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Trojan horse deals are test for WTO boss

Developing countries get wise to dubious trade tribunals

INVESTOR POWER

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the Globalist

ROBERTO Azevêdo, the new World Trade Organisation (WTO) director-general, has earned praise for avoiding the implosion that has characterised many past WTO meetings.

The Bali deal indicates that, while attempts to expand the scope of the WTO do not enjoy support from most members, Azevêdo may find more support in heeding calls to alter existing WTO rules.

His home country has proven successful in challenging old globalisation agendas and crafting its own trade policy. Brazil was one of the few countries that refused to subject its financial services sector to the WTO's broad deregulation rules. Unlike those countries that did, Brazil weathered the 2007/8 global financial crisis with limited impact.

Another example of Brazil's savvy is its refusal to accept an obscure-sounding provision that is usually buried in the trade and investment agreements and pushed onto other countries by the US and the EU.

Known as "investor-state" dispute resolution (ISDR), this mechanism empowers foreign corporations to bypass the domestic legal systems of the countries in which they operate. Instead, it allows them to drag sovereign governments before extrajudicial tribunals with a stunning demand – compensate corporations for health or environmental policies (or other government actions) that investors find inconvenient.

These tribunals consist of three private sector attorneys, unaccountable to any electorate. And yet, they are empowered to decide whether an important public interest policy should be deemed a violation of expansive, but vague, foreign investor privileges.

For example, a Peruvian anti-toxics policy is being attacked by a US corporation, as is Canada's medicine patent policy. And US tobacco giant Philip Morris has launched cases against progressive anti-smoking laws in Uruguay and Australia, after failing to sink the laws in domestic courts.

To outsiders, this may sound like a conspiracy theory. If only. In the name of investment promotion, US trade negotiators over the past two decades have quietly inserted these far-reaching provisions into a panoply of "free trade" agreements (FTAs) signed with 17 mainly developing countries, from Mexico to Morocco. European countries have inked nearly 1 000 bilateral investment treaties (BITs) containing the same mechanism with developing countries in Latin America, Africa and Asia.

As a result, US and EU oil, pharmaceutical and other corporations are now launching an unprecedented wave of these investor-state cases. The UN reports that the cumulative number of investor-state cases has jumped tenfold since 2000.

Corporations are using this tool to go up against consumer safeguards, environmental laws, financial regulations and other polices that they claim inhibit their "expected future profits". These tribunals have already ordered governments to pay billions to foreign corporations, while billions more in claims remain pending.

So why would any country want to sign on to such a one-sided system? Most likely, it is deceptive advertising. Sweeping investor privileges, it was reasoned, were required to lure a steady flow of investment into developing countries. Investor-state clauses were originally presented as promoting investments. In reality, they have turned into a Trojan horse.

If the agreements had worked as advertised, Brazil – which has steadfastly refused to accede to these tribunals – should be hurting for investment after rebuffing BITs and US FTAs that enshrine the ISDR system. And Peru, having ratified nearly two-dozen investment treaties and signed onto an ISDR-embodying FTA with the US, should be a darling of foreign investors.

The reality is the opposite. The UN reports that in 2012 Brazil was the fourth most popular destination for foreign investment, only outdone by the US, Hong Kong and China.

In contrast, Peru ranked as one of Latin America's lowest foreign investment recipients. Indeed, study after study has found zero correlation between a country's submission of its public policies to the whims of investor-state tribunals and its ability to attract investment.

No wonder then that South Africa is in the process of terminating its BITs with investor-state enforcement, as is Ecuador. Countries such as Bolivia and Venezuela have withdrawn from the World Bank forum where most investor-state cases are tried

The opposition to these dubious tribunals has also reached the Global North. After a multi-year review under the past conservative government, Australia concluded that the investor-state regime was not in its national interest. It refuses to be subjected to the US-proposed expansion of the investor-state system through the Trans-Pacific Partnership, a sweeping FTA that is currently under negotiation.

Given Brazil's proven success in refusing such costly schemes and engaging in the global economy on more pragmatic terms, will Azevêdo take a cue from his home country, learn from the recent backpedalling in the Bali deal and bring a new perspective to the WTO?

The odds may be long, but the world can only hope so.


Australian Minister for Trade and Investment Andrew Robb, left, congratulates WTO director-general Roberto Azevêdo during the WTO ministerial conference in Bali, Indonesia, this month.

Editor's note: Lori Wallach is director and Ben Beachy is research director of Public Citizen's Global Trade Watch. This article is part of Ford Foundation's "Reforming Global Finance Governance" project. It is published with permission from theGlobalist.com, an online newspaper covering developments shaping the global economy, politics and culture. Follow theGlobalist on Twitter: @theGlobalist

Food issues to threaten US-EU free trade deal

GENETICALLY modified crops, chlorine-washed chicken, beef quotas and a fight over who can call Greek-style cheese "feta" all block the way towards the largest free trade deal.

US and EU negotiators will determine a list of sticking points this week in Washington during their third round of talks, and food issues are expected to be chief among them.

At a time of low economic growth on both sides of the Atlantic, EU-US free-trade negotiations seek to integrate two markets representing almost half the world's economy in a sophisticated agreement going far beyond lowering tariffs.

But food is different and the old issues that have bedevilled many trade talks around the world are likely to complicate the ambitious Transatlantic Trade and Investment Partnership between Brussels and Washington.

The recently agreed EU-Canada free-trade talks dragged on for months before Brussels agreed to let in some 45 000 more tons a year of Canadian beef and 75 000 tons of pork free of tariffs. Even if just a fraction of the EU's output of 7.7 million tons of beef and 20 million tons of pork, the imports will be high-value hams and hind cuts of beef, a lot for Irish and French farmers to swallow. A US deal would let in more.

Meanwhile, Europe takes a precautionary approach to food safety, making it difficult and time-consuming to clear new practices and to see products reach the mouths of consumers. – Reuters

JPMorgan Chase to ban use of dealer chat rooms

Reuters
London

JPMORGAN Chase, the biggest US bank by assets, was banning the use of multi-dealer online chat rooms and the use of such chat rooms among staff for social purposes, a person familiar with the matter said yesterday.

Chat rooms have been a focus for regulators probing manipulation of benchmark interest rates and possible rigging in the $5.3 trillion (R55 trillion) a day foreign exchange market.

Chat communications featured prominently in a five-year probe into the rigging of the London interbank offered rate, which has already cost banks billions of dollars in settlements.

The source said JPMorgan's decision was unrelated to the foreign exchange probes which first surfaced in June, noting this had been under review at the bank since early this year.

"This has always been about more than foreign exchange," the source said, adding that the casual nature of online chat rooms increased the potential for "inappropriate" remarks to be made. The ban will come into force later this week. Bilateral online chats between JPMorgan traders and traders at other financial institutions were under review, while external chats between JPMorgan staff and clients would still be permitted, the source said.

JPMorgan declined to comment because the plans have yet to be finalised.

Nigerians sell shares while they're ahead

Chijioke Ohuocha
Lagos

AFTER a bumper year for Nigerian stocks, investors are selling riskier assets and moving money into short-term debt because of uncertainty over government spending and the future leadership at the central bank.

Nigeria has been growing as an investment destination. Foreign bond holdings swelled fivefold in the past year to an estimated $5.4 billion (R55.6bn), thanks to its inclusion in the JPMorgan index and a stable naira.

Central bank governor Lamido Sanusi, who is due to stand down in June next year, has been the driving force behind currency stability and in pushing inflation down to a five-year low of 7.8 percent in October. Inflation inched up to 7.9 percent last month.

Investors worry that Sanusi's successor may not follow his tight monetary policy stance, while an expected spike in government spending before elections in 2015 adds to currency risks, prompting a wait-and-see approach by many investors.

"The uncertain transition at the central bank and the pre-electoral climate in 2014 will weigh on sentiment," said Samir Gadio, the emerging market strategist at Standard Bank.

Domestic pension funds and asset managers are cutting exposure to stocks and moving into treasury bills to preserve gains in the main share index, which is up 41 percent this year.

The stock index eased off a five-year high in June and has been largely flat for a month after hitting a resistance level around 39 000 points.

The shortest-term three-year bond was sold last week at 12.9 percent, higher than the 12.55 percent it sold for last month. The one-year treasury bill, yielding 11.66 percent, has been attracting the most demand.

"We have switched to the short end of the [yield] curve," said Adeniyi Falade, the managing director of Crusader Sterling Pension, which in the past three months has increased the weight of bonds and short-term debt in its portfolio from 60 percent to 70 percent and cut exposure to stocks.

"We're trying to match asset maturity with uncertainties around the exit of the central bank governor and forthcoming elections," Falade said.

"Net outflow in Nigeria would put pressure on bond yields… Overall, foreign investors are likely to move towards the short end of the yield curve to reduce risks associated with currency weakening," Angus Downie, the head of economic research at Ecobank, said.

"The lack of information on potential candidates to replace Sanusi is a concern," Downie noted.

"It's possible his replacement could be keen to loosen policy given relatively low inflation." – Reuters


Lamido Sanusi will retire as central bank governor in June. PHOTO: BLOOMBERG

Diamond bets on banking in Africa

Matt Scuffham
London

ATLAS Mara, a new investment company backed by former Barclays boss Bob Diamond, had raised $325 million (R5.5 billion) by listing on the London Stock Exchange and planned to build a new financial services business in Africa, it said yesterday.

Diamond embarked on the venture after he was ousted from Barclays last year when the bank was fined $450m for alleged manipulation of the London interbank offered rate (Libor).

He and Africa-focused entrepreneur Ashish Thakkar invested a combined $20bn in Atlas Mara and said in a prospectus published yesterday that they saw significant gaps within Africa's financial services market, partly because European lenders quit the region after the financial crisis to focus on building capital to meet tougher regulations.

That presented an opportunity, they said, to make an acquisition that could be developed into a financial institution "to support economic growth and strengthen financial systems in Africa".

The scope for growth in Africa is significant. Barely a quarter of sub-Saharan Africans have a bank account yet economic growth in the region is set to outpace the global average over the next three years, according to World Bank figures.

Arnold Ekpe, a former chief executive of pan-African lender Ecobank Transnational, will chair the board, which will include Diamond and Thakkar alongside Tonye Cole, a co-founder of Sahara Group, and Rachel Robbins, the lead lawyer for the World Bank's International Finance Corporation.

Diamond left Barclays in July last year. It was the first bank fined for its involvement in Libor rate-rigging, but since then UBS, Royal Bank of Scotland and Rabobank have received bigger fines.

Diamond was praised for building up Barclays' investment bank into a global power over more than a decade before taking over as chief executive in 2011. However, evidence of a strained relationship with regulators emerged after his departure, with former Bank of England governor Mervyn King saying the bank had been "sailing too close to the wind across a wide number of areas".

Conditional dealing in Atlas Mara shares began yesterday. – Reuters