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End of multilateralism?

By forcing WTO's Appellate Body to shut shop, the US has escalated its trade war to the WTO

The World Trade Organisation is facing the prospect of death by a thousand cuts. The WTO's most important arm for resolving global trade disputes — the Appellate Body (AB) — will become dysfunctional from December 11, when the number of judges on the panel falls below the mandatory minimum. The AB delivered binding rulings in hundreds of trade disputes over the past 25 years. Members of the trade body were subjected to biting trade sanctions if they failed to comply with its rulings.

The US played a major role in establishing this binding dispute resolution mechanism at the end of the Uruguay Round of trade negotiations, that led to the creation of the WTO in 1995. Earlier, trade disputes were decided by GATT (General Agreement on Tariffs and Trade) panels that lacked the power to enforce implementation. The US also remained a major beneficiary of the rulings passed by the highest court for trade issues. Washington succeeded in enforcing strong intellectual property enforcement rules and the removal of quantitative restrictions in India due to rulings passed by the AB. The US also lost several major trade disputes with India, the European Union, China, Brazil, Mexico and Canada in trade disputes involving anti-dumping measures, countervailing duties, and safeguard duties among others. The AB had invariably found several measures adopted by the US, particularly the provisions in the anti-dumping investigations based on zeroing methodology and countervailing measures, to be inconsistent with the existing WTO rules. These adverse rulings were not acceptable to the US, which wanted its way or the highway. Attempts to change the rules through negotiations such as the Doha Development Agenda (DDA) trade talks that began in 2001 were never concluded due to fierce opposition from the US. The US pulled the plug for completing the DDA talks due to opposition from its powerful lobbies that saw international rules as a threat for their trade-distorting farm subsidies and anti-dumping provisions.

Little wonder that the US launched a sustained war against the adverse rulings issued by the AB, accusing the judges for not adhering to the dispute settlement understanding (DSU). A trade version of “shock and awe” was adopted at the WTO with the blocking of a second term for a serving AB member from South Korea in 2016. Subsequently, it blocked the selection process for filling the vacancies at the highest court for the past two years. Washington has not showed any signs of lifting its opposition despite members making a concerted effort to address its concerns. It also placed wrenching conditions in the use of funds for AB members in pending trade disputes. Consequently, India's two appeals against Japan and the US respectively, and one major appeal launched by the US against India's dispute on the illegal American local content requirements and subsidies used for its renewable sector, would go into limbo. Effectively, the Trump administration has struck the death knell for multilateralism.

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FROM THE VIEWSROOM

Academics under attack

Assaults against the higher education sector in India are on the rise

India has figured prominently on yet another not-so-flattering ranking. An international advocacy group that tracks assaults — physical and mental — in the higher education sector has named India, Turkey and China as the top three countries with the highest number of reported assaults in the academic world. ‘Scholars at Risk’, a voluntary network based in New York University, has been cataloguing instances of strangulating academic freedom as well as physical violence in academic institutions for the last five years. It is worried the impact of these attacks extends far beyond tens of thousands of academics, students, and staff. It fears these assaults shrink space to think, question and share ideas freely and safely. The fifth edition of the report — titled *Free to Think 2019* — compiled attacks between September 2018 and August 2019. What is perturbing is that the number of attacks on the higher education community is on the rise. As against 294 attacks (47 countries) recorded in 2018, the total assaults were 324 this year from 56 countries.

The advocacy group admitted that the list was not exhaustive, as many more such cases go unreported, but gives a snapshot of the situation. It was particularly worried about the role played by the state — police, military forces and government authorities — in such heinous attacks. While the placement of Turkey and China, ruled by authoritarian regimes, was not entirely unexpected, the surge in onslaughts on academic community in India, the world's largest democracy, is rather troubling.

The report, which devoted an entire chapter to describe the situation in India, quite candidly said there were elevated levels of attacks in India of late. Most of the attacks surprisingly were not those clashes between student groups aligned with different ideologies, but on students and scholars by state forces and non-state actors who have no links with higher education community. They also include the coercive legal actions and disciplinary measures against students and academics whose ideas do not align with the ideas of those in power.

TV Jayan Senior Deputy Editor

Does the strategic sale of PSUs work?

History says it does, but also suggests that the Centre needs to up its game on extracting a better price from private acquirers



tion was indeed a turning point in their financial fortunes. Hindustan Zinc, for instance, has seen its net profits shoot up from ₹67 crore at the time of its sale in FY03 to ₹9,698 crore in FY19, on the back of a 47-fold increase in sales. Balco managed a 14-fold profit expansion from ₹40 crore in FY01 to ₹573 crore now. Under government ownership, these metal majors were hamstrung by a high cost structure and a perpetual lack of funds for capex, shortcomings the Sterlite-Vedanta group overcame.

IPCL and CMC, in good financial shape under the Centre, made further headway on scale and profitability after their strategic sales before being merged into their acquirers. IPCL's net profits of ₹249 crore in FY03 shot up to ₹1,600 crore in 2006 when it was merged with Reliance Industries. CMC expanded its profits from ₹25 crore in FY02 to ₹280 crore in FY14, when it was merged with TCS. Paradeep Phosphates, which had seldom turned a profit under government ownership, has remained consistently profitable under the Zuari group since the sale. In fact, VSNL appears to be the only one from the 2000-2004 batch of privatised entities to have gone downhill since disinvestment, thanks to bruising competition in international telephony. Even Modern Food Industries, referred to the BIFR under its first acquirer, seems to have later found its feet under a new owner.

The above evidence suggests that strategic sales do unlock significant value for both PSU stakeholders and their private acquirers by helping hobbled firms perform to their full potential. But what about taxpayers who effectively gave up those stakes? Given that these PSUs had potential, did strategic sales extract good value for taxpayers by rightly pricing their assets? Evaluated on this score, the track record is checkered.

A CAG audit of the nine PSU strategic sales published in 2006 has flagged specific shortcomings in the sale process last time around. Addressing them in the current tranche

of sales could ensure that taxpayers have as much reason to be as happy with strategic sales of PSUs in the long run as investors.

Disinvestment prep

PSUs often have substantial undervalued assets sitting on their balance sheets in the form of surplus land, mothballed facilities and intangibles. This makes it imperative for the Centre to factor in the market value of such assets while setting reserve prices for strategic sales. But the CAG audit on the 2000-04 sales noted that the valuation exercise had fallen short on this score. Though each PSU was supposed to be valued under three methods — discounted cash flow (DCF), asset value and recent transaction multiples — the reserve price for 7 of the 9 sales was based on DCF alone. Faced with impractical deadlines, valuers often skipped important assets such as real estate and half-complete projects. In the Balco case, the valuer was given only 19 days for this exercise. The PSUs actively contributed to undervaluation with poor record-keeping.

These suggest that the Centre, in this round of strategic sales, must provide sufficient time to the valuers for a complete exercise, while cracking the whip on PSUs to clean up their records.

Healthy competition among bidders is essential to good price discovery in an auction. The CAG noted that, in the 2000-2004 auctions, though 70 bidders had thrown their hats into the ring initially, 48 withdrew at various stages. In the end, Modern Foods and Paradeep Phosphates were sold to their only bidders, while Balco, Hindustan Zinc, VSNL, Hindustan Teleprinters and CMC had only two bidders each to choose from. The sales were still concluded above reserve price.

But going by the details, prospective investors in PSUs seem to have been put off by shifting goalposts, non-disclosure of full financials and the government attaching one too many conditions to the sale.

In the VSNL sale, for instance, after deciding that ‘surplus land’ would not be part of the sale, the Centre took over four years to demerge it. Apart from addressing the transparency aspect, the Centre must peg the deal advisor's fee to the bidding interest generated.

Post-sale claims

Given that many strategic sales were concluded in February/March, when the financial statements of the PSUs were not published, sale agreements included clauses for the buyer and seller to settle post-deal claims based on differences between PSUs' disclosed assets versus actuals. This led

to private acquirers lodging fat post facto claims with the government, which the latter refused to pay. In Modern Foods, Hindustan Lever claimed ₹17.5 crore after finding that the company hadn't provided for legacy receivables. In Paradeep Phosphates, massive net-worth erosion led to the Zuari group demanding ₹151.5 crore, almost the entire sum it paid for the acquisition. Post-sale claims leave a bad taste in the mouth for both the acquirer and the seller. So, it is best that the Centre presents a complete and clean set of books to potential buyers before the bidding process begins.

In addition to all this, one overarching requirement for the government to maximise its takings from strategic sales, is not to rush through them to raise quick money for the fisc. Taking stock of hidden PSU assets, setting a fair reserve price, ensuring wide bidding interest and hammering out the modalities of each deal require the government to devote considerable bandwidth to each PSU strategic sale. To maximise value from this route, it is also essential that the Centre is able to walk away from deals that don't do justice to the assets on the block. In short, the PSU strategic sale process must be freed from the tyranny of over-ambitious disinvestment targets and fiscal year deadlines.

Poverty or wealth — it's all in the genes

The rich are communities that have zealously guarded their genepool over generations, and thus access to knowledge and power



Success tool

Genepool closely secured

ories of our times have been chasing what is basically a mirage.

Capitalism, the most popular one, believed that a free market would eventually self-correct inequalities, and hence advocated private means of production and competitive determination of products, prices, and distribution. However, capitalism left behind billions in the last several decades, became too unfair and ruthless; the top tier captured most of the economic benefits and the rest of the population was marginalised.

Socialism emerged with its rallying cry of equality, condemning capitalism for exploitation, domination and alienation. It believed markets were biased and hence there should be collective or governmental administration of the means of production and distribution to overcome inequalities. However, now we have empirical evidence on the persistence of significant inequalities and stratification in socialist societies, with no noticeable difference from capitalism. The inequality question looms large.

In our naivete, we believed that wealth and lack of opportunities were the reasons for all our inequalities and hence kept ourselves busy by either redistributing or creating wealth for the less equals. After so many decades of trial and error, we need to ask ourselves whether the real cause of inequality is something different altogether. Something hidden from plain sight. Our genepool.

Gene protectionism

Successful groups innately understood that it was not the wealth, but the genepool they possessed that really mattered and hence protected it aggressively from the prying eyes of intruders. They securely shut the access doors to their groups by creating exclusive identity moats of religion, caste, race and community. Each of these identities was further reinforced as water-tight compartments using soft tools of customs and traditions, and hard tools like taboos, social bans and arranged marriages. One example of such vigorous guardianship of the genepool could be the Jews, a highly successful community.

In our own backyard, alongside triumphant behemoths like the Parsis, Sindhis, Jains and Chettiaris, there are even midgets boxing above their weight — like this wealthy Kerala Christian community called Knanaya. Though conventional wisdom suggests we could bring down inequality through methods like redistribution and reservation in reality, none of these might really have an impact, unless the dominant and successful genepools are opened up.

Through their genepools, independent groups have already built up tremendous systemic advantages in their favour. They filled up places that matter, in education, business, politics, and judiciary, and devised systems and rules favouring them, thereby accumulating tacit knowledge accessible only to them, oblivious to the outside world.

Any closed system shall implode once disadvantages start to weigh over. Basic knowledge of evolution tells us that inbreeding can have undesirable effects, and hence would eventually self-destruct. However, the hoarders are yet to feel the heat, because they have so far not been put to any visible and obvious disadvantage that could be traced back to their protectionist tendencies.

Many of these groups, who have closely guarded their genepools, have not only survived the onslaught of time, but also have thrived and succeeded. Opening up, as they have always feared, may not provide them any sort of tangible benefits — to themselves or to their future generations. To keep our hopes of an equal world alive, we either would have to continue our fight to keep anchors like JNU intact, or wait for the genepool hoarders to open their family treasures.

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LETTERS TO THE EDITOR

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Company resolution process

This refers to the editorial 'Can't resign and walk away' (November 28). While lenders are still not out of the conundrum created by the bad big-ticket corporate loans, more powers should be given to the creditors, especially financial creditors, by making suitable amendments to the IBC.

A company avails and utilises credit facilities as per the directions of the board. At the time of repayment or resolution, the resignation of a promoter/director from the board indicates that the promoter does not care about the resolution or repayment of credit facilities availed from the lenders.

Reliance Communication's Committee of Creditors rejecting the resignation of the directors to protect the interest of lenders is a welcome move, and will create precedence.

RCom's dues are significant, and hence instead of resigning from the

company, the directors must co-operate with the resolution professional and the CoC for a speedy resolution and payment of the dues. The personal guarantee of the directors is crucial, because it enables the lenders to restrict such moves.

VSK Pillai

Kottayam

State of healthcare

This refers to 'Mohalla clinics, a viable primary care model' (November 28). Primary healthcare centres are greatly needed, especially in rural areas. The fact that *mohalla* clinics are functioning well is a compliment to the AAP government.

But in urban areas too, there is a need for upgrading the medical care of the people. Availability of medical care facilities is an issue. Then comes the high cost of treatment, at both government and private practices, as well as the cost of medicines.

The government should now assess the present facilities by an expert panel to identify factors that require attention, apart from taking public opinion on the problems faced.

TR Anandan

Coimbatore

Whither economy?

Apropos "Growth may have slowed, but there is no recession" (November 28). The Finance Minister's comparison of figures of consumption, inflation, etc with those of the UPA government is not useful. The NDA should judge its performance in the context of making India a \$5-trillion economy.

It should also reconsider its objective of keeping the fiscal deficit at 3.3 per cent, as crossing it could boost investment. If the Ministry reviews its key policy decisions taken during the first half of the year, it may find that some the bottlenecks were of its own making and its

sporadic, instead of structural, interventions were only mildly effective.

YG Chouksey

Pune

Farmer distress

This is with reference to 'As CM, Uddhav Thackeray may waive loans taken by farmers' (November 28). Waiver of farm loans is no solution to the farm distress in Maharashtra. The new government should work for rural development by providing the farmers with modern techniques of production, counselling facilities to prevent farmers' suicide, improved rural infrastructure, alternative income options etc. No economy benefits when it is run on a charitable concept.

We need more banks which will lend to poor farmers, illiterate people and small entrepreneurs who mainly depend on money lenders for their financial needs. Hence political influence should

not effect banking decisions and the banks should utilise the funds for fruitful growth of the economy. If the political parties/governments had any concern for the farmers, the latter's plight would not have been so bad today.

Veena Shenoy

Thane

Global warming

The grim findings of the UN Environment Programme Emissions Gap Report, pointing to alarming rise in the level of global carbon emissions should serve as a wake-up call for the international community. According to the report, even if all emissions promised by the countries are met, the world will be warmer by more than double the 1.5-degree target by 2100. It is time international community took the cue from young activists to ensure the fight is taken seriously

M Jeyaram
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