GLOBAL VALUE CHAINS, TRADE AND INEQUALITIES

Kent Law School

Inequitable global value chains

Lead-firms maintain control of global value chains (GVCs) through many mechanisms, including contractual relations with supplier firms, and rights over intangibles. Studies have shown that power over these intangibles is concentrated in lead GVC segments, benefiting particular lead-firms and states.

The current WTO and WB positions on integration in GVCs

The World Trade Organization (WTO) and the World Bank (WB) have promoted the development-related benefits of firms' participation in GVCs. The claim is that by inserting themselves into GVCs and technologically upgrading, firms can reap greater economic rewards, thus also benefiting workers and their states through employment, income and taxation. The evidence in support of this argument is inconclusive, with many studies pointing to worsening working and living conditions. States however, especially developing countries, have been encouraged to undertake deeper trade commitments to speed up the integration of their firms in GVCs.

These 'WTO-plus' and 'WTO-extra' commitments include:

- strengthening the protection of investors' rights, particularly Intellectual Property Rights (IPRs) and contractual rights
- the further liberalisation of investment and services
- the free(r) movement of capital

The WB has acknowledged that:

> **"The concentration of trade in a few importing–exporting firms is extreme."** [1]

This policy brief argues that the adoption of these rules is likely to exacerbate socio-economic inequalities and wealth concentration as they provide investors and asset holders with internationally legally enforceable rights without corresponding obligations, as illustrated below. It also poses some questions for policy-makers to consider when negotiating these provisions.

Wealth concentration and international trade law

International trade rules constitute GVCs by organising and structuring the production, exchange and distribution of value, within and between firms, and countries, while restricting domestic policy space to address inequitable value capture.

1 Services liberalisation

WTO/WB reports argue that service liberalisation is necessary for integration into GVCs, as services are embedded into almost all stages of production. Developing countries are encouraged to adopt 'WTO-plus' liberalisation commitments, including the negative list approach (committing to liberalising all service sectors unless listed as exceptions), and committing to Market Access and National Treatment under the General Agreement on Trade in Services.

Market Access and National Treatment obligations constitute inequitable GVCs by limiting states' ability to adopt policies that enable local firms to increase value capture. This includes preferential treatment of domestic firms and regulation of foreign firms.

? What are the consequences of adopting these rules for the states' ability to provide these services and/or to guarantee their quality, geographical reach and affordability?

1. World Development Report 2020: Trading for Development in the Age of Global Value Chains. (2020) Washington, DC: World Bank, p.30, Available at www.worldbank.org/en/publication/wdr2020

Investments liberalisation

WTO/WB reports argue that adopting more stringent protections of investor rights promotes GVC integration as they incentivise investors to contract out production to firms in host states.

These 'WTO-plus' and 'WTO-extra' investment protections would restrict states' policy space by prohibiting:

- local content and technology transfer requirements
- limits on repatriation of profits
- limits on foreign ownership share
- limits on the type of legal entity

Investors however:

- are vested with treaty rights against states, without corresponding duties towards those states and their populations
- have protection guarantees
- have access to national courts and/or private arbitration

What effects do these investment rules have on the governments' ability to regulate economic activity so as to meet their socio-economic goals such as labour and environmental protection, and/or enact positive action measures for minority groups?

Intellectual property rights under TRIPS

WTO/WB reports argue that since intangibles are one of the most valuable assets of lead-firms, states must increase protection of IP standards, if they want to give IP holders/investors the confidence to contract out production to their firms. In addition to employment, an added benefit is thought to be the technology transfer that results from local firms accessing the advanced technology of lead-firms, thus stimulating innovation.

However, **the available evidence casts doubts on whether technology transfer, innovation and greater value capture by smaller firms and countries of the global South have taken place since TRIPS came into force.** Reaping these benefits can be expected to be even more difficult if stronger IP protection is considered alongside 'WTO-extra' investment provisions that would prohibit performance requirements such as technology transfer.

From a global public health and food perspective, this ratcheting up of rights becomes more problematic. The immediate concern is access to medicine as patents increase the price of pharmaceuticals. There are also concerns about the kind of health research being pursued, when it is not profitable.

What are the effects of protecting IPRs not only on technology transfer, but also on access to health and food?

Policy recommendations

To embed these questions in the architecture of international trade regulation, bilateral, regional and multilateral trade agreements should include:

- equality / environmental / labour impact assessments of all 'commercial' measures
- revision clauses to amend provisions found to negatively impact the states' ability to provide social reproduction-related goods and services
- carve out clauses that exclude Investor State Dispute Settlement, the abolition of capital controls as well as 'survival' clauses
- compensatory/adjustment mechanisms for people who are negatively affected by the agreements

Other initiatives that target concentration and centralisation of lead-firms are the push for mandatory contract terms, due diligence and joint liability, as well as those that target the ability of firms to shift profits between jurisdictions.

This policy brief is based on research conducted at the University of Kent by Professor Donatella Alessandrini (D.Alessandrini@kent.ac.uk) and Dr Jeremmy Okonjo (J.Okonjo@kent.ac.uk), with British Academy funding (MD19\190020).

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