
On Trade Agreements and a Social Reproduction Approach to GVCs: A Reply to Donatella Alessandrini

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Abstract

The 15 years following the 2008–2009 global financial crisis witnessed increasing questioning in the global North of the distribution of the gains and costs of an open world economy and the multilateral rules-based trade order. Difficulties in (re-)negotiating trade agreements in the World Trade Organization led states to shift even more of their focus to reciprocal and bilateral trade agreements as these internalize benefits among partners by continuing to maintain trade barriers against non-signatories (mostly emerging economies). There is a vigorous debate across academic disciplines whether such agreements help to increase participation in global value chains (GVCs) by signatory nations and the magnitude and incidence of the associated economic, social and environmental impacts – positive or negative. These are questions calling for rigorous empirical research that assesses impacts against appropriate baselines and counterfactuals and investment in data collection, monitoring and evaluation by participating governments. Mischaracterizing both the extent to which trade agreements constrain the ability of states to regulate and reports published by international organizations on GVCs and trade agreements detracts from where the focus arguably should be: providing compelling empirical evidence that GVCs and trade agreements detrimentally affect social reproduction and specific suggestions on how the design of trade agreements should be changed to improve outcomes.

In her 2022 *European Journal of International Law* article, Donatella Alessandrini argues that: (i) international economic institutions (IEIs) advocate that ‘states need to adopt deeper trade and investment commitments [in trade agreements] to sustain value

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chain trade if they wish to either “develop” or continue being competitive in the global economy’;¹ (ii) the evidence for this is ‘tenuous at best’;² (iii) IEIs ignore that ‘current data is unable to account for the variety of factors that contribute to so-called ‘social downgrade’ – that is, the deterioration of working and living conditions, including the presence of informal and migrant workers’;³ (iv) ‘social downgrade’ often is an integral element of global value chains (GVCs), negatively affecting ‘the ability of populations to support their daily and generational needs’;⁴ (v) advice by IEIs to participate in trade agreements that address matters such as investment policies, intellectual property protection and the liberalization of trade in services or agricultural products is misconceived because it ignores the negative consequences for social reproduction and informal labour; and (vi) contrary to the (purported) advocacy by IEIs for including provisions on labour standards and political and civil rights and the environment in trade agreements,⁵ this is inappropriate because such provisions neglect ‘the specific needs of workers on the ground’.⁶

Whether and how (and through what channels) international trade and investment impacts workers, households and communities, including reproductive and informal labour, are important questions. However, by framing the article as a critique of IEI reports and trade agreements,⁷ Alessandrini arguably diverts attention from her central concern: the need to apply a social reproduction lens in analyses of the development impacts of GVCs. Using IEI reports as a straw man is unnecessary and counterproductive. The justification offered for doing so – that they are influential – is not compelling (the authors of the various publications would be very pleased if they did have the influence attributed to them). More important, a neutral reading of the IEI publications suggests that they are more balanced and nuanced than Alessandrini suggests. Whatever one’s views on the selected publications – many of which are authored and thus reflect the views of the contributors, not the position (or policy) of the IEI – not devoting attention to research done by IEIs on trade more generally, as well as on social protection, public health, education and the informal sector,⁸ undermines the case made against IEI research.

The presumption that international trade agreements (whether bilateral, regional or multilateral) are instruments that seriously constrain, if not preclude, the ability

¹ Alessandrini, ‘A Not So “New Dawn” for International Economic Law and Development: Towards a Social Reproduction Approach to GVCs’, 33 *European Journal of International Law (EJIL)* (2022) 131, at 131.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*, at 152.

⁵ *Ibid.*, at 153 (referring to a ‘2020 World Bank report which claims that enacting WTO-plus and extra provisions is the *conditio sine qua non* for ensuring social and environmental protection’. It is unclear which report this is. The 2020 World Development Report (Trading for Development in the Age of Global Value Chains [2020]) makes no such claim nor does the other 2020 World Bank publication mentioned in Alessandrini’s article (A. Mattoo, N. Rocha and M. Ruta (eds), *The Handbook of Deep Trade Agreements* [2020]).

⁶ Alessandrini, *supra* note 1, at 153.

⁷ This may reflect incentives for scholars to write for a peer group with strong priors and similar views as opposed to adopting a multi-disciplinary focus and engaging with a wider audience.

⁸ Or, in the case of the development agencies, the numerous projects and programmes on social protection, education, public health, access to electricity and safe water, transport, connectivity and so on that seek to improve access to such services for low-income households.

of states to regulate market activities is a common one, often regarded as self-evident among critics of globalization and international trade. It is important here to differentiate between bilateral investment protection treaties and trade agreements. Arbitration under the former can result and has resulted in findings that are excessive and inappropriate, in turn leading many states to reconsider the traditional and expansive model of bilateral investment treaty protections.⁹ But, arguably, this is a matter that is distinct to the arena of investor protection and investor–state dispute settlement, which does not arise in the context of state-to-state trade agreements with associated state-to-state dispute settlement mechanisms.

How great a threat do trade agreements pose? Such agreements reflect the outcome of reciprocal negotiations.¹⁰ The stylized fact is that most developing countries have not engaged in deep trade agreements. Instead, they have limited themselves to ‘shallow’ integration agreements that centre on the reduction of border barriers to trade, policy transparency and national treatment.¹¹ India, China, Brazil and many other developing countries have resisted participation in World Trade Organization (WTO) plus or WTO extra trade agreements. These states generally also oppose efforts by importing nations to condition trade (market access) on binding, enforceable commitments on ‘behind-the-border’ regulatory matters, including political, social, civil and human rights. Even if countries participate in trade agreements that address ‘behind-the-border’ policy areas, the extent to which this threatens the ability to regulate is frequently greatly exaggerated, if not misconstrued, by critics.¹² Alessandrini hedges this somewhat in noting that her argument is that:

WTO-plus and extra provisions may contribute to this process [that is, constraining the ability of governments to provide social reproduction-related goods and services], intensifying the inter/national protection of lead firms’ rights whilst constraining states’ ability to redress inequalities – not necessarily by preventing states from regulating in the public interest but by enabling lead firms to govern economic relations, even in spite of state regulation, thereby also impacting on the production, distribution and availability of resources.¹³

⁹ See, e.g., Kurtz, ‘On Foreign Investor “Privilege” and the Limits of the Law: A Reply to Ivar Alvik’, 31 *EJIL* (2020) 313.

¹⁰ This is not the case for unilateral trade preference programmes, which by their nature imply harder (potentially more effective) conditionality. See Borchert *et al.*, ‘The Pursuit of Non-trade Policy Objectives in EU Trade Policy’, 20 *World Trade Review* (2021) 623.

¹¹ Alessandrini argues that the reduction of import tariffs may be detrimental by lowering government revenue. In practice, new trade agreements are likely to have a limited impact on tariff revenue given the autonomous tariff reductions implemented by governments around the world since the 1980s in conjunction with the adoption of indirect tax systems such as value-added tax. Alessandrini, *supra* note 1, section 6.A.

¹² Alessandrini refers to trade agreement critics who argue that the ‘ratcheting up of the rights of multinational enterprises (MNEs), epitomized by the WTO agreements, has had profound implications for the regulatory autonomy of states, constraining their ability to provide social and environmental protection’. *Ibid.*, at 135. But the World Trade Organization (WTO) does not constrain the autonomy of states to provide social protection or to protect the environment. This is made abundantly clear in the case law. See, e.g., P.C. Mavroidis, *The Regulation of International Trade*, vols 1 and 2 (2016).

¹³ Alessandrini, *supra* note 1, at 135–136.

This appears to recognize that trade agreements might not in fact impede the ability of governments to enact regulation but that they are powerless to influence how lead firms govern GVCs. This argument is very different from the one centred on trade agreements undermining the right to regulate. If governments are unable to affect the behaviour of firms in their markets, it does not matter what a trade agreement may or may not do to constrain regulation. If the claim is that governments cannot effectively regulate lead firms, the focus should be on that problem as opposed to (overblown) claims that trade agreements may preclude them from doing so.

Many governments – both in the global North and the global South – perceive value in cooperation to identify good regulatory practices in a range of areas. This is exemplified in the ongoing talks among over 100 WTO members on investment facilitation for development¹⁴ and the recently launched structured discussions on an initiative on trade and environmental sustainability.¹⁵ These efforts centre on cooperation to jointly agree on what constitutes good regulatory practices and often involve measures to enhance transparency, reduce administrative costs and bolster the effectiveness of market regulation. Such approaches also characterize cooperation under the umbrella of reciprocal trade agreements, which increasingly encompass provisions relating to labour, social and other rights and the protection of the environment. This type of collaboration is distinct from the traditional focus of ‘shallow’ trade agreements: reciprocal reductions in import tariffs. It offers an alternative path for like-minded countries to pursue shared regulatory objectives.¹⁶ A feature of such cooperation is that governments decide if they desire to participate, which is the case, for example, in the 2021 agreement on a new Reference Paper on Services Domestic Regulation under the General Agreement on Trade in Services, concluded among a group of 67 WTO members.¹⁷ What matters here is that the benefits of this agreement apply to all WTO members, while the obligation to apply the agreed set of good regulatory practices, which are procedural, not substantive, pertains only to the signatories.¹⁸

¹⁴ Joint Statement on Investment Facilitation for Development, Doc. WT/L/1130 (2021), available at www.wto.org/english/tratop_e/invfac_public_e/invfac_e.htm.

¹⁵ First meeting held to advance work on trade and environmental sustainability, 5 March 2021 available at www.wto.org/english/news_e/news21_e/tessd_08mar21_e.htm.

¹⁶ See Hoekman and Sabel, ‘Plurilateral Cooperation as an Alternative to Trade Agreements: Innovating One Domain at a Time’, 12 *Global Policy* (2021) 49.

¹⁷ General Agreement on Trade in Services 1994 (GATS), 1869 UNTS 183.

¹⁸ Alessandrini argues that:

the current negotiations under GATS [...] Art. VI.4 [...] affect states’ right to regulate as they are meant to adopt standards against which to assess “domestic regulations”. A standard that is being discussed is the “necessity” test. This would translate into an obligation for states to adopt domestic regulations that are “no more trade restrictive than necessary”. This standard may have “chilling” effects on the ability of states to determine appropriate social, health-related, environmental and labour standards/ rights. Alessandrini, *supra* note 1, at 157.

In fact, the negotiated agreement has no necessity test, participation is voluntary and the text is explicit that ‘Members recognize the right to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet their policy objectives’ and that ‘disciplines shall not be construed to prescribe or impose any particular regulatory provisions regarding their implementation’. See WTO, Reference Paper on Services Domestic Regulation Section, Doc. WT/L/1129, December 2021, section 1, paras 3, 5.

Even if states decide to conclude traditional trade agreements, it must be recognized that this does not seriously constrain their ability to regulate, contrary to claims to this effect. Trade agreements do not impede autonomous (unilateral) policies towards GVCs that consider social reproduction and informal labour as long as measures do not discriminate against foreign products and firms. And if discrimination is deemed necessary, exceptions are built into trade agreements that permit governments to do so, subject to a requirement to justify why discrimination is needed. Whether or not a nation engages in the international economy and concludes trade agreements – that is, whatever its stance towards trade, open or highly restrictive – the pursuit of greater inclusion and equity requires appropriate domestic policies, and no government will accept (or has accepted) constraints on its ability to do so. The issue is not external constraint but, rather, why governments do not pursue policies to address concerns related to social reproduction and informal labour. This is a matter that extends beyond firms engaging in international trade – it is salient more broadly to domestic economic activity. Understanding this is a precondition for thinking about whether trade agreements could be designed to be effective instruments to incentivize them to do so. Any such effort would need to consider the political economy equilibrium that underpins the status quo set of policies and institutions in a given country.

Arguing that trade agreements are *prima facie* problematic requires them to impact on GVCs. How the growth of GVCs relates to trade agreements is an open question. The experience of Asian countries suggests that trade agreements are not necessarily drivers of GVCs – most of the growth in Asian participation in GVCs occurred without deep trade agreements in place.¹⁹ The evidence suggests that GVCs drive the deepening of trade agreements and not the other way around.²⁰ Deeper agreements may support GVCs, but a plethora of academic, as well as IEL, research, including reports cited in Alessandrini's article, suggests that what is much more important is market size, the domestic business environment and the quality of governance.²¹ This has implications for what trade agreements can do, whether positive or negative. Domestic institutions and policies largely determine outcomes. As has been argued by scholars across different disciplines, the incorporation of International Labour Organization conventions on labour rights in trade agreements may be ineffective in improving conditions for workers.²² Cross-country empirical research suggests that there is not much in the way of robust evidence that inclusion of labour or environmental provisions in trade agreements affects outcomes in these areas.²³

¹⁹ This is an alternative critique of advocacy for preferential trade agreements as being necessary for GVC trade.

²⁰ See, e.g., Baccini *et al.*, 'Global Value Chains and Deep Integration', in A. Fernandes, N. Rocha and M. Ruta (eds), *The Economics of Deep Trade Agreements* (2021), 49.

²¹ World Bank, *Trading for Development in the Age of Global Value Chains* (2020).

²² See, e.g., A. Smith *et al.*, *Free Trade Agreements and Global Labour Governance: The European Union's Trade-Labour Linkage in a Value Chain World* (2020).

²³ A. Ferrari *et al.*, 'EU Trade Agreements and Non-Trade Policy Objectives', EUI RSC Working Paper no. 2021/48 (2021).

There is robust evidence for the effects predicted by economic theory that trade (and trade reform) will have distributional consequences. An extensive academic literature investigates the incidence of gains and costs associated with trade, including through GVCs.²⁴ This research makes clear that there are losers, that adjustment costs can be long-lasting and that the distribution of the benefits is highly asymmetric in most societies.²⁵ These call for targeted, specific measures by national governments and local authorities. While, on balance, there is robust evidence for a strong positive association between trade and international integration of markets and average real incomes and social development indicators, this does not mean social downgrading cannot occur in specific value chains. But how extensive is the social downgrading that is caused by participation in GVCs? The cited case study literature suggests that there is significant heterogeneity.

Rather than arguing that this is a major downside of GVCs and the international integration of markets more generally (that is, an open trading system) or, conversely, arguing that the economic development and poverty reduction experienced by many countries, including improvements in maternal health, child mortality, education and so on, suggests that the positives substantially outweigh the negatives, a more appropriate stance – one consistent with that taken by Alessandrini – is that this question deserves more attention. Alessandrini's call to give greater attention to *ex ante* and *ex post* intersectional analyses of the impacts of GVCs on reproductive and informal labour is one with which many staff in IEs, I suspect, would agree.²⁶ The argument for considering the regulation of GVCs through a social reproduction lens becomes more compelling if it is based on empirical evidence of sustained negative effects over time that is associated with GVC business models as opposed to alternative forms of economic organization, including non-GVC-related domestic economic activity. Regulating socio-economic activities is a matter for national policy. Intra-GVC activities are increasingly the locus of policy action – illustrated by the recent proposal in the European Union (EU) to implement regulations mandating companies to put in place due diligence systems to monitor their supply chains.²⁷ This is a unilateral measure, illustrating that trade agreements do not constrain the ability of the EU to impose such regulation.

The salience of claims that international economic agreements are likely to impede the ability of states and communities to improve working and living conditions depends in part on the effects of deep trade agreements on trade and investment – do they skew incentives (further) towards the devaluation of social reproductive

²⁴ See, e.g., N. Pavcnik, 'The Impact of Trade on Inequality in Developing Countries', National Bureau of Economic Research Working Paper no. 23878 (2017); Winters and Martuscelli, 'Trade Liberalization and Poverty: What Have We Learned in a Decade?', 6 *Annual Review of Resource Economics (ARRE)* (2014) 493.

²⁵ The 2020 World Development Report, *supra* note 5, discusses these issues at some length. See also Hoekman and Nelson, '21st Century Trade Agreements and the Owl of Minerva', 10 *ARRE* (2018) 161.

²⁶ Alessandrini, *supra* note 1, at 154.

²⁷ 'Towards a Mandatory EU System of Due Diligence for Supply Chains', *European Parliament*, available at [www.europarl.europa.eu/RegData/etudes/BRIE/2020/659299/EPRS_BRI\(2020\)659299_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659299/EPRS_BRI(2020)659299_EN.pdf).

and informal labour? If so, how? What are the channels through which they do so? Answers to such questions are necessary to inform deliberation whether and how to revisit the design of trade agreements. In some jurisdictions, *ex ante* assessments and consultations are instruments that can be – and are – used to do so. In the EU, consultations with stakeholders are used to solicit input on a broad range of sustainability and non-market issues and concerns.²⁸ One implication of Alessandrini’s argument for the EU is that consultation processes and associated trade sustainable impact assessments (SIAs) should consider social reproduction and informal labour issues and the impact of trade agreements via induced GVC activity. The 2021 public review by the European Commission on Trade and Sustainable Development (TSD) chapters in EU trade agreements²⁹ provided a vehicle to make suggestions to this effect. Engaging with critiques and proposals put forward in the TSD review from a feminist international political economy (IPE) and social reproduction perspective would help to identify specific measures that this lens suggests should be considered in revising SIA methodologies and *ex post* monitoring and evaluation of trade policy initiatives. Doing so calls for recognizing the constellation of interests and priorities of different groups in society and the use of participatory democracy approaches to identify priorities as well as the appropriate instruments to pursue them.³⁰

Many economists and development scholars agree with the argument that participating in deep reciprocal trade agreements that include WTO-plus and extra provisions is not a necessary step for countries wishing to develop. After all, many countries have done so.³¹ To make a compelling case that doing so risks further entrenching the conditions for social and environmental inequalities³² calls for greater effort to present cross-country, cross-sector evidence that trade and trade agreements are a significant problem and a clear(er) understanding of what domestic policies are needed to improve outcomes from the perspective of social reproduction. Absent such clarity, calls to refrain from deeper trade cooperation and opposition to national participation in GVC business models are unlikely to improve outcomes. A compelling case for reform requires robust empirical evidence that GVCs do drive social downgrading, analysis of the country-specific circumstances in which such downgrading is more likely, recognition of the prevailing domestic political economy contexts and a focus on the identification of policies that can help to improve outcomes for reproductive and informal

²⁸ See N. Ashraf and J. van Seters, ‘Making It Count: Civil Society Engagement in EU Trade Agreements’, ECDPM Discussion Paper no. 276 (2020); D. Martens, D. Potjomkina and J. Orbie, *Domestic Advisory Groups in EU Trade Agreements: Stuck at the Bottom or Moving Up the Ladder?* (2020); Bronckers and Gruni, ‘Retooling the Sustainability Standards in EU Free Trade Agreements’, 24 *Journal of International Economic Law (JIEL)* (2021) 25.

²⁹ ‘Open Public Consultation on the Trade and Sustainable Development (TSD) Review’, *European Commission*, available at https://trade.ec.europa.eu/consultations/index.cfm?consul_id=301.

³⁰ See, e.g., Hoekman and Rojas-Romagosa, ‘EU Trade Sustainability Impact Assessments: Revisiting the Consultation Process’, 25 *JIEL* (2022), doi.org/10.1093/jiel/jgac010.

³¹ See, e.g., D. Irwin, ‘Does Trade Reform Promote Economic Growth? A Review of Recent Evidence’, National Bureau of Economic Research Working Paper no. 25927 (2019).

³² Alessandrini, *supra* note 1, at 132.

labour. Feminist IPE scholars have made concrete proposals in this regard that deserve more attention.³³ Focusing more on documenting the magnitude and source of the problem and the underlying political economy drivers is a precondition for thinking about the reform of international trade law. This agenda concerns governments and polities in the North and the South. IEIs have little salience – they are agents, not principals.

Donatella Alessandrini continues the debate with a Rejoinder on our *EJIL: Talk! Blog*.

³³ See, e.g., Hannah, Roberts and Trommer, 'Towards a Feminist Global Trade Politics', 18 *Globalizations* (2021) 70; Hannah, Roberts and Trommer, 'Gender in Global Trade: Transforming or Reproducing Trade Orthodoxy?', *Review of International Political Economy* (2021), DOI: 10.1080/09692290.2021.1915846.