



FROM NMDC TO NOW: REASSESSING THE 'PUBLIC BODY' TEST UNDER WTO IN LIGHT OF U.S. TARIFFS ON INDIA

*Janet Vanlaldinpui**

ABSTRACT

This paper re-approaches the jurisprudence of “public body” under article 1.1 (a) (1) of the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement), since India won the case of NMDC against the United States. The Appellate Body had stated that mere ownership or control by a government is not enough, an entity had to possess or exercise governmental authority. Although this approach has sheltered developing countries, it raises evidentiary and definitional problems in the wake of disputes. This paper places this doctrine in today’s trade environment, where the United States has imposed tariffs on Indian exports through countervailing duties, section 232 national security measures, and prospective climate-related adjustments. These actions which often target public sector undertakings result in the revival of debates central to the NMDC case which has been explored in the paper. The present paper re-examines the “public body” doctrine in light of these contemporary challenges and argues that the test laid down by the Appellate Body, while doctrinally sound, imposes evidentiary and procedural burdens that may disproportionately disadvantage developing economies. The paper further argues that India must combine legal reliance on the “public body” test with domestic PSU reforms, build institutional litigation capacity, and initiate proactive diplomatic measures to defend its interests in an evolving global order.

Keywords : WTO, Public Body, Jurisprudence, United States, India, PSU reforms

I. Introduction

The case law on subsidies and countervailing measures under the World Trade Organisation (WTO) has experienced a spectacular development since the mid-1990s. Central to this reorientation is the meaning to be given to the concept of “public body” as developed in article 1.1(a)(1) of the Subsidies Agreement. And the definition’s contours — about when a state-owned enterprise should count as a public body, and when it should be subject to the discipline — have helped shape the course of global trade disputes featuring state-connected entities. The tipping point in this direction was India’s successful challenge (in United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India or the “NMDC case”) which established that the simple fact of ownership or control by the State

* Ph.D. Research Scholar, Faculty of Law, University of Delhi.

would not automatically make an enterprise a public body, for this would require that such a body is invested with or exercises governmental authority.¹

But today, the importance of that jurisprudence has taken on a new urgency. The US has, in the past few years, applied various tariffs and trade measures against India in different areas, using both traditional countervailing duty instruments as well as newer tools like section 232 tariffs (those on steel and aluminium, ostensibly for national security rationale) and climate-related trade adjustments.² These policies, while different in legal character, in many cases turn on the same nub issue: at what point does State participation in a business amount to a subsidy capable of being challenged under the law of the WTO. The test enunciated in the NMDC dispute continues to be core to the test.

The international context also has changed drastically. The United States' continuing obstruction of appointments, which has rendered the WTO Appellate Body paralysed since 2019, has effectively dismantled the final level of dispute settlement in the WTO.³ This institutional void has encouraged unilateral trade actions, eroded adherence to past decisions and imposed a larger responsibility on developing countries such as India to protect their own interests by the process of bilateral negotiation and adjustment of domestic policies. In this context, the NMDC decision, at one-time viewed as a limited doctrinal triumph for India, should be reconsidered as a leading precedent which endures to shape the framework for trading activity.

What's more, the stakes are even higher now than they were in 2001. India's export basket has moved away from the primary steel products to include sophisticated items in software, pharma, green, and energy-intensive goods.⁴ Each of these industries is also made up of firms with different levels of State participation (ownership, subsidies, regulation). The continuation of U.S. tariffs, justified on the basis of subsidies, national security and environmental sustainability, throws into question the understanding of the "public body" in

¹ "United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India", Appellate Body Report, WT/DS436/AB/R, adopted Dec. 2014.

² "U.S. Department of Commerce: Section 232 Investigations on Steel and Aluminium Products" *Federal Register* (2018), available at: <https://www.commerce.gov> (last visited on Aug. 25, 2025).

³ Ernst-Ulrich Petersmann, *International Trade Law and the GATT/WTO Dispute Settlement System* (Kluwer Law International, 1997) p. 219.

⁴ Government of India, Ministry of Commerce and Industry, *Export-Import Data Bank 2024*, available at: <https://tradestat.commerce.gov.in> (last visited on Aug. 25, 2025)

WTO law. For example, battles over renewable energy subsidies or carbon border adjustments are effectively a continuation of the arguments that used to revolve around NMDC.⁵

The present paper re-examines the “public body” doctrine in light of these contemporary challenges and argues that the test laid down by the Appellate Body, while doctrinally sound, imposes evidentiary and procedural burdens that may disproportionately disadvantage developing economies.

II. The Legacy of NMDC Case

The NMDC case, officially titled ‘United States: Countervailing Measures on Certain Hot Rolled Carbon Steel Flat Products from India’, was one of the key disputes decided during a time when countervailing duty investigations by the United States were at their highest level ever, and the use of countervailing measures was being overextended.⁶ India brought proceedings with respect to a countervailing duty measure imposed on exports of hot-rolled carbon steel flat products (HRCS) from India, claiming that the U.S. Department of Commerce (USDOC) acted in an impermissible manner under the SCM Agreement in various ways. At the core of this dispute there was a seemingly straightforward, yet legally significant, question: Was the National Mineral Development Corporation (NMDC) – a government-owned mining company – a “public body” for the purposes of article 1.1(a)(1) of the SCM Agreement?⁷

Panel Findings

The panel in the dispute interpreted the concept of ‘public body’ broadly. It held that NMDC being owned and controlled by the Government of India, with the Government appointing directors and exercising “administrative control” in its functioning, the enterprise would be treated as a public body.⁸ The Panel in its analysis laid stress on the aspects of ownership, control and capacity of government to guide commercial decisions of NMDC. By deeming “meaningful control” synonymous with “public body”, the Panel effectively removed the distinction between State ownership and the operation of public power.⁹

⁵ Steve Charnovitz, “The WTO’s Environmental Progress,” (21) 2 *Journal of International Economic Law* 377 (2018).

⁶ “United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India”, Panel Report, WT/DS436/R, adopted Dec. 19, 2014, para 7.1.

⁷ Agreement on Subsidies and Countervailing Measures, art. 1.1(a)(1).

⁸ *United States – Hot-Rolled Carbon Steel (India)*, Panel Report, WT/DS436/R, para 7.36.

⁹ Dominic Coppens, *WTO Disciplines on Subsidies and Countervailing Measures* 127 (Cambridge University Press, 2014).

In the view of the USDOC, this broad interpretation was consistent with its long standing approach of treating publicly owned enterprises as “public bodies” where the government exercised predominant ownership or control over them.¹⁰ The reasoning was based on a presumption that, when government controls (i.e. owns) a business, the assets of such a business are akin to the assets of the government. This interpretation, however, threatened to reduce article 1.1(a)(1) to an absurdity, in as much as any SOE would then in return categorize as a public body, irrespective of the activities it engaged in.

Appellate Body Findings

On appeal, the Appellate Body steered clear of the Panel methodology. It concluded that a public body is not a government-owned or government-controlled entity. Rather, an entity qualifies as a “public body” only when it is vested with governmental authority. Therefore, the relevant inquiry must focus on the functions performed by the entity rather than on its ownership structure alone.

The Appellate Body also noted that the USDOC had not shown that the NMDC possessed governmental authority with respect to (the mining and sale of) iron ore;¹¹ although the role of the State in the appointment of directors and monitoring was acknowledged, such control did not demonstrate that the NMDC was engaged in the exercise of sovereign authority or regulation. Without any indication that the NMDC was an instrumentality of the State in a governmental sense, classification of NMDC as a public body was unwarranted.

Where there arises a distinction between ownership of and control by the State, they will not be considered to be the same entity, which means it will not be automatic that an SOE would be considered as a public body. There needs to be a functional and data-driven inquiry. In doing so, the Appellate Body raised the evidential bar for the countervailing investigations (proceedings against states linked companies).

III. Significance for India

The ruling was a doctrinal win for India on several fronts. It immunized Indian PSUs operating commercially from being automatically treated as public bodies in the US countervailing duty proceedings.¹² By requiring investigating authorities to establish effective government

¹⁰ U.S. Department of Commerce, “Countervailing Duty Investigation of Certain Hot-Rolled Carbon Steel Flat Products from India: Final Determination” (2001).

¹¹ *Ibid.*

¹² Shanker A. Singham, “Subsidies and State-Owned Enterprises: Lessons from WTO Disputes” (14) 3 *World Trade Review* 479 (2015).

authority, the ruling offered protection to exporters that sourced inputs from state-controlled suppliers.

Second, the decision revised the evidentiary burden balance. Under the Appellate Body's standard, it is the investigating authority, USDOC in this case, that must demonstrate that a SOE does exercise such governmental authority.¹³ This would serve to avoid placing undue burden on exporters in developing countries that are unlikely to have access to internal documents or corporate governance materials of larger PSUs.

Third, the decision also enriched the WTO law on subsidies by narrowing the definition of "public body" as opposed to "government" or "private body." This conceptual distinction proved invaluable in subsequent fights like the US–Anti-Dumping and Countervailing Duties (China), where the interpretation made it possible to apply the same logic of interpretation to Chinese SOEs.¹⁴

IV. Broader Jurisprudential Impact

The NMDC judgement has been subsequently referred to as a landmark in the law of subsidy. It emphasised that WTO disciplines must take into account the diversity of domestic economic structures, in particular in those countries in which state-owned enterprises have a significant role in industrial policy.¹⁵ But it presented challenges too: the demand for "governmental authority" is doctrinally apt yet pragmatically difficult, as the line between commercial and government functions is rarely a clear one in practice.

The ruling had both defensive and offensive importance for India. Defensively, it acted as insulation in WTO litigation and in US probes; Offensively, it served as a precedent for India to fight expansive interpretations of subsidies mandated by trading partners. Looking back, the NMDC dispute may turn out to be one of those rare instances when India successfully reset the parameters of WTO subsidy law to account for realities of how India's own economic management works.

¹³ Julia Ya Qin, "The Public Body Test in WTO Subsidy Law: A Comparative Institutional Perspective" (19) 4 *Journal of International Economic Law* 823 (2016).

¹⁴ "United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China", Appellate Body Report, WT/DS379/AB/R, adopted March 25, 2011.

¹⁵ Aaditya Mattoo and Arvind Subramanian, *India and the Multilateral Trading System Post-NMDC* 14 (Peterson Institute for International Economics, 2016).

V. Post-NMDC Case Developments

The decision of the Appellate Body in the NMDC case was feted as a doctrinal victory for India and a great clarifying precedent for WTO law on subsidies.¹⁶ But its afterlife has proven more complicated. Disputes that followed use of the “public body” test, however, reflect conflicting panel and investigative resource interpretations of what constitutes a “governmental authority” in the absence of an explicit definition.¹⁷ The action also came amid broader institutional problems in the WTO, including the Appellate Body having been gridlocked since 2019, impeding the enforcement of disciplines on subsidies.¹⁸

Application in Subsequent Disputes

After the NMDC case, the most visible application of the “public body” debate was in the United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China.¹⁹ On the issue in that litigation, the Appellate Body affirmed that a “public body” is not merely a State-owned enterprise, but one endowed with government authority. Yet the case underscored the challenges in mapping the standard onto a large and complex state-owned enterprise (SOE) such as in China, where commercial and regulator roles are overlapping.²⁰

The Appellate Body in US – Carbon Steel (India), by the same token, reaffirmed that the investigating authorities must undertake a functional analysis of an entity's capabilities and functioning,²¹ the Appellate Body applied the reasoning of NMDC to include also the requirement of evidence of the exercise of sovereign functions. However, the evidentiary standard was still a high one — panels asked for detailed evidence of what an entity's activities are, which typically require access to sensitive internal documentation that exporters usually do not have.²²

¹⁶ Appellate Body Report, United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India, WT/DS436/AB/R, adopted 19 December 2014.

¹⁷ Appellate Body Report, United States — Countervailing Duty Measures on Certain Products from China — Recourse to Article 21.5 of the DSU by China, WT/DS437/AB/RW, circulated 16 July 2019.

¹⁸ WTO, Dispute Settlement: Appellate Body, noting that the Appellate Body is unable to review appeals due to ongoing vacancies; WTO, Members urge continued engagement on resolving Appellate Body impasse.

¹⁹ “United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China”, Appellate Body Report, WT/DS379/AB/R, adopted March 25, 2011.

²⁰ Julia Ya Qin, “State-Owned Enterprises and WTO’s Public Body Test: A Chinese Perspective” (50) 3 *Journal of World Trade* 503 (2016).

²¹ “United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India”, Appellate Body Report, WT/DS436/AB/R, adopted Dec. 19, 2014, para. 4.46.

²² Dominic Coppens, *WTO Disciplines on Subsidies and Countervailing Measures* 312 (Cambridge University Press, 2014).

In EC and Certain Member States – Large Civil Aircraft (Second Complaint), panels faced issues related to whether financing entities associated with the European Union should be considered public bodies for the purpose of granting subsidies.²³ It was a case which did not deal with India, but its expression had substantially borrowed from the NMDC case and reflected the sanctity it has achieved over the years .

Doctrinal Challenges

The “public body” test is somewhat open-textured. The Appellate Body never gave a comprehensive list that would constitute governmental authority, but left it to panels to decide on a case-by-case basis. There have been mixed results as the result of this. In certain cases, SOE trading has been omitted from the definition of “public body” , and in others, the same factors were considered as being sufficient.²⁴

It has been noted by some scholars that this ambiguity generates systemic uncertainty. On the one hand, it stops automatic pursuit of SOEs only by virtue of being state-owned, while also affirming the development policies of countries – such as India and China. On the other hand, it makes the conduct of CVD investigations more cumbersome, because authorities are required to conduct complex factual investigations of the capacities and functionalities of foreign firms.²⁵

The NMDC jurisprudence has so far brought about little satisfaction for the United States. The Department of Commerce has stated that it is unrealistic and would weaken its authority to discipline subsidies coming out of countries where State Owned Enterprises (SOE) dominate industrial activity, if strict proof is required with respect to every SOE.²⁶ Therefore, in a number of post-2014 investigations, the United States has either used a broader reading of the “public body” test or relied on alternate rationales for imposing duties.

Institutional Backdrop: Appellate Body Paralysis

The path of the “public body” test is also not divorced from the institutional crisis of the WTO dispute settlement mechanism. The Appellate Body has not been able to function since

²³ “European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)”, Panel Report, WT/DS316/RW2, adopted Dec.15, 2011.

²⁴ Weihuan Zhou, *China’s Implementation of the Rulings of the WTO* 88 (Hart Publishing, 2019).

²⁵ Robert Howse, “The WTO System After the Collapse of the Appellate Body: The Limits of Judicialization,” (20)3 *World Trade Review* 345 (2021).

²⁶ U.S. Department of Commerce, *Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Steel Products* (2017).

December 2019, with the US refusing to give its blessings to new appointments.²⁷ Thus, despite applying the NMDC rationale, and several panels not extending the presumption, the decision to not extend the presumption has created a decision many believe will not be reconciled in the absence of a viable appellate level decision.

There have been two results to this deadlock. First, it has undermined compliance: dissatisfied members of panel decisions, especially the US, have been able to appeal “into the void” and thereby prevent the adoption of unfavourable reports.²⁸ Second, it undermined NMDC’s precedential value. With an inoperative appeals process, the binding nature of previous Appellate Body rulings is coming into question, and some academics believe they are binding only on the parties to the case in which they were issued.²⁹

Implications for India

Post NMDC, as far as India goes, it’s a mixed bag. On the one hand, its jurisprudence continues to serve as a barrier to broader interpretations of “public body” in Countervailing Duty cases. Nor is it clear that Indian exporters would lose as a result, given that they can still maintain that SOEs that export inputs - such as NMDC, Coal India, or Oil and Natural Gas Corporation (ONGC) - are acting commercially, not governmentally. However, on the flip side, it is the institutional weakness of the WTO that makes it impractical for India to count on the system. If other countries can prevent the enforcement of panel rulings that do not go their way, the doctrine of NMDC may provide only limited real-world protection. Also, in a world where tariffs and unilateral actions are spreading beyond the confines of the WTO, India will have to supplement legal arguments with diplomacy and policy.

The time since NMDC tells of the duality of WTO law: strong and at the same time vulnerable. The Appellate Body managed to limit the test of what is a “public body” so that it did not extend as far as some would have wanted, to the detriment of developing countries. The absence of settled doctrine and the erosion of the system of dispute settlement, however, have attenuated the practical value of such jurisprudence. For India, the issue is one of trying to continue to secure doctrinal victories of the NMDC variety in order to enable the country to

²⁷ Peter Van den Bossche and Werner Zdouc, *The Law and Policy of the World Trade Organization* 275 (Cambridge University Press, 2021).

²⁸ Jennifer Hillman, “Three Approaches to Fixing the WTO’s Appellate Body: Proposals by the United States, EU, and Canada,” *Council on Foreign Relations Special Report* (2019).

²⁹ Joost Pauwelyn, “Nullification and Impairment of Benefits in WTO Law,” (70)1 *International and Comparative Law Quarterly* 29 (2021).

manipulate the global trade environment (which is characterised by uncertain enforcement and resurgent unilateralism).

VI. The Present Context: US Tariffs on India

The current state of India-US trade relationship is paradoxical. On the one hand, India is now one of America's fastest growing trading partners, with bilateral trade touching \$190 billion last year.³⁰ On the other hand, the US has consistently slapped tariffs and trade remedies on Indian exports, typically based on charges of subsidies, market distortions or national security. These actions have been in addition to traditional countervailing duties and have included, for example, unilateral tariffs imposed under domestic US law, such as section 232 and section 301 of the Trade Expansion Act of 1962 and the Trade Act of 1974, respectively.³¹

Whilst these instruments are not the same as WTO-approved countervailing instruments, they nevertheless engage with the same debates which drove the NMDC dispute: the question of whether state involvement in Indian enterprises amounts to actionable subsidisation, as well as whether the global trading system is able to effectively discipline such unilateral actions.

Section 232 Tariffs: An Appropriate Tool for National Security as Trade Policy?

In March 2018, the US slapped 25 per cent tariffs on steel imports and 10 per cent on aluminium, under section 232 of the Trade Expansion Act of 1962, claiming the imports posed a threat to the country's national security.³² India is the largest exporter of steel and aluminium products that were directly affected. India requested to be excluded from the tariffs, which was denied; this prompted India to conduct WTO consultation in the United States – Certain Measures on Steel and Aluminium Products.³³

While the WTO panel found in December 2022 that the US tariffs were violating its commitments under the General Agreement on Tariffs and Trade (GATT), the country appealed it “into the void” taking advantage of the paralysis of the Appellate Body.³⁴ For India,

³⁰ Office of the United States Trade Representative (USTR), “2023 National Trade Estimate Report on Foreign Trade Barriers” 182 (Washington, 2023).

³¹ Trade Expansion Act of 1962, s. 232, codified at 19 U.S.C. § 1862; Trade Act of 1974, s. 301, codified at 19 U.S.C. § 2411.

³² U.S. Department of Commerce, “Presidential Proclamation on Adjusting Imports of Steel and Aluminium,” *Federal Register* (March 8, 2018).

³³ “United States – Certain Measures on Steel and Aluminium Products”, Panel Report, WT/DS547/R, adopted Dec. 9, 2022.

³⁴ WTO Dispute Settlement Body, “Minutes of Meeting held on 26 January 2023” WT/DSB/M/452.

this underlines a core problem: in places where WTO law would appear to be on its side, lack of an operational appellate body makes the remedy a mirage.

The national security argument also complicates the issue. Through its use of article XXI of the The General Agreement on Tariffs and Trade GATT, the U.S. has tried to designate a large realm for unilateral action.³⁵ This parallels the public body debate: if the definition of “public body” in this context determines the scope of subsidy-related disciplines, who gets to define “national security” exceptions will determine the scope of unilateral tariffs. In both cases, the US has pushed for broad interpretations that maximise its regulatory freedom.

Section 301 and Beyond: Tariffs as Strategic Tools

Another source of tension has been the use of section 301 of the Trade Act of 1974, which allows the United States to impose tariffs on countries that are found to be engaging in “unfair trade practices”.³⁶ While some of the high-profile section 301 actions pursued so far have been against China, India has also been impacted, especially with regard to IPR enforcement and market access restrictions. The 2019 US pullback of India’s Generalized System of Preferences (GSP) on the same pretext, depriving Indian exporters duty-free access worth nearly \$5.6 billion annually, was on similar grounds.³⁷

More recently, arguments over carbon-intensive products and supply chain resilience have provided new opportunities for US trade action. Proposals for a US carbon border adjustment mechanism (CBAM)-style tariff could also focus on Indian exports in steel, cement and other energy-intensive sectors.³⁸ Also, since many Indian firms in these sectors are State Owned Enterprises or have state links, the question “whether such entity is a public body” is still a very pertinent consideration for the constitutionality of any future measure.

India’s Policy Response

India’s response has two prongs: legal and diplomatic. On the legal side, it has launched several WTO disputes against US tariffs. In the United States — Certain Measures on Steel and Aluminium Products, India's submission that US action was in violation of WTO laws

³⁵ Peter Van den Bossche and Werner Zdouc, *The Law and Policy of the World Trade Organization* 604 (Cambridge University Press, 2021).

³⁶ Alan Wm. Wolff, *WTO Dispute Settlement and U.S. Trade Law: Section 301 and Beyond* 95 (Oxford University Press, 2019).

³⁷ Congressional Research Service, *India’s Status in the Generalized System of Preferences* 3 (Washington, 2020).

³⁸ Joe Biden, “Remarks on Climate and Trade Policy” *White House Briefing* (June 15, 2022), available at: <https://www.whitehouse.gov> (last visited on Aug. 25, 2025).

prevailed.³⁹ But the failure to obtain effective remedies has emphasized the structural weakness of the strategy of litigation alone.

As a matter of diplomacy, India has sought negotiated solutions. In 2023, India also agreed to eliminate a few of its retaliatory tariffs in return for having retained market access on certain items.⁴⁰ Meanwhile, India has stepped up its involvement in plurilateral platforms, such as the G20 and the Quad, to be able to manage trade irritants politically, as opposed to just through legal tactics.

The Relevance of the “Public Body” Test

These developments underscore the continuing importance of the “public body” jurisprudence. The US often classifies Indian PSUs (like NMDC, Coal India, ONGC) as conduits of trade distorting subsidies.⁴¹ As new tariffs are issued, most importantly in climate-sensitive and strategic industries, the extent to which one can separate commercial and government activities will be the key factor in deciding India’s exposure to countervailing action.

In this way, the NMDC case is not a dead but a living precedent. It allows India to make the case that state ownership on its own does not warrant punitive tariffs. But as enforcement of WTO rulings has been weakened and the US increasingly resorts to unilateralism, doctrinal victories are no longer enough. What is needed is a multi-dimensional approach, one that encompasses legal defence, domestic reform of PSU governance and proactive diplomacy.

The current tariff terrain is a mix of the old and the new. The continuity is the continuing contest over state intervention in Indian industry; the change is the tools, national security, climate policy, supply chain resilience, through which the US now conducts such contests. This is the dilemma that the Indian government will face, how to shield its industrial policy from the judicial canon, but engaging with the political economy of tariffs given the fragmenting world politico-economic order.

VII. Conclusion: Policy Implications and the Road Ahead

The NMDC litigation has left a long shadow over the past and future of India's trade relations. Although the articulation of the “public body” test by the Appellate Body was significant in

³⁹ “United States – Certain Measures on Steel and Aluminium Products”, Panel Report, WT/DS547/R, para 8.34.

⁴⁰ Ministry of Commerce and Industry, Government of India, “Press Release on India-U.S. Trade Agreement” June 23, 2023.

⁴¹ U.S. International Trade Commission, *Countervailing Duty Investigations: Indian Steel and Energy Products* (Washington, 2022).

doctrinal terms and provided a bulwark against the mechanical imputation to state-owned enterprises, India cannot (as developments indicate) depend only on jurisprudence. The enforcement crisis in the WTO and the escalation of unilateral US tariffs call for a more comprehensive approach. This concluding part discusses policy and strategic implications for India and places the NMDC legacy in relation to the problems of an increasingly fragmented trade order in the contemporary world.

Strategic Legal Implications

On the doctrinal front, India will always stand by NMDC norms in countervailing duty enquiries and WTO battles. And, by stipulating that a “public body” needs to demonstrate proof of ‘governmental authority’ and can’t be defined in terms of mere ownership, India can firewall critical PSUs such as NMDC, Coal India and ONGC from being automatically considered as no more than pipelines for subventions.⁴²

But the burden of proof is still a steep hill to climb. Investigating authorities typically request precise evidence of the role of SOEs documents that may not be in the possession of the exporter and that (literally) government bodies may be hesitant to produce.⁴³ To remedy this, India needs to build institutional capacity for trade litigation including inter-ministry, PSU, and private exporter coordination. India should create a central database containing information on PSU governance which can be relied upon by trade-defence authorities during investigations, instead of responding in an ad hoc manner.⁴⁴

Domestic Policy Adjustments

Other than litigation, India needs to rethink how it governs its state-owned enterprises at home. The more that PSUs resemble organisations of a commercial character, the more difficult it is for foreign states to argue that they are manifesting the exercise of governmental authority. This needs reforms in transparency, corporate governance and separation of the government’s regulatory functions from its commercial activities.⁴⁵ The strengthening of independent boards, diminishing of direct ministerial interference in the operational affairs and forging to international reporting standards can all help reduce India’s exposure to countervailing actions.

⁴² “United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India”, Appellate Body Report, WT/DS436/AB/R, adopted Dec. 19, 2014, para. 4.46.

⁴³ Dominic Coppens, *WTO Disciplines on Subsidies and Countervailing Measures* 312 (Cambridge University Press, 2014).

⁴⁴ Ministry of Commerce and Industry, Government of India, “Annual Report of the Directorate General of Trade Remedies” 45 (New Delhi, 2022).

⁴⁵ OECD, *State-Owned Enterprises and the World Trading System* 61 (Paris, 2020).

Simultaneously, it should not be discounting the developmental role of PSUs. Strategic sectors such as energy, mining, infrastructure, and heavy industry continue to require a degree of state intervention to move the country in the desired national direction. The issue is in balancing these roles while limiting the exposure to external trade conflicts. An intermediate stance that lets PSUs run commercially but drive public policy through clear, WTO-compliant instruments such as research grants or environmental subsidies is the best compromise.⁴⁶

Linkages with Emerging Issues

The relevance of the “public body” test transcends steel and minerals. With carbon border adjustment mechanisms, renewable energy subsidies and calls for supply chain resilience measures increasingly seeing light of the day, questions are being asked about the role of state organs. Indian companies operating in sectors such as solar energy, green hydrogen and strategic minerals may increasingly face countervailing duty investigations if their activities are suspected to involve state subsidies.⁴⁷ Once more, as in the NMDC case, the NMDC precedent offers a doctrinal basis for the proposition that governmental ownership is by itself not sufficient to justify countervailing actions.

In addition, India also needs to take a proactive role in framing the discourse on climate-compatible trade policies. Through showing green subsidies as WTO-consistent, while PSUs act commercially, India can head off disputes that force it into the unilateral-tariff camp.⁴⁸

Conclusion

The present paper is a timely reminder that trade law is an evolving realm. The Appellate Body approach of limiting the interpretation of “public body” to functioning based on authority was a victory for India and also for the developing world at large.

For India, three imperatives emerge. First, to maintain the doctrinal shield of the NMDC test through aggressive litigation and evidence-based advocacy. Second, to modernise PSU governance so as to enhance transparency and resilience against foreign challenges. Third, combining legal strategies and diplomacy and leadership in plurilateral negotiations.

⁴⁶ Aaditya Mattoo and Arvind Subramanian, *India's Role in Global Trade Governance* 29 (Peterson Institute for International Economics, 2017).

⁴⁷ Steve Charnovitz, “Trade and Climate: The Next Frontiers of WTO Law” (22)4 *Journal of International Economic Law* 555 (2019).

⁴⁸ World Trade Organization, Committee on Trade and Environment, *India's Communication on Climate and Trade Measures* (WT/CTE/W/268, 2024).

The legacy of the NMDC case is therefore not just a question of subsidy law; it is a prism through which India must view the crosscurrents of state capitalism, trade governance and geopolitical competition. The challenge going forward is to convert a legal precedent into a larger trade policy, one that facilitates India's capacity to protect its developmental priorities in an era of profound changes in the global economy.