Symposium Introduction - Global Value Chains, Trade and Development

By:

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This online symposium is the outcome of a workshop on ‘GVCs, Trade and Development’ hosted by the Kent Law School and IEL collective in July 2020 and supported by the British Academy (Grant no. MD19\190020). The workshop engaged with the policy research literature produced by the World Trade Organisation and World Bank since 2013, in particular their Global Value Chain Development (GVCD) reports of 2017 and 2019. Both reports encouragestates to adopt deeper trade and investment commitments to sustain value chain trade if they wish to either ‘develop’ or continue being competitive in the global economy. Developing countries in particular are encouraged to further liberalise services and capital and strengthen investors’ rights to enable their firms to insert themselves into GVCs. The argument is that linking up with lead-firms can foster technology transfer and innovation, which in turn enables firms

to technologically upgrade and get a larger share of the value-added produced along these chains. This process is said to contribute to the development of their economies by increasing employment, including women's participation in the workforce, wages and income.

Workshop participants scrutinised the evidence on which this argument (and concomitant policy prescriptions) is based and found it to be tenuous at best. Specifically, we found that the link between insertion, upgrade and value-added is weaker than what these reports assume; and that technological upgrade, where it happens, is not translating into better working and living conditions. Case studies show it is even leading to their worsening, with numerous GVCs relying on informal workers (many of whom are women and migrants); and this is happening across the global North as well as the global South. GVCD reports claim that the adoption of 'deeper commitments' is a necessary step for countries wishing to develop and get the resources needed to enhance social and environmental protection. However, workshop participants came to a different conclusion with regard to the international regulation of GVCs arguing that these rules are likely to further entrench the conditions for social and environmental inequalities. Thinking about these inequalities and their relationship to international economic law is crucial. The argument of the 2020 World Bank report is that, whilst there may be links between GVCs and these inequalities, the adoption of 'deeper commitments' will provide states with the resources needed to ensure such protection. This argument has been re-iterated during the outbreak of the COVID-19 crisis as Director-General Azevedo has called for countries to keep markets 'open and predictable' as well as to foster 'a more favourable business environment'. What this position disregards, however, is the role that the architecture of international trade and investment law plays in generating social, economic and environmental inequalities on the one hand, and 'extreme' wealth concentration in lead-firms on the other, a phenomena the world Bank report has also denounced.

This symposium opens up a space where multilateral trade law can be re-imagined in ways that are more supportive of the well-being of actors involved in value chain trade. Our contributors centre their analysis of IEL and GVCs around concepts of precarity, equality and social justice. This is especially important at a time when responses to labour, social and environmental inequalities and wealth concentration oscillate between the defense of the

global economic order that has contributed to them and the withdrawal from the multilateral trade system, and multilateralism altogether, with the pursuit of competitive interests along nationalistic lines. If, as Azevedo has put it in the context of the international response to the COVID-19 crisis, we want to 'lay the foundations for a strong, sustained and socially inclusive recovery [where t]rade [is] an important ingredient … along with fiscal and monetary policy' this rethinking is urgently needed.

Theme 1: GVCs as the Next Development Frontier?

Donatella Alessandrini's contribution critically evaluates the assumptions underpinning the concept of global value chain development (GVCD) and illustrates the 'tenuous' linkages between trade and development articulated in the WTO and World Bank Reports on GVCs. The concept of GVCD is premised on two claims: first, that social upgrade will be an almost inevitable consequence of GVCD if firms integrate into GVCs and technologically upgrade and, secondly, that the adoption of WTO-plus and extra rules by developing countries will enable their firms to integrate faster into GVCs. Alessandrini contests these assumptions showing that GVCD can result in 'social downgrade', precarious working conditions, and an overall decline in standards of living in developing countries. Furthermore, she shows that the requirement to adopt WTO-plus and WTO-extra rules is '*likely to exacerbate socio-economic inequalities and wealth concentration by providing lead-firms with stronger legal entitlements and no corresponding legally enforceable obligations*.'

Jeremmy Okonjo's piece problematises the position of developing countries in global data value chains (GDVCs) and proposes that a new imaginary is needed at the WTO to enable developing countries to benefit from value-capture. Okonjo shows that the GDVC has been structured in a way that replicates the classical international division of labour and has reinforced pre-existing structural hierarchies; developing countries are typically located at the lower-value added part of the chain providing 'raw' materials for the rest of the chain. He shows how the IEL architecture has constituted GDVCs by conceiving of technology as 'factors of production', as 'trade infrastructure' and as 'tradable goods and services'. Okonjo argues that a reconceptualization of the foundations of IEL disciplines is needed if equitable GDVCs are to emerge.

Fiona Macmillan demonstrates the uneven development effects arising from technology transfer in GVCs and uses the example of transfer of proprietary technology to illustrate how patterns of structural inequality can be reproduced through chain transfers. She problematises the 2019 Report's construction of chains as being comprised of interconnected links of equal value operating in a non-hierarchical manner. Instead, Macmillan shows how technology transfer through GVCs "*creates hierarchical relations that mirror the hierarchical relations between the global North and South that have been created everywhere in the legal, political and economic landscape of the post-colonial world*." She argues that the failure to recognise the interconnections between intellectual property rights, property and ownership, and technology transfer in chains results in the silencing of an important development phenomenon: that value accruing because of the transfer of proprietary technology goes back up the chain to the owner of the intellectual property.

Theme 2: GVCs as Enablers of Inequalities and Dependencies

Celine Tan problematises the assumption that GVCs are the 'ideal platforms' for pursuing the international development agenda and questions the extent to which GVCs act as 'enablers' for development. Tan illustrates how the complexity of transnational public and legal arrangements constitutes power within GVCs to sustain modalities for transnational reproduction. She powerfully argues that "*GVCs are incredibly porous to interests of the powerful corporate and state actors controlling these production and supply chains and can therefore serve as transmission nodes of global inequality*." The vulnerabilities and fragilities of GVC governance has, according to Tan, been exacerbated by Covid-19 but so too has their function as nodes of global inequality and precarity been exposed. Alessandra Mezzadri presents an account of the gendered construction of labour in GVCs and highlights the uneven development effects of GVC employment which result in '*a tendency towards skills-polarisation and low-skill bias*'. Mezzadri shows how women, as workers in GVCs, become a source of comparative and competitive advantage because of their disadvantage. She illustrates how the capitalist modes of production and the temporal nature of GVC employment sustains and reproduces precarity, informality and inequalities for many women workers in developing countries. Mezzadri attributes their low-skills and low-wages to "*their structural disadvantage and the gendered socially constructed nature of their*

representation as lower-skills workers" and calls for resistance to this neoliberal system of trade and labour. Instead, the focus should be on creating a system that pays *living wages* to enable women and their families to enjoy *improved livelihoods.*

Susan Newman focuses on commodity dependency in Africa to counter the optimism of international institutions to the GVCD approach. Newman argues that GVCD is not the 'panacea' to redress global inequalities and dependencies as promised by the WTO and World Bank. She highlights the absence of contemporary dynamics of commodity dependency from the joint WTO and World Bank Report on GVCs and argues that the failure to consider commodity price dynamics and the political economy of industrialisation in sub-Saharan Africa obscures development issues that are critical to the growth of developing countries. Newman argues that the multilateral development agencies and the WTO must adopt a more nuanced and critical understanding of how commodity prices have influenced the political economy of industrial policy in sub-Saharan Africa if development in the region is to be realised through their proposed economic programmes.

Theme 3: Power, Accountability and the Constitutive Role of Law in GVCs

Kinda Mohamadieh's piece focuses on how embedding accountability within GVCs could form part of a post-Covid 19 transformative agenda. Mohamadieh explores how the capitalist mode of production in GVCs exacerbates existing inequalities and create new vulnerabilities in communities across the globe. To push back against this private ordering, she argues for more robust and legally enforceable commitments for human rights due diligence (HRDD) beyond that currently imagined in the UN Guiding Principles on Business and Human Rights. Mohamadieh argues that for HRDD to be effective it needs to go beyond an expectation and become a legally enforceable obligation. She uses the recent decision of UK Supreme Court decision in *Vedanta* as an example of how the courts can interpret parent company liability in tortious actions by adopting 'duty of care' approaches. This type of broad approach could be followed by other domestic legal regimes but it must be complemented by a more effective international legal system, which currently does not go far enough to protect vulnerable subjects in international law, including those working in GVCs.

Tomaso Ferrando & Nicolás M. Perrone explore the constitutive role of law and power in perpetuating and sustaining transnational capitalist structures through GVCs. They illustrate how Covid-19 has exacerbated the inherent fragilities of GVCs, using examples like the horticultural industry in Kenya, and argue for legal reforms to restructure the economy away from contemporary commodity capitalism. Drawing correlations with international investment law, Ferrando and Perrone propose that basic standards governing GVC transactions could be designed to '*protect workers' legitimate expectations, ensuring that lead firms behave in a reasonable and proportionate manner*'; much like the fair and equitable treatment principle. Furthermore, and like Kinda Mohamadieh's piece, they argue that strengthening human rights due diligence could play an important role in holding lead firms, and those within the chain, accountable for human rights abuses.

James Harrison's piece presents an overview of the key findings from his recently published co-authored book, *Free Trade Agreements and Global Labour Governance-The European Union's Trade-Labour Linkage in a Value Chain World*. This piece reinforces the significance of analysing the effects of FTAs on labour standards through a value chain lens by demonstrating the way(s) in which trade liberalisation through GVCs has affected labour in three case studies: the sugar sector in Guyana, the automobile sector in Korea, and the textile sector in Moldova. Harrison argues that more meaningful engagement with GVC governance is vital if labour provisions are to be fundamentally reconceived in a way that benefits and protects workers in the future.

This symposium finishes with the poignant contribution by Vicente Paolo B. Yu III, who proposes that refocusing legal, regulatory and policy-making systems around norms and values like equality, justice, freedom, sustainability and feasibility can effect socially beneficial policy change(s). With a focus on climate change, Yu proposes a call for action to explore new narratives that reflect a '*shared interpretation of how the world works*' and which enable the dominant assumptions on which legal and policy frameworks rest to be challenged. He argues that by reorienting the international architecture towards an integrated approach – one that promotes participation between government actors and non-state actors – economic action and choices can be channeled more effectively towards socially and ecologically desirable public

goods.

Contributors

Donatella Alessandrini: Global Value Chains (GVCs), Trade and Inequalities

Jeremmy Okonjo: Legal Constitution of Global Value Chains in the Digital Economy

Fiona Macmillan: What happens as technology travels on the global value chain?

Celine Tan: The Law of Global Value Chains as Transmission Nodes for Global Inequality

Alessandra Mezzadri: The Time and Gender of GVCs: 3 Critical Points on the GVC & Development Report 2019

Susan Newman: Commodity Dependency, GVC development and Industrial Policy in Sub-Saharan Africa

Kinda Mohamadieh: Accountability within GVCs as part of post COVID-19 transformative agenda

Tomaso Ferrando & Nicolás M. Perrone: Beyond GVCs as clockworks: The constitutive role of law, power and the way(s) ahead

James Harrison: Free Trade Agreements and Global Labour Governance – The European Union's Trade-Labour Linkage in a Value Chain World

Vicente Paolo B. Yu III: Development, Climate and Economic Policy: The Need for Narrative Shift

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