



ILLUSTRATION: ROHNIT PHORE

AMITENDU PALIT

The author is senior research fellow & research lead (Trade & Economic Policy) at the Institute of South Asian Studies in the National University of Singapore. Views are personal



TRADE & WTO

When countries use 'security' to restrict trade

Although the WTO has expressed its right to adjudicate security exceptions invoked by members under Article XXI of GATT—as it did on a dispute between Russia and Ukraine—it remains to be seen whether WTO members, particularly major powers like the US, China and the EU, accept this point of view

movement from Ukraine to Kyrgyzstan and Kazakhstan, but also to Mongolia, Tajikistan, Turkmenistan and Uzbekistan. Russia countered the complaint by arguing it had done so on its essential security interests following the 'emergency in international relations' in 2014: primarily alluding to the outbreak of military hostilities with Ukraine in the year. More importantly, and in what has a direct relevance to the US trade actions on national security grounds, Russia invoked Article XXI of GATT (the General Agreement on Tariffs and Trade). The article, as Russia argued—as much as the US also had—allows security interests to determine trade restrictions even if they work against the WTO; and such actions are 'non-justiciable' by the WTO. In other words, the WTO is not empowered to review trade restrictions introduced by countries on national security grounds.

The WTO has delivered an interesting judgement on the dispute. It has upheld Russia's rights to impose the transit restrictions that it did in the light of the tense situation and hostile circumstances between the two countries. At the same time, it has indicated that the WTO is empowered to review and judge such measures. This indicates that countries can't get away by invoking trade restrictions on security interests, and by alluding to Article XXI of GATT. While accepting that WTO members can 'self-judge' the circumstances that underscore threats to security, the WTO—according to the judgement—retains the right to adjudicate whether those same circumstances satisfy the requirements of Article XXI; in other words, whether the members are justified in using security for blocking trade, or whether invoking security amounts to a misuse of Article XXI.

The judgement's implications are crucial for the relationship between international trade and security. Globally, geopolitics is becoming one of the most important determinants of trade. Countries are moving towards trade alliances on the basis of geopolitics. In some cases, mutual security interests are driving trade relations. The opposite is also equally true. Countries are taking to trade restrictions for 'safeguarding' essential security. However, such measures might also be efforts to 'manage' trade in specific fashions. The tariffs of the US on steel and aluminium imports

imposed in March 2018 are a major example. The US imposed these tariffs under Section 232 of the US Trade Expansion Act of 1962, describing higher imports as detrimental to national security. It is the same section under which it is pursuing investigations on imports of automobiles and auto parts, for assessing the possibility of retaliatory action.

Both Russia and the US have argued that invocation of national security by employing Article XXI is 'non-justiciable' by the WTO. But the WTO has overruled this contention. It now remains to be seen what it decides on the ongoing dispute between the US and India (along with several other countries) on American tariffs. If the current judgement is an indication, then the American rationalisation of the tariffs on national security—as decided by its own assessment of national security under Article XXI—might not hold. However, a new panel adjudicating the dispute might have a different view on the subject.

Both the US and Russia favour using national security exceptions for unilateral trade actions. This proclivity on part of large global powers, once established, might become a dangerous trend. It might lead to situations where other countries begin using security as a convenient tool for 'managing' trade. Furthermore, they might begin using Article XXI for protective economic policies—as the US already has, through its steel and aluminium tariffs. With trade increasingly getting digital and national security assuming complex proportions, the possibility of countries using national security as a ground for blocking cross-border data

flows can't be ruled out. Security, as it is, is central to most data localisation policies.

Although the WTO has expressed its right to adjudicate security exceptions invoked by members under Article XXI, it remains to be seen whether WTO members—particularly major powers like the US, Russia, China and the European Union—accept this point of view. After all, security is a sovereign concern and countries are best placed to judge threats to their security. While not undermining the sovereign rights of countries to act on core security interests, it is important to exercise utmost caution in using security as an excuse for restricting trade. Such a tendency is highly inimical to the orderly functioning of global trade.

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A RECENT JUDGEMENT BY the World Trade Organisation (WTO) on a dispute between Russia and Ukraine has great implications for the controversial relationship between international trade and national security. Separately, the ruling has implications for India, too, as India has joined several other WTO members in disputing the steel and aluminium tariffs imposed by

the US last year on national security grounds. The judgement would be utilised by various countries in the future to interpret the extent by which national security interests enable exceptions from obligations that WTO members need to extend to each other.

Ukraine took Russia to the WTO dispute settlement for the restrictions it imposed on transit of goods through Russia by road and rail meant mainly for

THE SUPERCYCLONE FANI, with wind speeds of 220-250 km per hour, on May 3, 2019, had a devastating effect on the coastal districts of Odisha, one of the most cyclone- and flood-prone areas of India. The extent of the damage is much more than what was previously thought. The awareness and previous experiences of Odisha in dealing with natural disasters prompted the state government and people to move to safer areas, and this minimised loss of lives. However, the loss of infrastructure, basic public services, and loss to private property and livelihood are irreparable in the short-term.

Odisha, particularly its coastal districts, is prone to a huge number of cyclones and storms. Apart from small and moderate cyclones and storms, Odisha has suffered colossal damages during a supercyclone and flood in 1999, killing more than 10,000 people, Phailin in 2013, Titli in 2018, etc. In fact, every big natural disaster takes back the people and affected areas by few years in terms of the standard of living and the level of development, putting lot of stress on both the people and the state.

This time, Fani—said to be India's strongest cyclone in 43 years—caused huge destruction. Going by the reported figures, almost 1.4 crore people in 11 coastal districts—of the total 4.2 crore people (2011 census) in Odisha—are badly affected, around 40 people have lost their lives so far, and about 5 lakh people have

Managing Fani's aftermath

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PRAVAKAR SAHOO

Author is professor, Institute of Economic Growth. Views are personal



lost their houses. The infrastructure, livestock, properties, crops, coconut trees and horticulture have been destroyed completely, especially in Puri, Khordha and Bhubaneswar. The entire plantation developed over decades—source of livelihood—has been uprooted. As reported, around 4,600 buildings, 6,000 educational institutions such as primarily schools, 1,000 health facilities, and over 300 factories have been badly damaged. Further, 5,030 km of 33 kV lines, and 38,613 km of 11 kV lines, 11,077 distribution transformers, and 80,000 km of low tension distribution lines are also damaged. People have been deprived of clean water since May 3 due to damage to the water supply infrastructure

and lack of electricity. The lifeline of the people, i.e. water, electricity and telecommunication, were taken away by Fani.

Given the extent of the damage, the support and relief provided so far has been largely inadequate. Odisha needs billions of dollars (\$14 billion, as reported by the state government) to rebuild damaged houses and public infrastructure. Odisha sought help of ₹17,000 crore (₹10,000 crore for disaster-resilient power infrastructure, and ₹7,000 crore for converting 5 lakh damaged *kutcha* houses to *pucca*) from the Centre on May 6. The Centre has offered ₹1,000 crore interim funding, in addition to the ₹341 crore advance given before Fani. The Centre has announced an



amount of ₹2 lakh *ex gratia* to each family of those killed, and ₹50,000 to the injured. In addition, some states have given few crores as financial assistance and provided manpower support to restore power. However, the relief support in terms of resources and manpower is grossly inadequate, given the colossal loss in terms of livelihood and infrastructure. The support of international agencies is lukewarm, except a loud appreciation to the state government in minimising human losses.

It's sad to observe that the coverage in the national media about the extent of the damage appears under-reported. In fact, the air time on the Fani was much more before the landfall. International media

has given a one-liner thumbs up, stating that the Odisha government has done an excellent job. Unfortunately, it gives an impression of little damage whereas it needs to be categorised as a national disaster. The expected material support in terms of materials and resources from central and state governments, international agencies, the general public and the private sector is not forthcoming. Lakhs of families need housing with electricity and water connection. Since Fani, people are literally in the dark, without water and telecom services. What Odisha needs now is huge resources and manpower to bring about some semblance of normalcy by providing basic lifesaving services, not an

Big data for big development

NEHA SAIGAL,
SAUMYA SHRIVASTAVA
& ASHITA MUNJRAL

Authors work with IPE Global on the Matrix of Change for Nutrition programme. Views are personal

Transparency of data can improve nutrition for India's poorest

WILL NOT SHARE ANY DATA on the coverage of beneficiaries till you are able to show me a letter from higher authorities" was the prompt response of a district social welfare officer to our request for data related to nutrition schemes. This reluctance to share data by a government official at the district level in India is not a new phenomenon, and it was not the first time we got such a response. But, as development practitioners working on implementation of nutrition programmes at the community level, the data we require to design our programmes should be no secret. This is reinforced by Section 4(1) of the Right to Information (RTI) Act, 2005.

This incident not only urged us to think about the importance of transparency of data related to government schemes and programmes, but more specifically on data related to nutrition and the Integrated Child Development Services (ICDS) scheme, which is aimed at improving nutrition intake of children till six years of age, and also pregnant and lactating mothers.

Once we moved beyond this incident, there was a challenge—not much has been written about the transparency of the ICDS data. A rare but thought-provoking mention has been made by Venkatesan Ramani, a retired officer of the Maharashtra cadre, in a policy document titled 'Fixing of Child Malnutrition in India: Views from a Public Policy Practitioner'. It mentions that the ICDS Monthly Progress Report that is collated in every state from every Anganwadi Centre (AWC) has relevant information on the coverage of beneficiaries as well as weight of children under five for each AWC. But, unfortunately, it is not easily available. Further, Ramani makes a valid point that lack of access to data for interested stakeholders results in the absence of public accountability and has huge implications on policy implementation.

Before we get to the issue of public accountability, there is a hurdle, i.e. there isn't enough information and data available in the public domain for us to understand the nutritional status and effectiveness of nutrition-related schemes of a particular district, block or village. The government, on its part, collects a range of information including the number of beneficiaries, their nutritional status and variances in coverage across villages and social groups like scheduled castes and scheduled tribes. But this local level data is not available in public domain. While one can argue that there are large nutrition surveys like the National Family Health Survey, but unfortunately their design does not capture locally-relevant information and it is not real-time.

Indeed, the ICDS data on target beneficiaries, people reached, services offered and funding for different services should be available at all levels of service delivery. Relevant break-up at each level including state, district, block and *gram panchayat* should give a holistic picture for decision-makers. Also, communities at village level should have access to the data relevant to their AWC, so they are aware of the beneficiaries, their entitlements as well as the nutritional status of women and children. This will help take forward the dialogue between service providers and the community, generate demand, and improve service delivery.

The ICDS scheme needs to emulate MGNREGA in this regard, in which the principles of transparency and accountability are ingrained through proactive disclosure of information at all levels of scheme delivery, social audits and grievance redressal. This is evident from their management information system—NREGASoft—that makes information readily available from the national to the beneficiary level, on every aspect of the scheme and is real-time. Information is also made available to public at community level through display boards and wall paintings under MGNREGA.

As a country that is aiming to end all forms of malnutrition by 2030 and has been on a successful path of reducing undernutrition, India is still faced with certain challenges holding us back from achieving our targets. Higher malnutrition prevalence in certain marginalised populations including the STs is one of the biggest challenges.

Transparency of data can be a huge support to governments to identify vulnerable geographies and populations, evaluate schemes, and come up with new innovations. But, most importantly, transparency of this data can support communities to engage with an issue like malnutrition and hold service providers accountable, which will improve service delivery. We also hope that, one day, instead of struggling to access ICDS data, our struggles will focus on analysing that data to find solutions.