion of new generation BITs and particularly health safeguards in the country. Two of the interviewees identified the BITs signed with these countries in 2003 and 2004 as milestones for being the first BITs requiring several rounds of negotiation, particularly in relation to clause-specific clarifications and exceptions.

> *I believe that the first milestone was the negotiation of the bilateral agreement with the United States... That was, imagine, 2004, nobody had the faintest idea of negotiating... It was the first time that an agreement was negotiated, let's say... I believe that from that moment on, the country started to be more aware of the relevance [of specific clauses] (ID2).*

The other external factor contributing to the uptake of health safeguards was the Philip Morris ISDS case, which started in 2010. Although the technical staff was already aware of the importance of these clauses and required their inclusion, the interviewees believed that the case contributed to increasing awareness at the political level. Awareness of the importance of health safeguards was described as fundamental to ensure their inclusion in BITs, particularly in situations where disagreements between parties exist.

> *What Phillip Morris did was to publicize these things more, but we had already visualized the risk well before and we were already trying to improve the new agreements (ID2).*

> *I hope that all our reports have made the difference, but no pain, no gain. It was the trials, the international lawsuits. No matter if you have won, they are still very expensive, right? The importance of these clauses is not that they do not make the complaint, but that the jury tells you 'I am not competent'. So it makes it a lot cheaper. So, I think that was what made the difference (ID1).*

> *If you are negotiating these agreements and the last issue you have left has to do with dispute settlement, right to regulate or others and your technicians have put a more protected position for the state, but the other side demands that you use the same wording that you used in an agreement that you signed in the mid 90's that says absolutely nothing, that gives you guarantee of nothing, ministers or other political authority have to intervene. So you need to raise awareness at the political level to ensure that you do not lose your position at the final stage of a negotiation (ID10).*

Internal and external factors acting as facilitators and barriers for the inclusion of health safeguards

The interviewees did not describe difficulties for the inclusion of health safeguards in the BITs signed by Uruguay in recent years, which was mainly attributed to the widespread agreement on their importance. Two of the interviewees described minor challenges to agree in the wording of specific safeguards, particularly in relation to the inclusion of climate change as a policy area separate from the environment.

> *I have no record that this type of exception, these clauses cause us major difficulties (ID5).*

> *I have the perception that with few exceptions, the experiences that all the countries in the world have had regarding these agreements have generally led them to understand that it is an issue that must be approached in a different way. So it is a global trend [to include health safeguards], although there may be exceptions (ID1).*

> *Sometimes we have wording issues... Now, for example, we are negotiating an agreement and in the exceptions we put environmental issues and they propose to include climate change... For us it is important to have a certain consistency with previous agreements...if you put it here [climate change] it can be interpreted that it was not considered before (ID3).*

A series of internal and external factors were identified as facilitators for the adoption of health-related clauses (Fig. 2). At the internal level, the interviewees highlighted

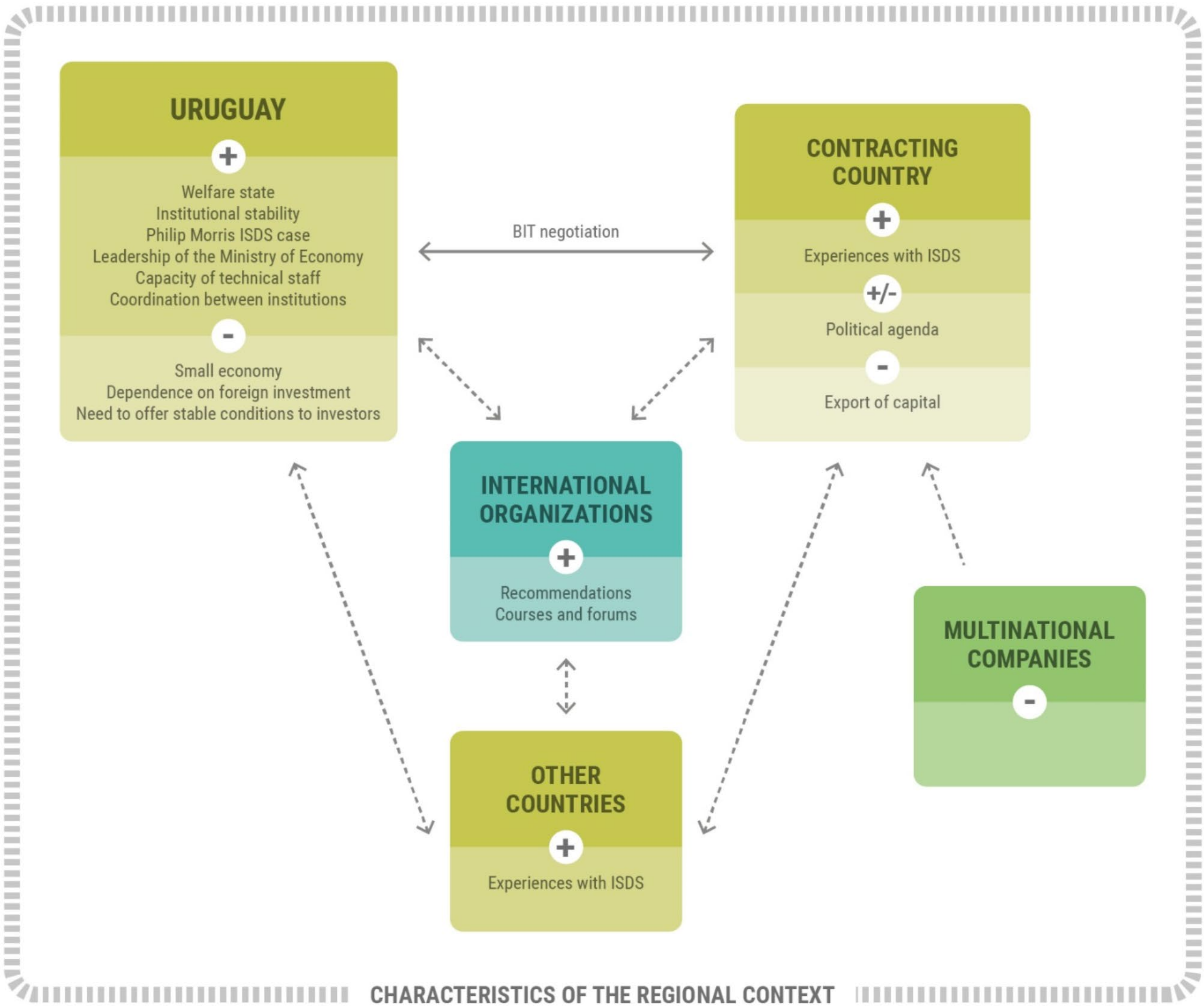

Fig. 2 Graphical representation of the barriers (-) and facilitators (+) for the inclusion of health safeguards in the (re)negotiation of Bilateral Investment treaties identified by the Uruguayan stakeholders who participated in the interviews

the stability of both the institutions and the technical staff as facilitators for the inclusion of health safeguards in the BITs. One of them highlighted the stability of the Uruguayan structure of public officials, which does not change from administration to administration. This is likely beneficial for building and maintaining technical capacity for the negotiation of IIAs.

> *Uruguay has a stable and respected legal and institutional system (ID7).*

> *An advantage that we have with respect to this topic is that since we are few but we have to know a lot.... we have studied the topic, which it is not something that complex either, as you can see (ID2).*

> *The structure of public officials that exists in Uruguay, with all the criticisms that can be made of it, is unique in Latin America. That is, in most Latin American countries, public officials are hired temporarily. Then the entire staff can change and I'm not worried about the staff changing, I'm worried about the loss of institutional memory. So, with the good and the bad, in Uruguay there is stability in that respect. The institutions are partly strong because there are people who will be there for years (ID9).*

Interestingly, the participants did not note the absence of Ministry of Health involvement as a barrier to adopting health safeguards. Although the Ministry of Economy and the Ministry of Foreign affairs are responsible for the negotiation of BITs, the interviewees identified the coordination between governmental institutions as facilitator to the inclusion of health safeguards. They stressed that the continuous coordination among governmental organizations enables having a unique position and facilitates support at the political level for requesting health safeguards in the treaties.

> *I think that inter-institutional work is good, that is, Uruguayan organizations can work together.*
>
> *This is an area where we have permanent coordination [among institutions] and continuing work (ID9).*
>
> *I can tell you that in the Ministry of Economy, we have always been very supported. In general, the chancellery supports us in these things (ID1).*

Another internal factor contributing to the inclusion of health safeguards in the BITs was the fact that Uruguay is seen as a strong welfare State. The interviewees described that the Uruguayan State uses regulation to promote economic and social wellbeing. This rationale makes it easy to require the inclusion of specific clauses to protect the right to regulate.

> *I believe that the Uruguayan social protection network in a broad sense [contributes to the uptake of safeguards]. Within Latin America it has to be one of the most advanced and most careful. I believe that the rationale of many politicians, of different administrations, to focus on health has also been important. And also there is social awareness of how important it is [regulation]... I believe that we Uruguayans are regulationists. In other words, if it is to regulate, it would not be a problem to protect this right in external negotiations (ID9).*
> *We have in our own conception of the state, we tend to have that vision of the Batllista State [in reference to José Battle y Ordóñez, president in the early 1900s], of the State that intervenes, of the welfare state. We cannot think that someone could limit the capacity of the State to act in certain areas through an agreement of this nature (ID10).*

International recommendations were identified as an external factor facilitating the inclusion of safeguards. According to the interviewees, the adoption of health safeguards is the norm at the global level, which minimizes potential disagreements when negotiating BITs: "*In Uruguay we follow international best practices*" (ID3); "*Many of the clauses are standard nowadays*" (ID4).

Despite the lack of challenges to include health safeguards when negotiating new BITs, difficulties in the renegotiation of old agreements were identified. The interviewees described that they have the mandate of renegotiating old agreements to include safeguards (i.e., clause-specific clarifications and exceptions). However, most high-income countries have rejected to renegotiate their treaties, despite widespread agreement of the importance of health safeguards.

Barriers to the renegotiation were mainly related to external factors to the country, although some internal factors emerged. Three of the interviewees attributed the rejection of developed countries to the influence of multinationals with investments in the country, as well as to the fact that the renegotiation is not in the political agenda of these countries when treaties are already in place.

> *There is like a double speech. On the one hand they tell you yes, we have to improve them [BITs]. And on the other hand, when you propose renegotiation, they never want to do it (ID2).*
>
> *There is a lot of technical or academic consensus, that the formats of the 90s are bad, that more precision and more certainty is needed about what we are regulating, but in practice we see the influence of large multinationals on governments, because it is not ignorance (ID1).*
>
> *When you already have a consolidated trade and investment flow, a relationship... It is very difficult to enter the agenda of those countries for a renegotiation, when you already have something...At this moment they [developed countries] have other concerns, other priorities. So what is a priority for you is not a priority for that country at this moment (ID5).*

When discussing the request to renegotiate existing treaties, the interviewees referred to a power imbalance between Uruguay and developed countries. The negotiation power of the country was described as limited due to the small size of the Uruguayan economy and the fact that it is usually the recipient of foreign investments. The ability to negotiate was also discussed in relation to the size of the investment involved in the context of the BIT.

> *Our negotiation power, like everything in life, with our economic size, is very small and very limited (ID2).*
>
> *Brazil, due to the size of its domestic market, which I support and applaud, can say no, I do not give these things conditions, if you want to come to Brazil, come. Uruguay, due to its size, cannot do that (ID5).*
>
> *When you negotiate and there is a great interest, your negotiating power with that counterparty is*

very low, because there is an important investment at stake, right? (ID1)

Two of the interviewees highlighted differences among countries in their willingness to renegotiate existing treaties. Some of the interviewees stated it is easier to renegotiate with countries that have faced similar experiences with ISDS, such as Australia, or developing countries with similar political and legal systems.

We were successful with Australia, and I think it is because we were both involved with Philip Morris (ID2).

When you deal with south-south agreements it is usually easier, such as Australia and India. I haven't seen any laxity with European countries, which are the ones that usually impose the toughest rules (ID1).

Sometimes there are asymmetries between countries… These differences usually have a political basis or arise from different legal systems (ID4).

Multilateral agreements were mentioned as an alternative to gain negotiation power to impose specific clauses in the renegotiation of BITs with developed countries: "*This could be in a multilateral agreement, right? Because if not, we will not have the power to impose these types of clauses that, let's say, off the table, they can recognize that you have the right to regulate*" (ID1).

Another approach highlighted by one of the interviewees to facilitate the renegotiation of old BITs with developed countries referred to environmental issues and particularly sustainability. Given the commitment of developed countries with sustainability, referring to the need to include the right to regulate in the BITs due to issues related to the environment and sustainability would make it easier for them to accept the request to renegotiate the treaties.

I believe that the countries now where they can buy or where we are trying to get them to buy the idea [of renegotiation], which is very much in vogue in terms of environmental issues, sustainability. Well, that implies exceptions in these agreements…I think that environmental issues are the way to make developed countries more uncomfortable [and accepting the idea of renegotiating old BITs to include safeguards] (ID1).

In relation to renegotiation of old BITs, one of the interviewees stated that Uruguay would need to be more aggressive and denounce the treaties if the country's requests continue to be rejected by developed countries.

I think that at some point we would have to rethink whether to be more aggressive and tell the countries, look, I am going to denounce it. And when they tell you why, to say because I want a new format…It is one more step, but today I consider that if Uruguay does not take that step, we will continue explaining why we are enlightened and want things that everyone else wants (ID1).

Another interviewee stated that Uruguay should only denounce or terminate treaties if a potential problem is identified: "*I believe that there is a fine balance that requires permanent monitoring, if you detect that there is a possibility of problems you would have to be more aggressive*" (ID10).

In relation to denouncing treaties or introducing changes to the usual clauses included in the BITs, the interviewees highlighted the importance of offering stable conditions to foreign investors. They highlighted that Uruguay stands out in the region for its stability and that any sudden change in the conditions for foreign investment could entail capital flight.

Uruguay has always had the risk of investments going to a more attractive framework. So, any signal from the country that can be interpreted by foreign investors as a review of what has been the policy, a State policy in terms of attracting investments, I believe puts existing and future investments at risk (ID10).

Unfortunately, we are in a region that is not characterized by stability and Uruguay has always stood out in that sense. Losing it or giving a small feeling that anyone could use you to give the image that you are moving towards another path of instability, would not be good (ID7).

Discussion

This study analysed the uptake of health safeguards in BITs in the Uruguayan context. Results from the documentary analysis showed that the inclusion of health-related clauses in the BITs signed by Uruguay followed the global pattern reported in a recent systematic mapping of health inclusions in BITs between 1959 and 2021 [21]. Very few treaties signed before 2003 included a health-related clause, whereas multiple references to health have been consistently included in all the treaties signed since 2010.

The gradual adoption of health safeguards resembles the process of diffusion of an innovation [41]. The accounts of stakeholders related to investment agreements in the country shed light on how this process occurred. According to the interviewees, the inclusion of health safeguards in BITs diffused from abroad, mainly as a consequence of other countries' experiences with ISDS. The technical staff involved in the design and negotiation of BITs were identified as the key agents responsible for the diffusion of health safeguards at the internal level. At the external level, international organizations, such as UNCTAD and OECD, emerged as central transnational transfer networks by providing general recommendations and contributing to capacity building. These results reflect the important role of international organizations in the spread of policy and practice [43, 44].

Uruguay was described by stakeholders as a small country with limited negotiation power. Thus, most of the clauses included in the BITs are expected to be proposed by capital exporting countries. In this sense, the first BIT including a reference to health was signed with Germany, which has been identified as an early leader in the inclusion of defensive safeguards [53]. In addition, one of the interviewees identified the BIT with the USA as a milestone in terms of understanding the importance of including and negotiating clause-specific clarifications and exceptions in the BITs. Capital exporting countries have been identified as key drivers of change in the characteristics of IIAs, promoting an increase in the legal precision of BITs [20].

Similar to global experience, awareness of ISDS disputes has influenced the government of Uruguay's approach to BITs [4, 39]. However, in this case it was more awareness of disputes internationally, during the early 2000s. In this sense, Uruguay's own experience with the ISDS did not cause a radical change in how Uruguay approaches BITs. However, according to the interviewees the case brought by Philip Morris, the country's second ISDS case, facilitated the uptake of health safeguards by raising awareness of their importance at the political level. The Philip Morris case may have increased the perceived risks associated with BITs among non-technical decision-makers by making the likelihood of ISDS more salient, as postulated by dual-process decision-making models [54].

No additional effects of the case on IIAs were reported by the interviewees or identified in the documentary analysis. In particular, no changes have been introduced in the approach to ISDS and all the BITs signed by Uruguay enable foreign investors to use this mechanism. In fact, two of the interviewees described ISDS as a positive feature of BITs from a diplomatic point of view, as it avoids potential conflicts between states.

Previous research has shown that other countries have reacted more actively to experiences by ISDS, e.g., by introducing large changes in treaty design, as well as terminating or renegotiating investment agreements [20, 39, 55]. Although progressive health safeguards requiring health-related obligations to investors have been identified as a potential tool to support public health policy worldwide [21, 56], they have not been used yet in Uruguay. Brazil and a handful of other developing countries in Latin America, Asia, and Africa, have been identified as leaders in developing and including progressive health safeguards in BITs [21, 22, 53]. However, such clauses have not yet diffused into Uruguay. The slow uptake of health safeguards in Uruguayan BITs can be partly explained by the government's efforts to promote a favourable stable socio-political environment to foreign investors. In this sense, some of the stakeholders highlighted the importance of regulatory stability as a means to increase competitiveness in the Latin American context. Economic studies have shown that political stability is positively associated with foreign direct investment, particularly in developing countries [57–59]. Investors have been reported to minimize risk by avoiding investments in unstable environments in terms of regulatory and macroeconomic management [60]. Although, studies also note that investment agreements do not necessarily have a significant impact on foreign direct investment flows [61]. Previous studies suggest that other countries have taken a similar approach to safeguarding health in IIAs to Uruguay, focusing on defensive and neutral provisions including general exceptions, clause-specific clarifications, article-specific carve-outs, and exhortative statements [13, 24, 56, 62].

Another factor underlying the lack of inclusion of progressive health safeguards included a perception that they were not necessary in the Uruguayan context by some of the stakeholders given the existence of internal regulations applicable to both national and foreign investors. In this sense, it is important to highlight that there is still no evidence of the impact of progressive health-clauses on public health [21, 22, 53]. Two of the interviewees also raised concerns about the potential use of progressive clauses as a protectionist policy, not aligned with the Uruguayan approach to attract foreign investment. In this sense, the resistance to the inclusion of progressive health safeguards can also be explained by the focus on providing stable conditions to foreign investors.

The stakeholders involved in the research did not identify major challenges for including health safeguards in new BITs, in line with the widespread agreement on the importance of these clauses [13, 15, 21]. However, challenges to the renegotiation of old generation BITs to introduce health safeguards were acknowledged. Renegotiation has been one of the recommended strategies to reduce the potential threats of old generation BITs [63]. Although the interviewees highlighted that they have requested the renegotiation of several BITs, success has been very limited. High-income countries have been identified as innovators regarding the inclusion of both defensive and neutral health safeguards in BITs [53] and have actively renegotiated or terminated BITs after facing ISDS cases [20, 39]. However, results from the present work suggest challenges as many developed countries seem to follow a different approach when acting as the capital exporting countries. One of the factors contributing to the rejection to renegotiate may be the lobbying of foreign investors whose activities may be affected by the renegotiation of BITs, as previously highlighted by other authors [23, 63]. Denouncing the International Centre for Settlement of Investment Disputes (ICSID) convention or terminating treaties are alternative exit strategies from old generation BITs [63]. The first approach trying to rule out the obligation to submit disputes to arbitration, as previously done by Latin American countries such as Bolivia, Ecuador and Venezuela [64].However, denouncing the ICSID convention or terminating BITS have potential negative consequences in terms of exposing countries to legal measures and sending negative signals to both potential and existing foreign investors [63, 64].

Taken together, the findings of this study enabled the identification of a wide range of factors that act as facilitators and barriers for the inclusion for health safeguards in the BITs (Fig. 2), highlighting the complexity of the decisions related to treaty design. The identified factors were related to both the national and intergovernmental levels, in agreement with the postulates of theories of policy learning [43, 44] and international negotiation [46, 49]. In the Uruguayan context, the most relevant internal factors facilitating the inclusion of health-related clauses in the BITs were the political values related to the protection of public health, the technical capacity of the organizations in charge of the design and negotiation of IIAs, and institutional stability. On the contrary, reliance on foreign investment as part of the economic development strategy of the country emerged as a potential barrier to safeguarding health when dealing with large investments. In this sense, the asymmetry of power arising from the position of the countries in terms of capital was identified as a key influencer of the design of BITs at the intergovernmental level. Capital exporting countries may have greater capacity to influence the design of BITs compared to capital importing countries [65]. This asymmetry may be influenced by contextual factors of the capital importing country, including its economic situation and the characteristics of the context [41, 66]. Uruguay may be particularly susceptible to the effect of power asymmetries, due to its small economic size and the need to stand out in the region in terms of political and institutional stability. Further research in other contexts is needed to better understand the factors influencing the inclusion of health safeguards in IIAs. This evidence can contribute to the development of recommendations to encourage constructive engagement across policy sectors and support further innovation to improve the interface between investment and public health policy in the future.

Another important area for further exploration is the relationship between health and sustainability safeguards. One interviewee highlighted the growing interest in sustainability issues as a potential catalyst for incorporating broader regulatory safeguards and renegotiating older-generation treaties with developed countries. Expanding the focus of future research to include a wider range of safeguards could provide valuable insights into how different types of regulatory protections are framed and implemented in investment agreements. Comparative analyses across treaties and jurisdictions could help identify best practices and inform strategies for advancing investment treaty reforms that better protect public health, environmental sustainability, and the State's regulatory space.

Limitations

This study has a series of limitations that should be acknowledged. First, the analysis of BITs relied on explicit mentions of health-related terms, which may have led to an underestimation of indirect or implicit references to health within broader regulatory clauses, such as clauses related to specific products such as tobacco. Future research could expand on this by incorporating a more detailed legal analysis to capture potential indirect implications of BIT provisions on public health policy. Second, although the interview sample consisted of key stakeholders with relevant expertise, it was relatively small, with only ten participants. While data saturation was reached and the number of interviews was appropriate given the specialized nature of the participants, a larger sample could have offered additional perspectives and further enriched the findings. For example, none of the interviewees had been involved in the negotiation of BITs prior to 2003. The reliance on a snowball sampling method, though effective in identifying knowledgeable informants within tight policy networks, resulted in a sample that does not fully represent the diversity of perspectives from other relevant actors, such as international organizations, private sector representatives, or civil society groups. Future studies could broaden the scope of informants to include these perspectives.

Finally, the study was limited to Uruguay, making the findings context-specific and potentially not generalizable to other settings or countries. However, Uruguay's experience offers valuable insights, particularly as a country with a well-established public health regulatory framework. Future comparative research across different jurisdictions could help determine whether similar trends exist in other nations and provide a broader understanding of the relationship between investment treaties and public health policies.

Conclusions

This study contributes to the understanding of the factors that influence the evolution of the interface between investment agreements and public health policy by analysing the adoption of health safeguards in BITs in the Uruguayan context. Results indicate that while health safeguards were new and contentious in the early 2000s, their use became widely accepted and normalized in the last decade. This diffusion of health-related clauses in the country was mainly driven by capacity building promoted by international organizations. A series of factors acting as facilitators and barriers to the inclusion of health safeguards were identified, which may apply to other domains of the interface between economy and public health. Despite widespread agreement on the importance of protecting countries' regulatory space, challenges for successfully renegotiating old generation BITs with developed countries were identified. Strong recommendations from international organizations to renegotiate old generation BITs may contribute to overcoming the existing power dynamics and support developing countries in the protection of their regulatory space.

Abbreviations

BIT	Bilateral Investment Treaty
IIA	International Investment Agreement
ICSID	International Centre for Settlement of Investment Disputes
ISDS	Investment-State Dispute Settlement
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Trade and Development
WHO	World Health Organization

Supplementary Information

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Supplementary Material 1

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Author contributions

Gastón Ares: Conceptualization, Methodology, Investigation, Formal analysis, Writing – Original Draft, Writing – Review & Editing. Gerónimo Brunet: Conceptualization, Methodology, Investigation, Formal analysis, Writing – Original Draft, Writing – Review & Editing. Dori Patay: Conceptualization, Methodology, Writing – Original Draft, Writing – Review & Editing. Anne-Marie Thow: Conceptualization, Methodology, Writing – Original Draft, Writing – Review & Editing, Project administration, Funding acquisition.

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Data availability

The data generated and analyzed during the current study are available from the corresponding author on reasonable request.

Declarations

Ethics approval and consent

The study was approved by the ethics committee of the School of Chemistry of Universidad de la República (Uruguay) (Protocol Number 101900-000149-23). Participants provided written informed consent.

Consent for publication

Not applicable.

Competing interests

The authors declare no competing interests.

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References

1. Kickbusch I, Allen L, Franz C. The commercial determinants of health. Lancet Glob Health [Internet]. 2016;4:e895–6. Available from: https://doi.org/10.1016/S2214-109X(16)30217-0
2. Friel S, Collin J, Daube M, Depoux A, Freudenberg N, Gilmore AB et al. Commercial determinants of health: future directions. The Lancet [Internet]. 2023;401:1229–40. Available from: https://doi.org/10.1016/S0140-6736(23)00011-9
3. Biermann F, Hickmann T, Sénit CA, Beisheim M, Bernstein S, Chasek P, et al. Scientific evidence on the political impact of the sustainable development goals. Nat Sustain. 2022;5:795–800.
4. Moehlecke C. The chilling effect of international investment disputes: limited challenges to state sovereignty. Int Stud Quart. 2020;64:1–12.
5. Milsom P, Smith R, Modisenyane SM, Walls H. Do international trade and investment agreements generate regulatory chill in public health policymaking? A case study of nutrition and alcohol policy in South Africa. Global Health. 2021;17.
6. Davison M, Emerton P, The Treatment of Public Health Measures Affecting Intellectual Property Under Multilateral and Plurilateral Trade and Investment Agreements. The Journal of World Investment & Trade [Internet]. 2019;20:759–83. Available from: https://brill.com/view/journals/jwit/20/5/article-p759_7.xml
7. Garton K, Thow AM, Swinburn B. International trade and investment agreements as barriers to food environment regulation for public health nutrition: A realist review. Int J Health Policy Manag. 2021;10:745–65.
8. Dolzer R, Schreuer C. Principles of international investment law. Oxford: Oxford University Press; 2012.
9. Bonnitcha J, Williams ZP. The impact of investment treaties on domestic governance in developing countries. Law Policy. 2024;46:140–69.
10. Jandhyala S. The politics of Investor-State dispute settlement: how strategic firms evaluate investment arbitration. In: Chaisse J, Leïla C, Jusoh S, editors. Handbook of international investment law and policy. Singapore: Springer; 2020.
11. UN Trade & Development. Investment Dispute Settlement Navigator. https://investmentpolicy.unctad.org/investment-dispute-settlement. 2024.
12. Van Harten G, Scott DN. Investment treaties and the internal vetting of regulatory proposals: a case study from Canada. Osgoode Legal Studies Research Paper Series. 2016. Research Paper Number 26/2016. https://digitalcommons.osgoode.yorku.ca/olsrps/151
13. UNCTAD. International investment policies and public health. Geneva: UNCTAD; 2021.
14. Barlow P, McKee M, Basu S, Stuckler D. The health impact of trade and investment agreements: A quantitative systematic review and network co-citation analysis. Global Health. 2017;13.

15. Smith R, Blouin C, Mirza Z, Beyer P, Drager N. Trade and health: Building a National strategy. Geneva: World Health Organization; 2015.
16. Rimmer M. The Trans-Pacific partnership: intellectual property, public health, and access to essential medicines. Intellect Prop J. 2017;29:277–332.
17. Schram A, Friel S, Anthony VanDuzer J, Ruckert A, Labonté R. Internalisation of international investment agreements in public policymaking: developing a conceptual framework of regulatory chill. Glob Policy. 2018;9:193–202.
18. Hagemann TA. The North-South divide of regulatory chill: A comparative analysis of the impact of Investor-State dispute settlement on policy makers in developed and developing countries. New York Int Law Rev. 2022;35:27–48.
19. Schram A. When evidence isn't enough: ideological, institutional, and interest-based constraints on achieving trade and health policy coherence. Glob Soc Policy. 2018;18:62–80.
20. Manger MS, Peinhardt C. Learning and the precision of international investment agreements. Int Interact. 2017;43:920–40.
21. Thow AM, Alschner W, Aljunied F. Public health clauses in international investment agreements: sword or shield? Glob Policy. 2023;14:260–9.
22. Monebhurrun N. Novelty in international investment law: the Brazilian agreement on cooperation and facilitation of investments as a different international investment agreement model. J Int Dispute Settl. 2016;8:79–100. https://doi.org/10.1093/jnlids/idv028
23. Garton K, Swinburn B, Thow AM. Who influences nutrition policy space using international trade and investment agreements? A global stakeholder analysis. Global Health. 2021;17:118. https://doi.org/10.1186/s12992-021-00764-7
24. Mitchell A, Sheargold E. Protecting the autonomy of States to enact tobacco control measures under trade and investment agreements. Tob Control. 2015;24:e147–53.
25. Alschner W, Tuerk E. The role of international investment agreements in fostering sustainable development. In: Baetens F, editor. Investment law within international law: integrationist perspectives. Cambridge: Cambridge University Press; 2013. pp. 217–31.
26. Uruguay XXI. Uruguay en síntesis [Uruguay in brief]. https://www.uruguayxxi.gub.uy/es/monitor-macro/. 2024.
27. International Monetary Fund. GDP per capita, current prices. https://www.imf.org/external/datamapper/NGDPDPC@WEO/URY?zoom=URY%26highlight=URY. 2024.
28. The World Bank. Uruguay [Internet]. 2024 [cited 2024 Dec 7]. Available from: https://data.worldbank.org/country/uruguay
29. United Nations Development Program. Human Development Reports. Uruguay [Internet]. 2024 [cited 2024 Dec 7]. Available from: https://hdr.undp.org/data-center/specific-country-data#/countries/URY
30. Hoffmeister O. Development Status as a Measure of Development. UNCTAD Research Paper No. 46. United Nations Conference on Trade and Development (UNCTAD) Research Papers [Internet]. 2020 [cited 2025 Mar 4];46. Available from: https://unctad.org/system/files/official-document/ser-rp-2020d5_en.pdf
31. Lanzilota B, Leira E, Miranda R. Inversión Extranjera Directa y Calidad Del Gobierno: evidencia Para Los países de América Latina y La OECD. Montevideo: Udelar; 2022.
32. Uruguay XXI. Direct foreign investment report. Montevideo: Uruguay XXI; 2023.
33. Uruguay XXI. Monitor de inversión Extranjera En Uruguay. Montevideo: Uruguay XXi; 2024.
34. Parlamento de Uruguay. Ley N° 16906. Ley de inversiones. Promoción industrial. Montevideo: IMPO; 1998.
35. Ministerio de Economía y Finanzas. Acuerdos de inversiones. https://www.gub.uy/ministerio-economia-finanzas/node/5257#:~:text=Uruguay%20cuenta%20con%2032%20Acuerdos,Qatar%2C%20Arabia%20Saudita%20y%20Colombia. 2024.
36. Heydari G. Which countries are the best in tobacco control? A quantitative analysis of the MPOWER 2017. J Glob Health Rep. 2019;3.
37. Ministerio de Salud Pública. Ordenanza 514/008. Montevideo: Ministerio de Salud Pública; 2008.
38. Melillo M. Evidentiary issues in Philip Morris V Uruguay: the role of the framework convention for tobacco control and lessons for NCD prevention. J World Invest Trade. 2020;21:724–52.
39. Thompson A, Broude T, Haftel YZ, Once Bitten. Twice Shy? Investment disputes, state sovereignty, and change in treaty design. Int Organ. 2019;73:859–80.
40. Russell A, Wainwright M, Mamudu H. A chilling example?? Uruguay, Philip Morris international, and who's framework convention on tobacco control. Med Anthropol Q. 2015;29:256–77.
41. Rogers EM. Diffusion of innovations. New York: Free; 2003.
42. Brookfield Institute for Innovation + Entrepreneurship. Exploring Policy Innovation: Tools, Techniques + Approaches. Toronto; 2018 May.
43. Stone D. Transfer agents and global networks in the 'transnationalization' of policy. J Eur Public Policy. 2004;11:545–66.
44. Stone D. Transnational policy entrepreneurs and the cultivation of influence: individuals, organizations and their networks. Globalizations. 2019;16:1128–44.
45. Downie C. International negotiations. In: Dahos P, editor. Regulatory theory. ANU; 2017. pp. 323–38.
46. Putnam RD. Diplomacy and Domestic Politics: The Logic of Two-Level Games. Int Organ [Internet]. 1988;42:427–60. Available from: http://www.jstor.org/stable/2706785
47. Hall PA. Policy paradigms, social learning, and the State: the case of economic policymaking in Britain. Comp Polit. 1993;25:275.
48. Linos K. The Democratic foundations of policy diffusion: how health, family, and employment laws spread across countries. Oxford: Oxford University Press; 2013.
49. Moon S. Power in global governance: an expanded typology from global health. Global Health. 2019;15:74.
50. Alschner W, Elsig M, Polanco R. Introducing the electronic database of investment treaties (EDIT): the genesis of a new database and its use. World Trade Rev. 2021;20:73–94.
51. Radford A, Kim JW, Xu T, Brockman G, McLeavey C, Sutskever I. Robust Speech Recognition via Large-Scale Weak Supervision [Internet]. 2022. Available from: https://arxiv.org/pdf/2212.04356.pdf
52. Rampin R, Rampin V. Taguette: open-source qualitative data analysis. J Open Source Softw [Internet]. 2021;6:3522. Available from: https://joss.theoj.org/papers/10.21105/joss.03522
53. Uddin S, Lu H, Alschner W, Patay D, Frank N, Gomes FS, et al. An NLP-based novel approach for assessing National influence in clause dissemination across bilateral investment treaties. PLoS ONE. 2024;19:e0298380.
54. van Aaken A, Kurtz J. Beyond rational choice: international trade law and the behavioral political economy of protectionism. J Int Economic Law. 2019;22:601–28.
55. Haftel YZ, Thompson A. When do States renegotiate investment agreements? The impact of arbitration. Rev Int Organ. 2018;13:25–48.
56. Baetens F. Protecting foreign investment and public health through arbitral balancing and treaty design. Int Comp Law Q. 2022;71:139–82.
57. Sabir S, Rafique A, Abbas K. Institutions and FDI: evidence from developed and developing countries. Financial Innov. 2019;5:8.
58. Okara A. Does foreign direct investment promote political stability? Evidence from developing economies. Econ Model. 2023;123:106249.
59. Blanton SL, Blanton RG. What attracts foreign investors?? An examination of human rights and foreign direct investment. J Polit. 2007;69:143–55.
60. Daniels JD, Radebaugh LH, Sullivan DP. Globalization and business. Upper Saddle River, NJ: Prentice Hall; 2002.
61. Bonnitcha J, Skovgaard Poulsen LN, Waibel M. The political economy of the investment treaty regime. Oxford: Oxford University Press; 2017.
62. Sheargold E, Mitchell AD. Public health in international investment law and arbitration. In: Chaisse J, Choukroune L, Jusoh S, editors. Handbook of international investment law and policy. Berlin: Springer; 2019.
63. Lavopa FM, Barreiros LE, Bruno MV. How to kill a BIT and not die trying: legal and political challenges of denouncing or renegotiating bilateral investment treaties. J Int Economic Law. 2013;16:869–91.
64. Tietje C, Nowrot K, Wackernagel C. Once and forever?? The legal effects of a denunciation of ICSID. Halle: Martin Luther University Halle-Wittenberg; 2008.
65. Pfetsch FR. Power in international negotiations: symmetry and asymmetry. Négotiations. 2011;16:39–56.
66. Stone D. Policy paradox: the Art of political decision making. New York, NY: W.W. Norton; 2012.

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