

**THE OTHER SIDE OF TRADE LIBERALISATION***Martina Oberti\**

Literary Review

D. Danielsen – “Trade, distribution and development under supply-chain capitalism”<sup>1</sup>**I. Introduction**

Notwithstanding the significant growth that affected both international trade and investment in the past 40 years, most developing countries have neither increased their incomes per capita nor reduced their poverty rates as expected. Starting from this disappointing scenario, Dan Danielsen gives a punctual analysis of how these countries and their domestic firms still face a hard time benefitting from the global economic expansion and trade liberalization, and in particular how, in his view, this is mainly attributable to what he defines “supply-chain capitalism”. According to Danielsen, the modern global production system, structured as “*disaggregated, geographically disbursed and non-proprietary*”, and governed by a concentration of large buyer firms, grossly limits the bargaining power of domestic firms, their innovative capacity, and in turn, their ability to attract equitable shares of rents from the participation in global trade.

**II. Analysis**

Danielsen with his analysis brings out two contradictions deeply rooted within trade law. On the one hand, the promise of trade liberalization as a boost of equality and inclusivity of states in the global market; and on the other the “real face” of an equality that did not bring the same advantages to all actors. From this perspective, the article appears as a – indirect – critique to the universal and all-encompassing approach adopted in the international trade system to all market economies. Precisely, this very approach is seen as the original cause of supply-chain capitalism. Extending to all state-actors the same global market conditions, whereas beyond the borders not properly supported by solid domestic regulations or state power, ended up creating a hegemonic and unfair market dynamics, constricting the “global south” to remain subordinated and at the mercy of stronger economic realities.

However, it seems arguable to portrait the rise of supply-chain capitalism as a pure collateral effect of trade liberalization. What the author does not take into account is the

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<sup>1</sup> in A. Santos, C. Thomas and D. Trubek, *Globalization Reimagined: Towards a Progressive Agenda for World Trade and Investment Law*, London: Anthem Press 2019, pp. 121-130.

social dimension common to all issues intersecting law and economics. Indeed, all social sciences prove that human behaviour in situations of conflict or strategic interaction is driven by personal interest and maximization of gains.

To support his underlying theory, the author adopts a descriptive technique. He investigates the interplays between country-development and modern trade dynamics without specific economic data or interpretation of the letter of the law. His standpoint seems more focused on “the law in practice” and specifically, on how it triggered, and now fuels, the phenomenon described.

His approach helps to create a comprehensive and wide-ranging paper that does not focus solely on one core aspect but conveys a broader message. It seems the result of thoughtful reflection on a present and global issue that, given its large-scale and far-reaching nature, could not have been addressed any differently. The methodology embraced also reflects on the sources he relies upon, being international scholars’ essays discussing, *inter alia*, the convergence of trade, capitalism, globalization, ethics and inequality.

Specific reference to trade law is made towards the end, when the author questions the strategies proposed by progressive theorists to assist developing countries in capturing more gains from the global market. He seems to point the finger at the naivety of trade policymakers, so far still focused on tariffs, protectionism and concentration of power, whereas the problems brought by supply-chain capitalism keeps unnoticedly growing bigger.

For these reasons, while the explicit purpose of the article is the denunciation of the underlying mechanisms reinforcing supply-chain capitalism, it also appears as a warning to policymakers and as a guide leading towards the right areas of intervention. In fact, when discussing supply-chain capitalism, no net distinction between trade law and “the other” areas of the law should exist.

Such legal homogeneity is indeed not realistic and directing the attention exclusively on trade law and policies would have been an overly simplistic approach. In fact, if on the one hand WTO law is responsible for generating a degree of liberalization permitting free market access and smoother trade conditions, that consequently enabled supply-chain capitalism; on the other, this allocation of power and resources is now reinforced by other fields of law. Indeed, buyer firms’ impact on business practices is often facilitated by legal techniques and procedures. This dynamic brings into play the need to consider domestic legal orders in light of “legal pluralism”, as in their interactions with global production, they are likely to connect with it in a multilateral manner.

Rightly, Danielsen appears sceptical about the idea of developing countries having scarce regulatory space or capacity to exploit trade rules in their favour. These approaches tend to overemphasize the role of the global trade rules in determining states’ policy autonomy, whereas under supply-chain capitalism, various other legal and private ordering regimes and business practices constrain their capacity of action.

In this context, the author's criticism is well-substantiated by the analysis he gives of economic power and how it deeply interrelates with law, states' policymaking independence and the shaping of local market practices. From this equation, it emerges a dominant influence and constraining force of large-scale firms' economic power over the other factors. This is to be considered as the main strength of, and challenge posed by, the supply-chain capitalism.

### **III. Concluding remarks**

It is hard to question the successfulness of the article. In a clear and well-structured manner, it explains a complex reality and delineates its underlying mechanisms by dissecting and disassembling them. Coherently with the very notion of globalization, the multilateral approach adopted effectively shows how law, politics and economics are intimately interconnected, and how it is not possible to conceive them as neatly separated entities anymore. It also shows an economic power that was firstly empowered by the law as a means of improvement of the global market, and successively escaped its constraints to become dominant and pervading on it.

Nevertheless, one criticism should be made to the paper: while it delivers knowledge and a well-supported commentary, it lacks concluding propositions. Clearly, according to Danielsen there is not "one-solution", but rather multiple possible ones to be adopted in different strategic (legal) areas; however, the reader might be also interested in knowing more specific and practical opinions, rather than a simple "do not place all eggs in one basket" advice. Although, it may be in line with the above-mentioned "warning theory", with that addition the contribution would have come truly full circle.