Vulnerability and the Speed of the Global Economy: Searching a new vocabulary for international economic law

By:

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International trade is not free of costs; the dominant view is that the benefits *outweigh* these costs. Following Ricardo and other free trade enthusiasts, the premise inbuilt in international economic law is that trade is a win-win social activity. Everybody would be better off in the long-run. Meanwhile, the immediate losers could perhaps expect that international economic rules would take their interests seriously, as in making their vulnerability visible or ensuring they receive compensation, particularly when the long-run takes too long to arrive.

Yet, this is not the case. The costs—the vulnerability that international trade creates—are not part of the vocabulary of international economic law.

Economic liberalization creates pain, concedes Pascal Lamy (former director-general of the WTO), but trade policy and practice suggest that states should deal with these social costs.[1] International economic law does not aspire to provide a different or less costly version of itself, let alone resolve the problems it creates, because the benefits of more trade and technology would be gone without the costs. It turns out that the costs are congenial to the benefits, and the losers have not been made better off in the long-run.

The lack of a trade vocabulary to talk about these costs, for the vulnerability trade creates, is not inevitable. It is not an intrinsic feature of trade rules or a universal quality of economic relations. Law creates rights and obligations, and economic relations can serve to make as well as to remedy situations of vulnerability. It is probably true that some coercion is necessary for the functioning of the economy. Still, the law and public institutions can ensure that those who are in positions of command—whether in the private or the public realm—do not abuse their prerogatives.[2] Put it simply, there is no reason for not having a specific vocabulary of vulnerability in international economic law.

Not having such a vocabulary implies that articulating a fair vision of international trade from within international economic law is quite tricky. The costs created by international trade are there, international trade enthusiasts recognize them, but international economic law does not provide tools to visualize and address those costs. To deal with these questions, trade lawyers rely on other vocabularies, such as environmental or human rights law, which remain external to the field. The best trade lawyers can do is to expect somebody else deals with social costs, governments, human rights lawyers, or development institutions.

Changing this situation is not simple. Recognizing these costs within international economic law is not straightforward - or it is not as simple as some people seem to imagine. Showing statistics about poverty in a trade event or recommending states to implement a basic income policy does not do the trick. These means are not enough to make international economic law interested in the costs of economic liberalization or live up to the expectations of those whom the global economy has made vulnerable. Instead, international economic lawyers would need to find their own vocabulary of vulnerability, and

become concerned with how trade rules create costs for people in the Global South and the Global North.

Making the costs both visible and significant for international economic law is a necessary step to think about a fair international economic order for everybody, particularly after decades of colonialism and extractivism in the Global South. International economic law needs to become attuned to the present challenges, to its contingency, and contribute to addressing inequality and climate change. International economic lawyers, then, have to investigate the specific ways in which trade and investment rules make life more difficult and less enjoyable for millions of people.

Recognizing these costs, it is true, has become more difficult in the last decades as economic relations have rapidly changed due to technology and corporate re-organization. Global value chains (GVCs) are the best example. For those who defend international trade, GVCs represent the success story of their vision and a testimony of the importance of the WTO and free trade agreements. Production and consumption are now a global reality, allowing people in the same region to participate both in the production and the consumption of goods and services. In this age of 'convergence', people can climb the ladder, upgrade.[3] However, the other side of this story reveals the costs of these GVCS, including low salaries, bad working conditions and 'social downgrade'.[4] Trade institutions and enthusiasts increasingly acknowledge these costs, but as explained above, they expect states or development institutions to address them through social policy, capacity building, and training. They are concerned with the benefits or, to be more precise, what they perceive to be the benefits.

A version of international economic law that took the costs of GVCs seriously would need to do more than acknowledging the costs of these production platforms or telling somebody else to deal with these costs. The law is involved in GVCs in different ways, including intellectual property, custom rules (tariffs, norms of origin, others) and others. I have argued elsewhere that international economic law is also implicated in the operation of GVCs by allowing the diffusion of the economic relations that make these chains into a vast number of fast and individual transactions.[5] In this way, lead firms can organize

production through one-off or short-term quick deals, which gives them significant bargaining power over other actors. Suppliers instead rarely have time to calculate or make plans for the future.

Most suppliers are made vulnerable as a result. Maquiladoras in the garment sector never know when the next contract will come in, what the lead time will be, and fear potential cancellations—lead firms can often cancel orders without giving appropriate notice or paying a penalty. As the ILO has shown, this situation translates into low salaries and bad working conditions.[6] Something similar happens with skilled workers, such as translators, who provide services for GVCs. They also relate to the lead firms through one-off or short-term quick transactions and suffer from the competition of machine translation.[7]

This acceleration of production—of goods and services—leads to what Rosa calls a 'frenetic standstill'.[8] The lives of millions are drastically changed as a result of the acceleration of the economy. The speed of the transactions is related to the disadvantageous terms of the contracts as well as with the inability of these suppliers to plan and organize themselves to demand better working conditions. Speed makes competition almost unbearable. People live immersed in a 'frenetic standstill', which affects their professional, community and private lives.

If anything, the COVID-19 has shown us the other side of this economic acceleration: deceleration. Like the costs of speed, the risk of a global economic shutdown is also allocated to the most vulnerable people. They have lost their source of income, while lead firms wait and see how the situation develops. In the meantime, the WTO is working towards keeping trade open amid COVID-19.[9] Similarly, the ILO has launched an initiative asking lead firms to pay for finished goods and communicate suppliers the status of business operations and future planning.[10]In a certain way, this initiative benefits lead firms too, as they will need somebody to process their orders when things go back to 'normal'.

The vocabulary of speed, acceleration (and deceleration) is just one example of the possible ways in which we can talk about the costs of international trade. Speed might be a good indicator for vulnerability, which trade rules can

address by adding friction into exchanges and favouring long-term relations as opposed to one-off transactions. This vocabulary would provide us with a new lever to pull to ensure a better distribution of benefits, costs and risks. Crucially, speed and acceleration may relate to other areas too, from the duration of public consultations to the need to plan the application of a new technology.

Of course, there are other vocabularies to talk about vulnerability and trade from *within* international economic law. What is important, I think, is to remain attentive to which vocabularies are best to deal with the costs of international trade. The challenge is not to find the most eloquent ideas, but rather the most efficient narrative for the specific purpose. The best vocabulary would be as ambitious as possible, gather enough support, and facilitate coordination among different actors, including the most powerful. Speed may be a good candidate for this task, among others.

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[1] Pascal Lamy, 'Looking Ahead: The New World of Trade - Jan Tumlir Lecture', (2015) ECIPE, Brussels, 9 March, available at https://ecipe.org/wp-content/uploads/2015/02/PLamy-Speech-09.03.15.pdf.

[2] Robert Hale 'Coercion and Distribution in a Supposedly Non-Coercive State,' (1923) 38 Political Science Quarterly 470, 474-6.

[3] Richard Baldwin, *The Great Convergence: Information Technology And The New Globalization* (2016).

[4] Donatella Alessandrini, 'Value-capture, Development and Social Reproduction in International Trade Law' VerfBlog, 2020/3/04, available at https://doi.org/10.17176/20200304-094544-0.

[5] Nicolás M. Perrone, 'Speed, law and the global economy: How economic acceleration contributes to inequality and precarity' (2020) Leiden Journal of International Law 1-20.

[6] ILO, 'Purchasing practices and working conditions in global supply chains: Global Survey results', (2017) INWORK Issue Brief No.10, available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---

travail/documents/publication/wcms_556336.pdf.

[7] Kristiina Abdallah, 'Translators Agency in Production Networks' in T. Kinnunen and K. Koskinen (eds), *Translators' Agency* (2010) 11.

[8] Hartmut Rosa, *Social acceleration: A new theory of modernity* (2013) 283.

[9] See https://www.wto.org/english/tratop_e/covid19_e/covid19_e.htm.

[10] See ILO, COVID-19: Action in the Global Garment Industry, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/statement/wcms_742371.pdf.

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