

Negotiating Trade in Services with China from the Uruguayan Perspective

Ignacio Bartesaghi*

Gabriel Gari**

Natalia Melgar***

Abstract

This paper focuses on trade in services, in particular it assesses the concessions made by China when negotiating trade agreements. Additionally, it refers to the opportunities that Uruguay may have in exporting services to China in case of signing a Free Trade Agreement (FTA). The debate on this issue started in 2016 when Uruguayan President Vázquez visited China and with the Chinese President Xi Jinping raised the possibility of signing an FTA. Since then, opposing arguments have been put forward. Unfortunately, the limited information on bilateral trade in services flows is a limitation for this kind of studies. It is highlighted that there will be additional large gains which would emerge from trade in goods, cooperation, or investments.

Keywords: services, integration, trade agreement, China, Uruguay.

JEL Classification: F00, F14, F15

Resumen

Esta investigación se centra en el comercio de servicios y en particular, en las concesiones que ha realizado China al negociar acuerdos comerciales. Además, se refiere a las oportunidades que una economía pequeña como Uruguay puede tener al exportar servicios al gigante asiático en caso de firmar un Tratado de Libre Comercio (TLC). El debate sobre este punto comenzó en 2016, cuando el presidente de Uruguay, Vázquez, visitó China y con el presidente de ese país, Xi Jinping, anunciaron la posibilidad de firmar un TLC. Desde ese momento, diversos agentes han presentado argumentos tanto a favor como en contra de este acuerdo. Desafortunadamente, la falta de información bilateral sobre el comercio de servicios es una limitación para esta clase de análisis. Se destaca que un acuerdo de este tipo podría implicar grandes ganancias adicionales las cuales se originarían en el comercio de bienes, la inversión o la cooperación internacional.

Palabras clave: servicios, integración, acuerdo comercial, China, Uruguay.

Clasificación JEL: F00, F14, F15

* Director of the International Relations Institute, Catholic University of Uruguay. E-mail: ibartesa@ucu.edu.uy. Received: August 24th 2021; modifications: November 24th 2021; accepted: December 06th 2021.

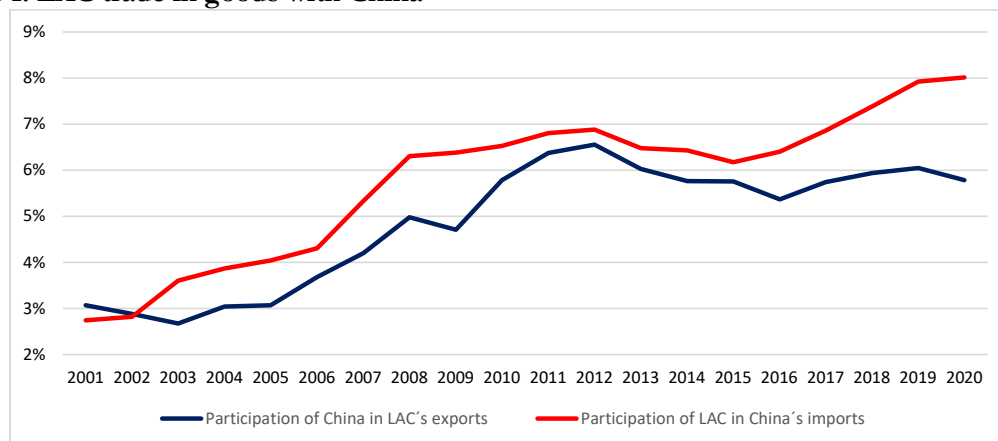
** Director LLM Programme in International Economic Law, Queen Mary, University of London. E-mail: g.gari@uqmul.ac.uk.

***Professor and Researcher at the Catholic University of Uruguay, International Relations Institute. E-mail: natalia.melgar@ucu.edu.uy.

Introduction

Over the last fifteen years, China has deepened its relationship with Latin-America and the Caribbean (LAC). This process has been characterized by a relevant growth in trade flows and the signature of FTAs with Chile, Costa Rica, and Peru. China is currently negotiating an FTA with Panama and conducting a joint feasibility study for an FTA with Colombia¹. Furthermore, the last China's White Books on the relationship with LAC countries highlights that the trade agreements with this group of countries are a priority for the Chinese government.

Figure 1: LAC trade in goods with China



Source: own elaboration based on Trade Map.

The FTA between China and Chile came into force in 2010. When considering the experimental data set that is being developed by the World Trade Organization (WTO) that includes bilateral trade in services; it can be shown that between 2010 and 2019, Chilean exports of services were down 0.2% but those to China grow 2.9% and the participation of China as a destiny of these exports varied from 7.0% in 2010 to 9.2% in 2019.

In the case of Uruguay, in 2016, President Vázquez visited China and with Chinese President Xi Jinping discussed the possibility of signing a trade agreement. However, no progress was made on this front until September 2021 when the parties publicly announced their intention to conduct a joint feasibility study for an FTA with a view to start negotiations in early 2022².

Moreover, the Uruguayan internationalization strategy has been criticized for its slow progress in bilateral trade talks. In 2019, the agreement between the European Union and MERCOSUR was signed, after 20 years of negotiations. In that year, MERCOSUR also signed an agreement with the European Free Trade Association. Hence, the external agenda has become more dynamic. However, it is unclear whether the agreement with the European Union would be ratified.

Back in 2016, the announcement of a possible FTA with China opened a debate about the potential impact of the agreement for the Uruguayan economy. Some studies focused on trade in goods suggest that the net result would be positive (Bartesaghi and Melgar, 2018). However, the analysis of the potential impact of an FTA with China in the Uruguayan services sector has, so far, not received enough attention.

¹ More information can be found in: <http://fta.mofcom.gov.cn/english/index.shtml>

² More information can be found in: <https://www.gub.uy/presidencia/comunicacion/noticias/inicio-su-trabajo-equipo-negociador-del-estudio-factibilidad-para-acuerdo>

The aim of this paper is to fill this gap of the literature by shedding light on the potential risks and opportunities for a small country like Uruguay to conclude an agreement on services with China. After this introduction, the literature on trade in services that explores this matter is presented. After that, the existing FTAs covering trade in services concluded by China are reviewed, identifying its best preferential concessions on services to illustrate what Uruguay could realistically expect from China during the negotiation process. Therefore, the paper is organized as follows: section 2 offers a theoretical framework for the analysis; section 3 provides an overview of the dynamics of trade in services; section 4 discusses the potential gains that Uruguay may have if signing an agreement with China; section 5 presents a negotiation strategy on services for Uruguay, and section 6 presents some conclusions.

Theoretical framework

In recent years, services have become increasingly important in the international economy (trade and investment) and have presented a sustained process of internationalization. Advances in technology have allowed a growing expansion of the sector (IT, telecommunications, transport, travel).

The specialized literature offers compelling evidence about the contribution of trade in services to development. For instance, Sauvé (2009) shows the significant impact of services on development and the roles of liberalization and effective regulation in key service sectors, both at regional and multilateral levels. Cattaneo et al. (2010) argue that the performance of the services sector is a key driver of Gross Domestic Product dynamics, although they acknowledge the existence of significant variations by sector. Cattaneo et al. (2013) also showed not only the relevance of the direct effects of services, but also the indirect effects to the extent that services play a key role on industrial productivity.

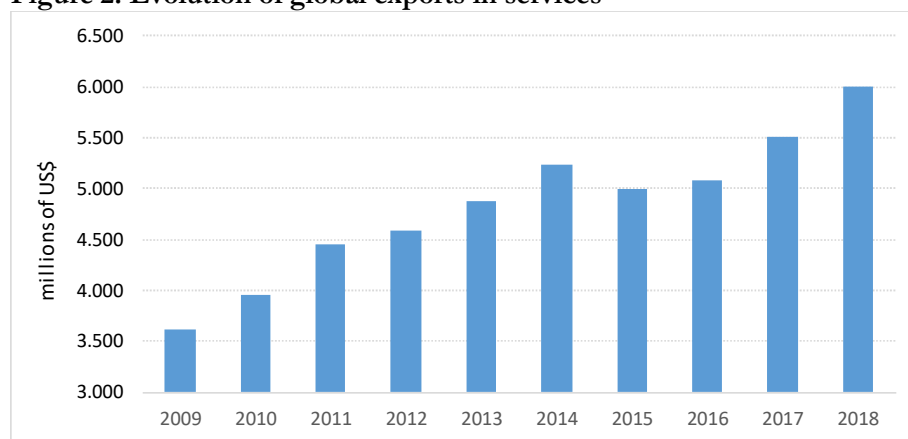
The literature also shows the relevance of trade agreements in services. Although specific commitments on market access and national treatment do not necessarily generate new market opportunities, they bind the applied regime becoming an insurance against protectionist policy reversals; and offering transparent and predictable market access conditions to economic actors. For example, the pandemic has showed the relevance of electronic payment services that enable e-commerce activity and the vulnerabilities of micro, small and medium enterprises that should have dealt with digitalization. Before the pandemic, Roy (2019) highlighted that most WTO members had few or incomplete market access and national treatment commitments for electronic payment services. Moreover, Roy (2017) argued that an enabling policy environment – promoting competition, openness to trade and investment, and adequate regulatory frameworks – can enhance connectivity, lower trade costs, and foster growth and economic performance. Lamprecht and Miroudot (2018) found that legal bindings (that are included in services trade agreements) have a positive impact on exports. Having said this, one should not ignore the fact that the quid pro quo for greater predictability on market access conditions that stems from binding commitments is less policy space to regulate in pursuance of legitimate public policy objectives (Nicolas Pose, 2019).

FTAs on services also include disciplines on domestic regulation that contribute to enhance the quality of services' domestic regulatory framework. In 2017, nearly 60 WTO members initiated the Joint Initiative on Services Domestic Regulation (SDR) in order to discuss simplification and transparency of requirements and procedures to avoid becoming trade barriers. Baiker et al. (2021) showed that the new generation of trade agreements tend to include SDR disciplines and that countries are likely to change their domestic regulatory frameworks. Authors also provided 'initial insights' on the potential impact of these changes on economic performance. Kox and Lejour (2005) highlighted that regulation matter because they may imply fixed cost and authors highlighted that also policy heterogeneities have a negative impact on bilateral trade in services. Benz and Jaax (2020) used panel data from OECD Services Trade Restrictiveness Index, and they demonstrated the huge potential of services trade liberalization based on the premise that barriers to trade in services tend to be much higher than average tariffs on products.

The service sector at the global market

The internationalization of services has deepened, and the global relevance of the sector is larger. It continues to show great potential and the pandemic has strengthened this trend in several service sectors. This process has mainly been driven by technological advances that enabled the expansion of sectors such as telecommunications, transport, and travel, among others. As figure 1 shows, this process has led to a significant growth in trade flows of services.

Figure 2: Evolution of global exports in services



Source: own elaboration based on Trade Map.

As table 1 shows, the service sector has registered not only high growth rates (5.8% in the case of exports and 5.4% in the case of imports), but also higher rates than the ones observed in the case of trade in goods (4.3% in the case of exports and 4.2% in the case of imports). Despite this evolution, when considering total trade, services account for around 24% of it.

Table 1: Growth rates of trade in services and in goods

	Growth 2009-2018	Annual average 2009-2018
Exports of services	68,3%	5,8%
Imports of services	60,0%	5,4%
Exports of goods	57,6%	4,3%
Imports of goods	57,0%	4,2%

Source: own elaboration based on Trade Map.

Moreover, as table 2 describes, not only the trade flows of services were up but also all categories have grown. The table shows the annual growth rate of each service category by supposing a constant rate or a linear path in the period. It is worth noting that the traditional categories such as transports and communication services register lower rates than the “newer” categories such as telecommunications, computer, and information services (9.2%) or the charges for the use of intellectual property (7.9%).

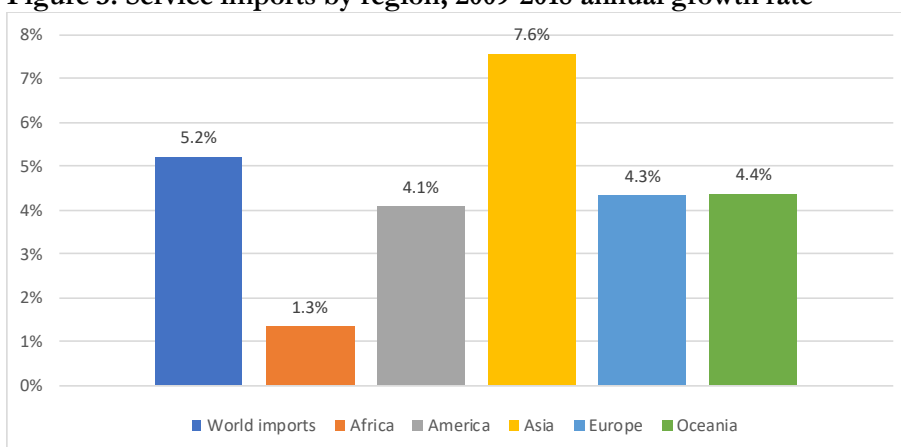
Table 2: Growth rates by service categories

	Annual growth rate 2009 - 2018
Maintenance and repair services	10,1%
Telecommunications, computer and information services	9,2%
Charges for the use of intellectual property	7,9%
Other business services	7,0%
Personal, cultural and recreational services	6,1%
Other services	5,9%
Travel	5,4%
Manufacturing services on physical inputs owned by others	5,2%
Financial services	4,9%
Transports	4,8%
Insurance and pension services	3,6%
Construction	2,7%
Government goods and services	0,7%

Source: own elaboration based on Trade Map.

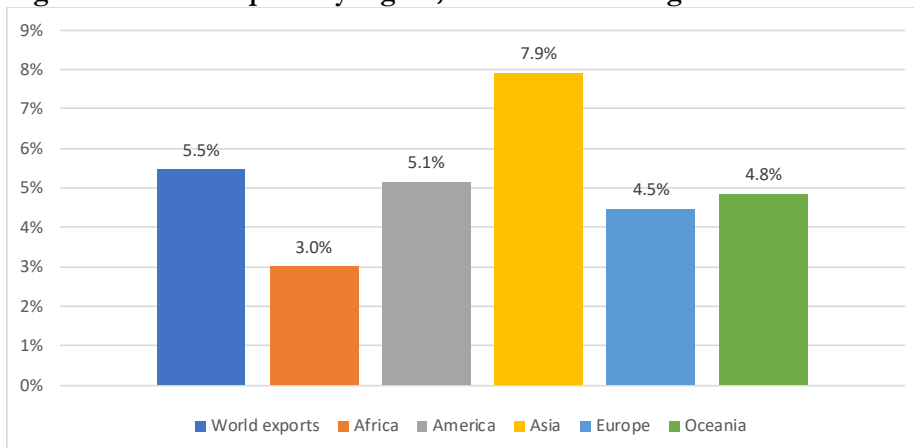
In addition to the dynamism registered by trade in services in global terms, it is worth considering who the relevant players are. When computing the 2009-2018 annual growth rate, Asia emerges as the most dynamic region, only this region has registered a growth rate that is higher than the world average and China has played a relevant role in this evolution.

Figure 3: Service imports by region, 2009-2018 annual growth rate



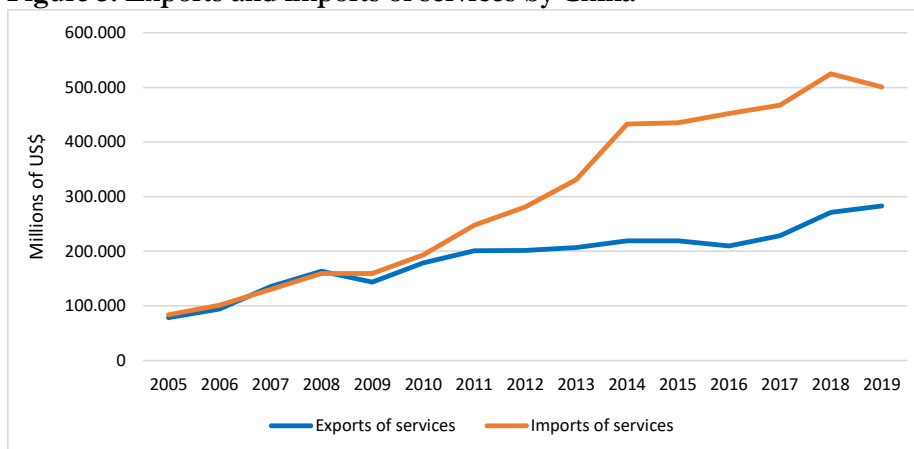
Source: own elaboration based on Trade Map.

Figure 4: Service exports by region, 2009-2018 annual growth rate



Source: own elaboration based on Trade Map.

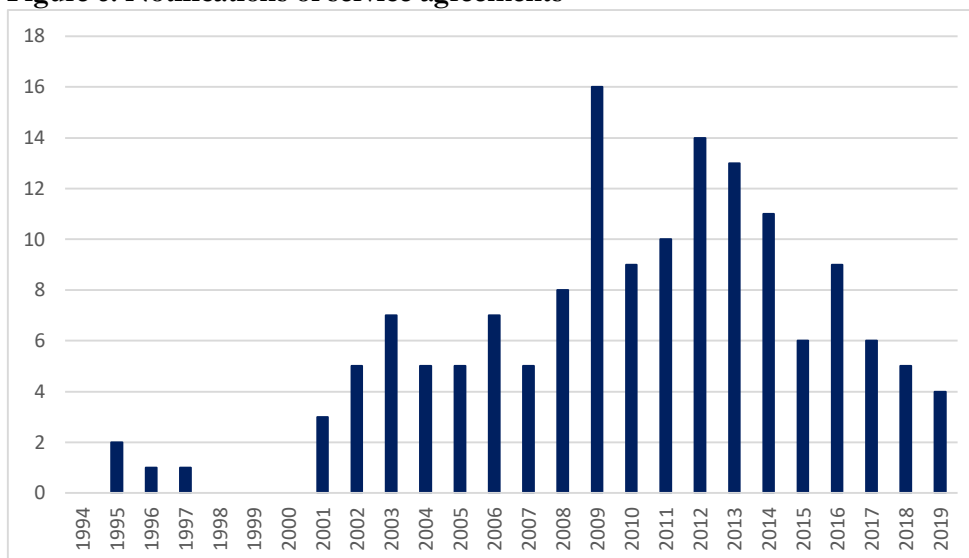
Figure 5: Exports and imports of services by China



Source: own elaboration based on Trade Map.

In line with these upward trends, the formal inclusion of services in trade negotiations took place in 1995 with The General Agreement on Trade in Services (GATS) that was one of the milestones achievements of the Uruguay Round. Its targets are: 1) creating a credible and reliable system of international trade rules; 2) ensuring fair and equitable treatment of all participants; 3) stimulating economic activity through guaranteed policy bindings; and 4) promoting trade and development through progressive liberalization. It is worth remembering that all WTO members are part of this agreement, and it applies to all service categories with the exemption of some services provided by the State such as the cases of education and health.

An additional way of assessing the relevance of services is considering the new international regulations, since the agreements that now incorporate service provisions have increased considerably since 2001.

Figure 6: Notifications of service agreements

Source: own elaboration based on WTO

Low and Pasadilla (2015) hold that the service sector has a crucial role in developing an economy and improving the well-being of their citizens. Its contributions to growth are no more relevant than its linkages with the manufacturing sector. If an economy becomes more efficient in the provision of services, it would be also more efficient in the provision of goods and hence, it will gain competitiveness and it could also become a key player as a global provider. In other words, an exporter would benefit from having a more efficient: infrastructure, banking services, energy provision, and telecommunications, among others. As proof, table 3 shows the first five positions in the ranking of world exporters and importers of services (in 2009 and in 2018) and no developing country is found in this table.

Table 3: Ranking of world exporters and importers of services

	Ranking 2009	Ranking 2018
Exporters of services	1. United States	1. United States
	2. Great Britain	2. Great Britain
	3. Germany	3. Germany
	4. France	4. France
	5. Netherlands	5. China
Importers of services	1. United States	1. United States
	2. Germany	2. China
	3. Great Britain	3. Germany
	4. France	4. France
	5. Netherlands	5. Great Britain

Source: own elaboration based on Trade Map.

Regarding the relevant exporters of services, the table presents almost the same group of countries, which are ranked in the same position with the sole exception of China which ranks fifth, displacing the Netherlands. The same is true in the case of the most relevant importers of services, as China has emerged as a relevant global player in services. It ranked seventh in 2009 and it reached the second position in 2018. This change opens new opportunities for countries such as Uruguay that are competitive in some

services. In line with this, if considering the ranking of importers by category, in most of them China has emerged as a relevant player.

Table 4: Ranking of world importers by service category

	Ranking 2009	Ranking 2018
Travel	1. United States	1. China
	2. Germany	2. United States
	3. United Kingdom	3. Germany
Construction	1. Japan	1. China
	2. China	2. Japan
	3. Russian Federation	3. Saudi Arabia
manufacturing services on physical inputs owned by others	1. Hong Kong, China	1. Hong Kong, China
	2. Japan	2. Republic of Korea
	3. Republic of Korea	3. France
Transports	1. United States	1. United States
	2. Germany	2. China
	3. China	3. Germany
Other services	1. United States	1. United States
	2. Germany	2. China
	3. United Kingdom	3. Germany
Telecommunications, computer and information services	1. United States	1. United States
	2. Germany	2. Germany
	3. France	3. China
Maintenance and repair services	1. United States	1. Germany
	2. France	2. France
	3. Switzerland	3. United States
Charges for the use of intellectual property	1. Ireland	1. Ireland
	2. United States	2. Netherlands
	3. Japan	3. United States
Personal, cultural and recreational services	1. India	1. United Kingdom
	2. Venezuela	2. Luxembourg
	3. United Kingdom	3. France
Other business services	1. United States	1. United States
	2. Germany	2. Germany
	3. France	3. Ireland
Insurance and pension servicios	1. United States	1. United States
	2. China	2. United Arab Emirates
	3. Ireland	3. China
Financial services	1. Luxembourg	1. Luxembourg
	2. United States	2. United States
	3. United Kingdom	3. United Kingdom

Government goods and services	1. Saudi Arabia	1. Saudi Arabia
	2. United States	2. United States
	3. United Kingdom	3. United Kingdom

Source: own elaboration based on Trade Map.

Given the importance of the service sector, it is argued that restricting trade in services is equivalent to an implicit tariff on the exports of goods. Consequently, the liberalization of trade in services could expand the exports of the sectors that show comparative advantages. It also implies a fall in costs that would benefit other sectors, including the importing sector. In terms of the classical theory, more efficient service suppliers cause a rationalization of the production processes and hence there would be gains in internal and external competitiveness.

The service sector is protected through a normative approach; there are, in general, restrictive policies against external suppliers such as: a) quantitative restrictions (quotas, local content and prohibitions), b) instruments based on prices, c) standards, licenses and special regimes and d) discriminatory access to distribution networks.

According to Hodge cited by Steuart and Rashad (2005), it is important to distinguish between the liberalization of a sector and its deregulation because they have very different market implications. While the former aims at providing an equitable treatment of all participants (local suppliers and external suppliers), the latter is associated with a reduction of the participation of the State in the economy. In this vein, it is worth noting that FTAs on services seek to advance the liberalization of trade in services while recognizing the right of the parties to regulate and to introduce new regulations on the supply of services to meet national policy objectives.

The opportunities for Uruguay if it signs a trade agreement with China

Regarding the negotiation of services, Uruguay showed a more pro-active position during the Doha Round than the one maintained during the Uruguay Round. However, as it happened in the case of other developing countries, the lack of national regulations in most of the sub-sectors affected the definition of a position and it affected the country's negotiating capacity.

At the regional level, Uruguay has undertaken more ambitious commitments under the Mercosur umbrella through the Protocol of Montevideo on Trade in Services. For example, the Law 19629 approved Mercosur Common Market Council Decision No 21/09 that adopted Members lists of specific commitments resulting from the seventh round of negotiations of specific commitments on services. As a Mercosur Member, Uruguay has also undertaken specific commitments on services as part of the agreement between the Mercosur and Chile through the signing of the Fifty-Third Additional Protocol on Trade in Services. There are several ongoing negotiations between Mercosur and third parties, which include services. This is the case of the Mercosur– European Union Agreement that was signed in 2019 but it has not yet entered into force.

In line with the global trends, Uruguay has showed increasing interest in terms of market access and national treatment in tourism (hotels and restaurants), software and agricultural services. Uruguay also has an offensive position in relation to the coverage of categories and the market access conditions for each category. Any progress in these issues would generate positive impacts because trade flows were up, and Uruguay presents an adequate level of competitiveness in these service sectors. However, in some cases, Uruguay shows a defensive position due to existing regulatory restrictions (for example, fixed telephony and the distribution of energy).

Table 4 shows that China has emerged as a relevant importer of services in several categories and in some of them Uruguay has gained ground and registered high growth rates. This result is a clear proof of the potential in terms of trade in services between these two countries.

Besides, as table 5 shows, China has increased its imports of services and in most of the cases, growth rates are very high. At the same time, Uruguay's exports of services were also up and as mentioned in the case of China, in some cases, the growth rates are very high.

Table 5: China as importer and Uruguay as exporter of services by category

	China as importer, growth rate 2009 - 2018	Uruguay as exporter, growth rate 2009 - 2019
Personal, cultural and recreational services	32,0%	70,9%
Travel	22,8%	6,6%
Telecommunications, computer and information services	20,5%	10,2%
Government goods and services	20,4%	4,8%
Manufacturing services on physical inputs owned by others	17,0%	NA
Other services	15,2%	8,8%
Financial services	14,2%	5,2%
Charges for the use of intellectual property	13,9%	82,7%
Transports	9,8%	0,6%
Other business services	9,3%	20,9%
Construction	4,3%	NA
Insurance and pension services	0,5%	10,3%
Maintenance and repair services	NA	NA

Source: own elaboration based on Trade Map.

These trends evidence that there are opportunities for exporting more services to China and the signature of an FTA could strengthen this process because it may enhance the transparency and predictability of market access conditions and foster coherence on services regulations. With the aim of identifying these opportunities, the next section focuses on the Uruguayan strategy to negotiate an FTA on services with China.

A negotiation strategy on services for Uruguay

It goes without saying that the asymmetries between China and Uruguay's markets are colossal. But size on its own should not be a reason to deter Uruguay from negotiating trade concessions on services with China. Even more when China has showed interested on signing a trade agreement with Uruguay. The structure of FTA chapters on services usually offers enough flexibilities to accommodate both parties' offensive and defensive interests. The key challenge is to secure a mutually advantageous negotiation package.

This section offers some considerations to illustrate what could be realistically achieved on services. It first depicts China's approach to the negotiation of FTAs; it then suggests ways to advance Uruguay's offensive interests and concludes with some recommendations to protect Uruguay's defensive interests on trade in services.

China's concessions on trade in services

At the outset, it must be stated that China joined the WTO in November 2001. As a late comer, it had to pay its way into the WTO by undertaking a number of specific commitments higher than the average for a developing country. Indeed, China's schedule of specific commitments includes partial or complete commitments in ninety-three of the one hundred and fifty-five service sectors, while the average number for developing countries is forty-two (Adlung and Roy, 200). Inevitably, this has left China with less maneuvering room to offer improvements of its multilateral commitments when negotiating FTAs.

Since its accession to the WTO, China has signed fourteen FTAs including specific commitments on trade in services with twenty countries, plus the Closer Economic Partnership Agreements with Hong Kong and Macao and the Economic Cooperation Framework Agreement with Taiwan. This includes China's PTAs with ASEAN, Australia, Chile, Costa Rica, Georgia, Iceland, Korea, New Zealand, Peru, Pakistan, Singapore and Switzerland (and the text of the agreements with Mauritius and Maldives are not publicly available). Negotiations on trade in services in the Asia-Pacific Trade Agreement are still ongoing.

China's FTA strategy is characterized by the pre-eminence of political over economic considerations (Zeng, 2016 and Sampson, 2019). This is clearly reflected in the selection of its partners and the design of the FTAs. China's trading partners include a diverse and flexible mix with countries from different regions of the world, very different economic size, or degree of development. The agreements contain predominately shallow commitments, many carve-outs to address the varied needs and political sensitivities of its trading partners, and they are subject to relatively weak enforcement mechanisms (Antkiewicz and Whalley, 2005, Wang, 2011, and Zeng, 2010). Specific commitments on services include only modest improvements of the scope and depth of China's GATS commitments (Gari, 2020a).

So far, China has followed a gradual and piece-meal approach to the negotiation of PTAs, i.e. starting with narrow, incomplete initial agreements (covering goods only) that progressively expand its policy coverage and degree of liberalization over time (Gari, 2020a). Even its most advanced agreements signed with Australia, Korea, New Zealand, and Singapore are significantly less ambitious than those agreements recently concluded by other large trading players such the CPTPP, USMCA or EU-Japan FTA. Chinese FTAs simply match those policy areas already covered by WTO disciplines but fail to cover 'WTO-extra' policy areas or cover them only superficially.

There are some indications suggesting that the pace of China's trade diplomacy will soon move up a gear or two (Gari, 2020a). First, China's growth model is transitioning from one driven by inward investment and exports of manufactures to a stronger consumer-led growth one in which services are the major factor driving economic expansion (Lardy, 2015). Second, China's continuing rise of exports of services and outflows of foreign direct investment demands more ambitious disciplines to protect its growing offensive interests. Third, well aware of the relevance of the service sector for its economy, the Chinese

government is pushing for reforms that are further opening the sector to foreign competition. For instance, in January 2020, the new Foreign Investment Law of China (FIL) came into effect, reducing the number of sectors subject to restrictions (Lau et al. 2020). In fact, China has already taken a more aggressive stance on the negotiation of preferences for trade in services. In September 2018, the Shanghai Municipal People's Government adopted a 'negative list' approach to further opening up of cross-border trade in services (see Special Administrative Measures for Cross-Border Trade in Services in China (Shanghai) Pilot Free Trade Zone, which was a Negative List). Since then, the use of a negative list approach has been extended to negotiations for the upgrade of specific commitments on services with Australia (see for example the Declaration of Intent by the Government of Australia and the Government of the People's Republic of China Regarding Review of Elements of the China-Australia Free Trade Agreement, 24/03/17), Korea (which were introduced for the first time on the fourth round of the second phase of the Sino-Korea talks on 2/04/19), and New Zealand (New Zealand's Ministry of Foreign Affairs and Trade, 2019).

However, it must be clearly noted that despite this push for expanding preferences on trade in services, China will remain reluctant to forfeit policy discretion over some areas that are crucial to its socialist market economy model, i.e., state owned enterprises, subsidies, competition and monopolies and exclusive service suppliers and control of data flows (Gari, 2020a).

Uruguay's offensive interests

Against this background, it first corresponds to explore how can Uruguay advance its offensive interests on trade in services. Uruguay should bring to the negotiation table an ambitious request targeting those sectors and modes of supply relevant for the country's most competitive export sectors. The sectors that stand out as high export performers are tourism and non-traditional service sectors such as architecture and engineering services, fashion, textile and furniture design, computer and related services, services incidental to agriculture and various types of audio-visual services.³ However, it should be noted that tourism is mainly regional, specially from Argentina and Brazil.

A comprehensive diagnostic that compares what Uruguay needs with what China has committed so far to the most specific sectoral level possible, falls beyond the scope of this study. Nevertheless, some general observations can be made. In general terms, China's schedules of specific commitments annexed to its various FTAs, cover most of the sectors of export interest to Uruguay but only partially. Conditions, limitations and even unbound commitments for different modes of supply can be found in those schedules.

Architectural and Engineering Services

Take the case of architectural and engineering services. For mode 1, China's FTA schedules typical include a full market access commitment for scheme design. But for other type of architectural services, co-operation with Chinese professional organizations is required. For mode 3, Chinese FTAs' schedules typically stipulate that wholly foreign-owned enterprises are permitted. While relevant, this is less than a full market access commitment. China can still adopt other market access restrictions not covered by such commitment, such as limitations on the total value of service transactions of such enterprises. For mode 4, China's obligations remain unbound except as indicated in its horizontal commitments, which typically cover measures concerning the entry and temporary stay of restricted categories of persons such as business visitors, managers and executives and only for limited periods of time, not exceeding 180 days. This is clearly insufficient for trading in professional services, where the cross-border movement of natural persons is crucial for the supply of the service. So, should Uruguay ask for better market access

³ For more details, visit: <https://www.presidencia.gub.uy/comunicacion/comunicacionnoticias/uruguay-xxi-exportando-paso-a-paso-percira>

conditions for mode 4 supply of architectural services? Yes, it should definitely include that in its wish list. Judging by what can be found in China's existing FTAs' schedules, this is not an unreasonable request. Most of them include an improvement with respect to China's GATS schedule by extending market access commitments to an additional category of persons, namely, 'Contractual Service Suppliers', which may be granted work permits and stay permits for periods not exceeding four months (the China's schedule of commitments annexed to its FTA with Georgia is a good example of this). The preferences granted to Australian architects and engineers under this category go even further by extending their initial stay to one year. In addition, Australia, Korea, Singapore and Chile have managed to obtain an additional GATS plus commitment consisting on bettering market access conditions for the establishment of foreign service suppliers in the Shanghai Free Trade Zone for construction and related engineering services. Australian, Korean, Singaporean and Chilean construction enterprises established in the China (Shanghai) Pilot Free Trade Zone ("FTZ") may undertake joint Chinese-foreign constructed projects in Shanghai. Under such circumstances, these foreign construction enterprises will be exempted from the foreign investment ratio requirement in the projects.

Yet, even the fullest market access commitments would not secure effective market access because they do not address the trade costs stemming from the diversity of non-discriminatory measures such as a license requirement to practice. Architecture in China, like in most countries of the world, is a regulated profession. This means that foreign professionals must take a local examination or obtain a registration by way of mutual recognition agreement in order to be able to practice in China.⁴ Australia, for example, has managed to secure a preferential treatment for the recognition of their architects' qualifications by Chinese competent authorities (that could be found in the China's schedule of commitments annexed to its FTA with Australia). And the FTAs with Georgia, Australia, Singapore and New Zealand include a commitment of the parties to encourage professional bodies to strengthen cooperation and explore possibilities for mutual recognition of professional qualifications, with particular reference to engineering, accounting and auditing services. This is another request that should be included in Uruguay's list. Simply put, for the effective liberalization of trade in professional services such as architecture and engineering services, it is absolutely essential that, in addition to full market access commitments on all modes of supply, professional regulatory bodies agree on mechanisms to simplify the mutual recognition of professional's licenses to practice.

Computer and Related Services

Another example to consider refers to Computer and Related Services. China's GATS schedule includes full market access commitments on modes 1 and 2, but mode 3 is allowed only in the form of joint ventures with majority ownership permitted. Now, China has removed this requirement in all its FTAs but for the one with Georgia. So, Uruguay should definitely ask for this preference as well.

Also, most China's FTA schedules include a commitment on mode 3 to allow foreign-owned enterprises on software implementation services and data processing services. Again, while relevant in itself, this is less than a full market access commitment and Uruguay should request an extension of the market access commitment that also covers, *inter alia*, the obligation not to impose limitations on the total value of service transactions of such enterprises.

A significant requirement to enable trade in computer and related services, as in many other non-traditional services, is the ability to transfer data across borders. However, only the agreements with

⁴ Detailed Rules for the Implementation of Regulations on Registered Architects of People's Republic of China 中华人民共和国注册建筑师条例实施细则 (Promulgated in 2008), Article 3 Chinese version). Regulations on Administration of Foreign-invested Construction and Engineering Design Enterprises 外商投资建设工程设计企业管理规定 (promulgated in 2002) Chinese version)) (English version).

Australia, Korea and Chile include a chapter on e-commerce and none of them include disciplines on the cross-border transfer of information by electronic means. This is not surprising, considering that Chinese legislation requires that personal data and other relevant information be stored in the national territory.⁵

Clearly, the chances of China amending its legislative framework on data protection at the Uruguayan request are close to nil. However, there are alternative ways to facilitate the cross-border transfer of data flows that should be explored. At a minimum, the parties could agree to set a platform for regulatory cooperation on data protection. This could simply include a non-binding obligation to exchange information and explore areas of mutual equivalence. Eventually, this could lead to bespoke arrangements for the mutual recognition of privacy protection standards allowing the cross-border transfer of data in specific sectors and subject to specific conditions (for example, the EU-US Privacy Shield agreement).

It is well documented that when it comes to the liberalization of trade in services, reciprocal negotiations of specific commitments on market access and national treatment have a limited role to play. At best, they can contribute to consolidate applied regulatory policies. But to ensure conditions for the effective market integration of services it is also necessary to address the trade costs stemming from 'pure' regulatory heterogeneity of services regulations, i.e. differences in non-discriminatory regulations that are not in any way attributable to protectionist or anti-competitive goal (Gari, 2020b). Hence, in addition to the request of sector specific market access concessions, Uruguay should spend considerable efforts on the negotiation of an institutional framework for regulatory cooperation. Regulatory cooperation is the only mechanism available to address the trade costs of regulatory heterogeneity and it is only at bilateral level where realistic progress on this matter can be achieved.

The institutional framework for regulatory cooperation should cover both regulatory bodies responsible for specific service sectors such as financial services, media and telecommunications and professional services, and regulatory bodies responsible for policy areas that cut horizontally across all service sectors such as immigration authorities and data protection regulators.

Double Taxation

Another policy issue that inhibits trade in service in all sectors is double taxation. Different taxation criteria may cause companies or individuals to be taxed for the same concept in more than one country when they operate at an international level (Gari, 2012). For example, on indirect taxes such as the Value-Added Tax (VAT), double taxation occurs when the supplier is subject to the origin principle and the consumer is subject to the destination principle. On direct taxes, it is not unusual for a business or an individual who is a resident in one country and makes a taxable gain (earnings, profits) in another, to be obligated to pay tax on that gain locally and pay again in the country in which the gain was made. The tax authorities from the destination country may require resident payers to report, and possibly withhold tax on, payments to non-residents. Now, FTAs do not encroach upon the sovereign right of its members to develop their own tax policies and administrative rules to raise revenues in a fair and equitable way. So, the only remedy to avoid double taxation is to negotiate a separate agreement to this effect. Uruguay should include the negotiation of such type of agreement in the agenda, side by side to the FTA.

There are two main reasons for being reasonably hopeful on getting some preferences on services from China. The first one is, precisely, the small size of Uruguayan market. This reduces the cost of any preference given to levels that, in Chinese terms, are almost insignificant. The second reason is that China, following its policy of prioritizing political over economic considerations, has already granted preferences to relatively small countries willing to recognize China as a market economy or to support other Chinese

⁵ Cybersecurity Law of the PRC adopted 7 November 2016, in force 1 June 2017, Article 37). Guideline for Personal Information Protection within Information System for Public and Commercial Services adopted 1 February 2013, para. 5.4) Decision of the Standing Committee of the National People's Congress on Strengthening Information Protection on Networks, adopted 28 December 2012).

policy interests (Pakistan, Costa Rica and the Maldives are good examples of this). Indeed, one thing that stands out when reviewing China's preferential treatment on services is that the extent of the preferences varies according to the trading partner (Gari, 2020a). Some countries have managed to extract much more preferences from China than others. And size is not necessarily the defining factor because Chile, a country of a relatively similar size to Uruguay, is one of the countries that along with Australia, Korea and Switzerland, has managed to secure the largest number of preferences.

Uruguay's Defensive Interests

Overview

In terms of requests, Uruguay is very likely to expect demands from China mainly on infrastructure related services such as construction and engineering and transport services. This is in line with the international legal framework that China needs to roll over its Belt and Road initiative.⁶ Another distinctive preference present in most Chinese FTAs relates to Traditional Chinese Medicine. For instance, the FTAs with Georgia, Australia, Switzerland and New Zealand include commitments by the parties to exchange information and discuss policies, regulations and actions related to TCM services; encourage discussion on recognition system of TCM practitioners; encourage cooperation between regulators, relevant professional bodies and registration authorities for TCM practitioners and encourage future collaboration between regulators, registration authorities and relevant professional bodies to facilitate trade in TCM and complementary medicines (Gari, 2020b). In addition, Uruguay should also replicate in its schedule of commitments all the limitations and conditions that have already been recorded in its previous schedules of commitments added to the Protocol of Montevideo, and in those added to the agreements with Chile and the EU.

The good news for Uruguay is that, save for minor exceptions it already has a liberal applied regime for services that cuts across most service sectors and modes of supply. And Uruguay has already conferred relatively ambitious preferences to its Mercosur partners and to Chile, which have significant value compared with its GATS commitments. Moreover, Uruguay moved from negotiating concessions on a positive list basis with its Mercs partners, to a negative list basis with Chile.

All in all, it should be relatively politically costless to extend those preference to China if a reasonable package of preferences in line with the characteristics described above is offered in return. However, one should not overlook the resistance that the Uruguayan government faced from a spectrum of the political system when trying to negotiate an FTA with the USA. There are concerns about the impact that FTAs on services can have on the policy space of its members to regulate the supply of services for legitimate public policy objectives (Porzecanski, 2010 and Pose, 2019). However, it is submitted that subject to careful negotiations, such policy space can be preserved. Services chapters offer a range of flexibilities for this purpose, even if concessions are negotiated on a negative list basis, such as general exceptions, prudential carve out, and annexes with list of reservations for existing and future measures.

Last, but not least, services are just one piece of a larger package that will have to be addressed in case China and Uruguay agree to negotiate a FTA. So, at risk of stating the obvious, the value of the final negotiation outcome on services should not be assessed in isolation but also considering China's commitments on trade in goods.

The Mercosur risk factor

In Uruguay, the government has been promoting the so-called flexibilization of the Mercosur. It aims at being able of negotiating bilateral free trade agreements. This possibility is not allowed by the Mercosur

⁶ <http://lv2.mofcom.gov.cn/article/onebeltoneroad/>

provisions. Uruguay argued that the Mercosur did not create a complete custom union and that it is functioning as a free trade zone with some developments. The Protocol of Montevideo has implied some progress regarding the regulation of services. However, the commitments have never entered into force. In addition, Uruguay has already negotiated services bilaterally with Chile and Mexico (that was strongly criticized by Mercosur members).

Some months ago, the government announced the launch of the feasibility study of a FTA between China and Uruguay. This study would include the impacts not only on trade in goods and in services but also the effects on other issues that are usually included in this type of agreement (such as investment or cooperation among others). Moreover, regarding the MERCOSUR members, the effects of retaliation from other MERCOSUR members (specially, Argentina and Paraguay) should be scrutinized.

Conclusions

During the last decade, China has experienced deep changes in several spheres and international trade is one of them. This is true not only in the case of trade in goods, but also in the case of trade in services and given the high growth rates, China has become a key global player both at the supply and demand side.

The first key finding that emerges from this analysis is that China is a relevant importer of services and at the same time, Uruguay has grown as a potential supplier in several categories in which the country is competitive, and the public sector has supported. Moreover, if considering trade in goods, China has become the most relevant trade partner for Uruguay and at the same time, in some products such as beef, Uruguay is a relevant supplier for China. This process should contribute to strengthening service trade flows, specially, in those categories in which China is a voracious consumer and, at the same time, Uruguay is able to export and nowadays, it is exporting not only to the region, but also to United States and the European Union, such as IT and communication services.

In normative terms, it is well known that China and Uruguay are members of the GATS and both have signed trade agreements that include concessions in services. At the same time, we provide evidence on the existence of significant opportunities that may improve market access conditions for some Uruguayan service sectors. However, it has been noted that there are some other sectors and modes of supply more sensitive to China's socialist market economy system which will not be opened for negotiations, such as the free movement of information, disciplines on state-owned enterprises, subsidies, competition and monopolies and exclusive service suppliers.

To sum up, within the limitations of the available information on trade in services and based on a review of China's trade concessions in other FTAs, it is not unreasonable to suggest that a trade agreement between China and Uruguay can contribute to deepen trade in services between the parties in several sectors and both countries will benefit from these exchanges. In the case of Uruguay, an additional challenge of this negotiation is to update some norms that would facilitate access to global markets and, to Asian markets.

References

- Adlung, R. and Roy, M. (2005). Turning Hills into Mountains? Current Commitments under the GATS and Prospects for Change, WTO Staff Working Paper ERSD-2005-01.
- Antkiewicz, A. and Whalley, J. (2005). China's new regional trade agreements. *The World Economy*, vol. 28(10), pp. 1539-1558.
- Bartasaghi, I. and Melgar, N. (2020). Posibles impactos de un TLC entre Uruguay y China. In D. Peters. (Ed.), *América Latina y el Caribe y China. Economía, comercio e inversión 2019* (pp. 105-126). Ciudad de México, México: Red ALC-China.
- Baiker, L., Bertola, E., and Jelitto, M. (2021). Services Domestic Regulation – Locking in Good Regulatory Practices?. WTO Staff Working Paper, ERSD-2021-14, September 2021. https://www.wto.org/english/res_e/reser_e/ersd202114_e.htm
- Benz, S., and Jaax, A. (2020). The costs of regulatory barriers to trade in services: New estimates of ad valorem tariff equivalents. OECD Trade Policy Papers, No. 238, OECD Publishing, Paris. <https://doi.org/10.1787/bae97f98-en>.
- Cattaneo, O., Gereffi, G., Miroudot, S., and Taglioni, D. (2013). Joining, Upgrading and Being Competitive in Global Value Chains: A Strategic Framework. World Bank Policy Research Working Paper 6406, World Bank, Washington, DC.
- Cattaneo, O., Engman, M., Saez, S., and Stern, R. M. (2010). *Assesing the potential of services trade in developing countries: An overview*. In Cattaneo, O., Engman, M., Saez, S., and Stern, R. M., International trade in services: New trends and opportunities for developing countries (pp. 1-29). Washington, D.C: The World Bank.
- Gari, G. (2012). International Initiatives for Reconciling the Sovereign Right to Tax with Free Trade in Services. *Law and Business Review of the Americas*, vol. 18(1), pp. 55-67.
- Gari, G. (2020a). China's Preferential Treatment on Trade in Services: is the Sleeping Dragon about to Wake Up?, *Journal of World Trade*, vol. 54 (6).
- Gari, G. (2020b). Recent Preferential Trade Agreements' disciplines for tackling regulatory divergence in services: how far beyond GATS? *World Trade Review*, vol. 19(1), pp. 01-29. <https://doi.org/10.1017/S1474745618000368>.
- Kox, H., and Lejour, A. (2005). Regulatory Heterogeneity as Obstacle for International Services Trade. CPB Discussion Paper No. 49, CPB Netherlands Bureau for Economic Policy Analysis, The Hague. www.cpb.nl/en/publication/regulatory-heterogeneity-obstacle-international-services-trade
- Lardy, N. (2015). The Fundamentals of Growth in China. In Peterson Institute for International Economics (Ed.), *China's Economic Transformation: Lessons, Impact and the Path Forward* (pp. 04-06). Washington DC, United States: Peterson Institute for International Economics.
- Lau, N., Ip, K., Guo, G. and Zhao, A. (2020). China set to implement the new Foreign Investment Law. *China investments e-bulletin, Herbert Smith Freehills*. <https://sites-herbertsmithfreehills.vuturvex.com/95/21568/compose-email/china-set-to-implement-the-new-foreign-investment-law.asp?sid=blankform>.
- Lamprecht, P. and Miroudot, S. (2018). The value of market access and national treatment commitments in services trade agreements. OECD Trade Policy Papers, No. 213, OECD Publishing, Paris. <https://doi.org/10.1787/d8bfc8d8-en>.
- Low, P. and Pasadilla, G. (2015). Services in Global Value Chains: Manufacturing-Related Services. APEC Policy Support Unit, Singapore: APEC Secretariat.

- New Zealand's Ministry of Foreign Affairs and Trade (2019). New Zealand-China Free Trade Agreement Upgrade. Available at: <https://www.mfat.govt.nz/assets/Trade-agreements/China-NZ-FTA-Upgrade/NZ-China-FTA-Upgrade-Outcomes-Documents-Final.pdf>.
- Porzecanski, R. (2010). ¿Por qué Uruguay no firmó un TLC con Estados Unidos?. *Letras Internacionales* 95 (4). Available at: <https://revistas.ort.edu.uy/letras-internacionales/article/view/1518>.
- Pose, N. (2019). Economic Ideas and North-South Preferential Trade Agreements in the Americas. *Latin American Journal of Trade Policy* 4.
- Roy, M. (2019). Elevating Services: Services Trade Policy, WTO Commitments, and Their Role in Economic Development and Trade Integration. WTO Working Paper, https://www.wto.org/english/res_e/reser_e/ersd201901_e.pdf.
- Roy, M. (2017). The contribution of services trade policies to connectivity in the context of aid for trade. WTO Staff Working Papers ERSD-2017-12, WTO, Economic Research and Statistics Division.
- Sampson, M. (2019). The evolution of China's regional trade agreements: power dynamics and the future of the Asia-Pacific. *The Pacific Review*, pp. 01-31. <https://doi.org/10.1080/09512748.2019.1660397>
- Sauvé, P. (2009). Trade and Investment in Services: An ADB-ITD Training Module for the Greater Mekong Subregion. Asian Development Bank. [.handle.net/11540/2414](https://handle.net/11540/2414).
- Steuart, I. and Cassim, R. (2005). Opportunities and risk in liberalizing trade in services: country study of South Africa. International Centre for Trade and Sustainable Development (ICTSD).
- Wang, G. (2011). China's FTAs: Legal Characteristics and Implications. *The American Journal of International Law*, vol. 105(3), pp. 493-516. <https://doi.org/10.5305/amerjintelaw.105.3.0493>
- Zeng, K. (2010). Multilateral versus bilateral and regional trade liberalization: Explaining China's pursuit of free trade agreements (FTAs). *Journal of Contemporary China*, vol 19(66), pp. 635-652. <https://doi.org/10.1080/10670564.2010.485400>
- Zeng, K. (2016). China's Free Trade Agreement Diplomacy. *The Chinese Journal of International Politics*, vol. 9(3), pp. 277-305. <https://doi.org/10.1093/cjip/pow009>.
- Zhou, W., Gao, H. and Bai, X. (2018). China's SOE Reform: Using WTO Rules to Build a Market Economy. Society of International Economic Law (SIEL), Sixth Biennial Global Conference, SSRN Electronic Journal. [10.2139/ssrn.3209613](https://ssrn.com/abstract=3209613).



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