

International Trade

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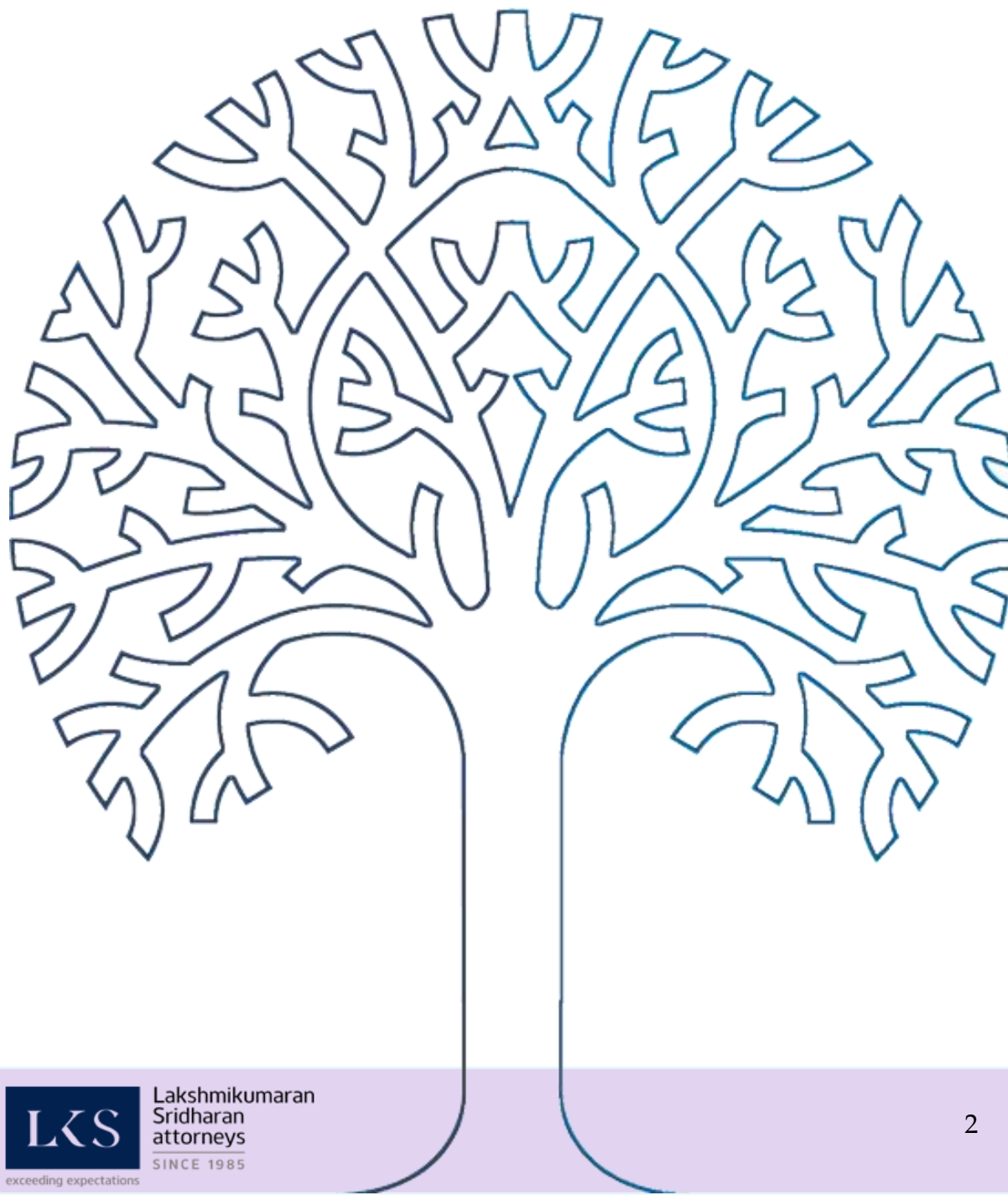
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Table of Contents

Article	3
The concept of ‘unforeseen developments’ in Safeguard law: A continuing requirement or a fading test?	4
Trade Remedy News	10
Trade remedy measures by India	12
Trade remedy measures against India	13
WTO News	15
India Customs & Trade Policy Update.....	17
India FTA Update	20
Ratio Decidendi.....	22
News Nuggets.....	25





Article

The concept of ‘unforeseen developments’ in Safeguard law: A continuing requirement or a fading test?

By Pareesha Gupta and Abhishek Tripathi

The article in this issue of International Trade Amicus discusses the issue as to whether the WTO members remain obliged to demonstrate ‘*unforeseen developments*’ in order to invoke safeguard measures as per Article XIX of the General Agreement on Tariffs and Trade 1947, or whether the omission of this phrase from the WTO’s Agreement on Safeguards has effectively displaced this obligation. Analysing the legal framework and the jurisprudence around the question, the authors are of the view that omission cannot be treated as a silent amendment of the parent provision. According to them, Safeguard investigations cannot rely solely on quantitative surges, rather they must also demonstrate compliance with the ‘*unforeseen developments*’ requirement.

The concept of ‘unforeseen developments’ in Safeguard law: A continuing requirement or a fading test?

By Pareesha Gupta and Abhishek Tripathi

Introduction

Safeguard measures, under World Trade Organisation (‘WTO’) law, are recognised as one of the trade defence instruments that enable member nations to take emergency action when increased imports cause or threaten to cause serious injury to a domestic industry. The legal foundation of safeguard measures is found in Article XIX of the General Agreement on Tariffs and Trade 1947, which has been carried forward to General Agreement on Tariffs and Trade 1994 (‘GATT’). Article XIX empowers WTO members to temporarily suspend their obligations or withdraw concessions where a sudden surge of imports, arising from ‘*unforeseen developments*’ results in or threatens to result in serious injury to the domestic industry.

The Uruguay round of WTO negotiations had introduced the Agreement on Safeguards (‘AoS’) with the objective of clarifying and operationalising Article XIX of the GATT. However, the AoS does not reproduce the reference to

‘*unforeseen developments*’. The omission has given rise to extensive debate in safeguard jurisprudence.

The central issue, explored in the following sections of this article, is *whether members remain obliged to demonstrate ‘unforeseen developments’ in order to invoke safeguard measures, or whether the omission of this phrase from the AoS has effectively displaced this obligation.*

Legal framework

The conceptual and legal foundation of safeguard measures is rooted in Article XIX of the GATT. Article XIX:1(a) of GATT provides that where, as a result of *unforeseen developments* and obligations incurred under the GATT, including tariff concessions, a product is imported in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive products, the affected member may, to the extent necessary and for such time as required, suspend obligations or withdraw or modify concessions.

In parallel, Article 2(1) of the AoS, stipulates that a safeguard measure may be applied where a product is being imported in such increased quantities, absolute or relative to domestic production and under such conditions as to cause or threaten serious injury to the domestic industry producing like or directly competitive products. While the AoS was conceptualised to bring greater clarity and procedural discipline into application of Article XIX of the GATT, its omission of the phrase '*unforeseen developments*' raises interpretative questions as to whether this element of Article XIX remains operative.

Under the Indian legal framework, Section 8B of the Customs Tariff Act, 1975 ('**CT Act**'), empowers the Central Government, after conducting an enquiry, to impose safeguard measures if it is satisfied that any article is being imported into India in such increased quantities and under such conditions as to cause or threaten serious injury to the domestic industry. Similar to the AoS, the CT Act replicates the structural elements of the safeguard provisions but explicitly does not refer to '*unforeseen developments*'. Consequently, the meaning and significance of this phrase have largely been shaped through judicial interpretation.

¹ AoS was entered into as a package of WTO Agreements in 1994 when WTO was formed.

Interpretative analysis

The existence of this phrase of '*unforeseen developments*' in GATT Article XIX has been a subject of continuing debate. Prior to WTO, the test was rarely applied in practice and its omission from the AoS¹ lead some to the view that Members were no longer required to demonstrate it when imposing safeguard measures. This uncertainty highlights the need for a structured interpretative framework to determine whether the clause '*unforeseen developments*' continues to operate as a binding condition under WTO law. To resolve this ambiguity, recourse to the principles of treaty interpretation under the Vienna Convention on the Law of Treaties ('**VCLT**') is essential, as it facilitates the interpretation of Article XIX of the GATT and the AoS within their legal and contextual framework.

It is a *trite* law that the WTO agreements cannot be read in clinical isolation from public international law and its customary rules of interpretation. Article 3.2 of the Dispute Settlement Understanding (DSU) expressly provides that the WTO dispute settlement system shall clarify the provisions of the covered agreements in accordance with customary rules of interpretation of public international law. Article 31 of VCLT, which codifies

such rules, therefore governs the interpretation of the GATT and other covered agreements under the WTO.

Article 31 of VCLT provides that treaties be interpreted in good faith, in accordance with their ordinary meaning and in light of their object and purpose. When this interpretative framework is applied to the AoS, it becomes evident that the omission of the phrase '*unforeseen developments*' from the text of the AoS cannot be construed as a deliberate negation of this substantive requirement. This is because the preamble to the AoS explicitly records its objective i.e. '*to clarify and reinforce the disciplines of GATT 1994, and specifically those of its Article XIX ... to re-establish multilateral control over safeguards and eliminate measures that escape such control.*' The AoS was thus intended to clarify and operationalize Article XIX, not to displace the substantive preconditions embedded within it.

This is further reinforced by the text of Article 11.1(a) of the AoS, which provides that '*a Member shall not take or seek any emergency action on imports of particular products as set forth in Article XIX of GATT 1994 unless such action conforms with the provisions of that Article applied in accordance with this Agreement.*'

Thus, the requirements of Article XIX, including the condition of '*unforeseen developments*,' remain applicable, but their application must be interpreted and implemented through the procedural and substantive disciplines of the AoS.

The drafting history of the AoS lends supports to the above interpretation. In June 1989, the Chairman of the Negotiating Group on Safeguards circulated a draft agreement which expressly required '*an unforeseen, sharp and substantial increase in the quantity of such product being imported.*'² This formulation was, however, omitted from the final text, thereby raising questions as to whether the omission reflected a deliberate exclusion. At the same time, the Chairman's remarks on the final draft clarified that the AoS '*would not amend Article XIX or any other Article of the General Agreement,*' thereby confirming that negotiators envisaged both provisions as operating concurrently. Accordingly, the omission of explicit language on unforeseen developments may not be construed as an intentional exclusion and instead leaves interpretative space for its continued application in harmony with Article XIX.

²GATT, Multilateral Trade Negotiations – The Uruguay Round, Negotiating Group on Safeguards, 'Safeguards – Draft Text by the Chairman', MTN.GNG/NG9/W/25 (27 June 1989); Zhou W, Fang MM. 'Unforeseen Developments' Before and After US

– Safeguard Measure on PV Products: High Standard or New Standard? *World Trade Review*. 2023;22(5):541-561. doi:10.1017/S1474745622000532

Thus, considering Article 31 of the VCLT, the omission of the phrase '*unforeseen developments*' from the AoS may not be a conscious exclusion. The ordinary meaning of Article 11.1(a), the object and purpose of the AoS and its drafting history collectively confirms that the requirement survives as an operative legal condition. Any contrary interpretation may amount to an impermissible amendment of Article XIX contrary to the principles of good faith interpretation enshrined in the VCLT.

Safeguard jurisprudence

The foregoing interpretative analysis, which establishes that the requirement of '*unforeseen developments*' continues to operate as an essential condition under WTO law, finds further affirmation in the safeguard jurisprudence. The origins of Article XIX were influenced by safeguard provisions in US trade treaties. The first dispute that addressed the '*unforeseen development*' test was *US - Fur Felt Hats*³, wherein the dispute was whether the United States could lawfully withdraw a tariff concession on women's fur-felt hats under GATT Article XIX, following a surge in imports allegedly caused by '*unforeseen*

developments' (a post-concession changes in hat fashions). The Working Party, by majority, held that while fashion changes were not unforeseeable in themselves, the extent to which they transformed the competitive situation could not reasonably have been foreseen by the United States Authorities when the concession was negotiated in 1947. It therefore concluded that the increase in imports, arising from these developments in conjunction with the tariff concession, satisfied the requirements of Article XIX.

Subsequent panels revisited the role of the '*unforeseen developments*' clause. In *Korea-Dairy Safeguard*,⁴ the Panel held that the reference to '*unforeseen developments*' does not constitute an independent legal condition for the application of safeguard measures. Instead, it serves to explain the rationale for Article XIX, namely that concessions negotiated on the basis of trade expectations may require temporary adjustment in the face of unexpected circumstances. Similarly, in *Argentina-Footwear Safeguard*,⁵ the Panel observed that the AoS was intended to provide a comprehensive framework for the application of safeguard measures and that the negotiators had deliberately

³ Working Party Report on the Withdrawal by the United States of a Tariff Concession under Article XIX of the General Agreement on Tariffs and Trade (*US-Fur Felt Hats*), GATT/CP/106, adopted 22 October 1951.

⁴ Panel Report, Korea - Definitive Safeguard Measures on the Imports of Certain Dairy Products, (Korea – Dairy Products) WT/DS98.

⁵ Panel Report, Argentina - Safeguard Measures on the Imports of Footwear (Argentina – Footwear) WT/DS/121.

chosen not to include the '*unforeseen developments*' criterion. On this basis, the Panel concluded that compliance with the explicit requirements of the AoS is sufficient to satisfy the obligations under Article XIX and that separate examination of claims under Article XIX is not required.

However, the Appellate Body subsequently clarified this position in *Appellate Body Report in Korea - Dairy Products case*.⁶ It held that the clause '*as a result of unforeseen developments and of the effect of the obligations incurred by a Member under this Agreement, including tariff concessions*' in Article XIX:1(a) establishes an additional legal requirement that must be demonstrated when imposing safeguard measures. In doing so, the Appellate Body reversed the Panel's finding that the clause was merely explanatory, thereby reaffirming that compliance with the AoS alone is not sufficient and that the conditions of Article XIX must also be met.

Further, in the Indian context, the recent safeguard investigation concerning imports of '*Non-Alloy and Alloy Steel Flat Products*,⁷ wherein the Indian Authority noted that although neither the CT Act nor the Safeguard Rules referred to the requirement of unforeseen developments, under Article XIX:1(a)

of GATT 1994, read with the AoS, the demonstration of such developments and their logical nexus with import increases causing injury remained necessary. The Authority clarified that the standard is not whether developments were unforeseeable in an absolute sense, but whether they were unexpected at the time commitments were undertaken, including accession to the WTO. It further recognised that unforeseen developments need not constitute separate legal conditions. Rather, they may be understood as circumstances arising from known facts or from the convergence of multiple factors, provided they were unexpected at the time of commitment.

Conclusion

The evolution of safeguard jurisprudence confirms that '*unforeseen developments*' remains a substantive condition under Article XIX of the GATT, notwithstanding its omission from the AoS. The omission cannot be treated as a silent amendment of the parent provision.

The WTO Panel Reports, Appellate Body jurisprudence, and findings of domestic authorities consistently affirm that the requirement of '*unforeseen developments*' has to be analysed. Instead, it functions as a substantive safeguard that ensures such

⁶ See Appellate Body Report, Korea - Dairy Products case (WT/DS98/AB/R); Appellate Body Report, Argentina-Footwear case (WT/DS/121/AB/R)

⁷ Final Findings, Safeguard Investigation concerning imports of 'Non-Alloy and Alloy Steel Flat Products (Case No. SG-01/2024) dated 16th August 2025.

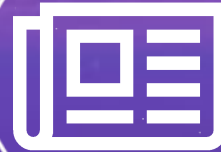
measures remain an exceptional remedy, justified only in extraordinary circumstances and not as a convenient tool for disguised protectionism.

For India and other WTO Members, this imposes a heightened standard of diligence. Safeguard investigations cannot rely solely on quantitative surges, rather they must also demonstrate compliance with the '*unforeseen developments*'

requirement. By retaining this substantive threshold, WTO law preserves the delicate balance between Members' rights to protect domestic industries and their obligations to safeguard the integrity of the multilateral trading system.

[The authors are Partner and Associate, respectively, in International Trade and WTO practice at Lakshmikumaran & Sridharan Attorneys, New Delhi]

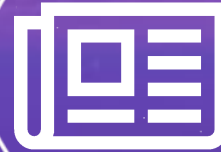
Trade Remedy News.



- Acrylic Fibre from China PR, Peru and Thailand – India's DGTR recommends imposition of anti-dumping duty
- Barium Carbonate from India – European Union imposes provisional anti-dumping duty
- Black Toner in powder form from China PR, Malaysia and Taiwan – India continues anti-dumping duty after sunset review
- Crystalline Silicon Photovoltaic Cells, whether or not assembled into modules, from India – USA initiates countervailing duty and Less-Than-Fair-Value investigations
- Flax Fabric (Woven Fabric having more than 50% Flax content) from China PR and Hong Kong – India extends anti-dumping duty till 9 February 2026
- Flax Fabrics from China PR and Hong Kong – India's DGTR recommends continuation of anti-dumping duty after sunset review
- Fluoroelastomers (FKM) from China PR – India extends anti-dumping duty till 26 February 2026
- Freight Rail Couplers and parts thereof from India – USA initiates countervailing duty investigation and less-than-fair-value investigations
- Hot rolled flat products of alloy or non-alloy steel from Vietnam – India's DGTR recommends imposition of anti-dumping duty
- Liquid Epoxy Resins from China PR, Korea RP, Saudi Arabia, Taiwan and Thailand – India's DGTR recommends imposition of anti-dumping duty
- Non-Alloy and Alloy Steel Flat Products from all countries other than developing countries, except on certain products from China PR, Vietnam, Nepal – India's DGTR recommends imposition of safeguard duty



Trade Remedy News.



- Oleoresin Paprika from India – USA issues notice of reasonable indication of material injury by sale at less than fair value and subsidization
- Polyethylene Terephthalate Film from India – USA initiates five-year reviews (sunset reviews) of anti-dumping and countervailing duties
- Polyvinyl Chloride Suspension Resins from China PR, Indonesia, Japan, Korea RP, Taiwan, Thailand and USA – India's DGTR recommends imposition of anti-dumping duty
- Quartz Surface Products from India – USA issues affirmative sunset review of countervailing duty and anti-dumping duty
- Toluene Di-Isocyanate (TDI) from European Union and Saudi Arabia – India extends anti-dumping duty till 1 March 2026
- T-Shaped Elevator/Lift Guide Rails and Counterweight Guide Rails from China PR – India's DGTR recommends imposition of anti-dumping duty
- Untreated Fumed Silica from China PR and Korea RP – India's DGTR recommends modification of quantum of anti-dumping duty after anti-absorption investigation



Trade Remedy actions by India

Product	Country	Notification No.	Date of notification	Remarks
Acrylic Fibre	China PR, Peru and Thailand	F. No. 6/16/2024-DGTR	18 August 2025	Anti-dumping duty recommended to be imposed
Black Toner in powder form	China PR, Malaysia and Taiwan	26/2025-Cus. (ADD)	4 August 2025	Anti-dumping duty continued after sunset review
Flax Fabric (Woven Fabric having more than 50% Flax content)	China PR and Hong Kong	27/2025-Cus. (ADD)	6 August 2025	Anti-dumping duty extended till 9 February 2026
Flax Fabrics	China PR and Hong Kong	F. No. 7/05/2025-DGTR	8 August 2025	Sunset review recommends continuation of anti-dumping duty
Fluoroelastomers (FKM)	China PR	29/2025-Cus. (ADD)	19 August 2025	Anti-dumping duty extended till 26 February 2026
Hot rolled flat products of alloy or non-alloy steel	Vietnam	F. No. 06/15/2024 - DGTR	13 August 2025	Anti-dumping duty recommended to be imposed
Liquid Epoxy Resins	China PR, Korea RP, Saudi Arabia, Taiwan and Thailand	F. No. 6/24/2024-DGTR	18 August 2025	Anti-dumping duty recommended to be imposed
Non-Alloy and Alloy Steel Flat Products	All countries other than developing countries, except on certain products from China PR, Vietnam, Nepal	F. No. 22/01/2024-DGTR	16 August 2025	Safeguard duty is recommended to be imposed

Product	Country	Notification No.	Date of notification	Remarks
Polyvinyl Chloride Suspension Resins	China PR, Indonesia, Japan, Korea RP, Taiwan, Thailand and USA	F. No. 6/33/2023-DGTR	14 August 2025	Anti-dumping duty recommended to be imposed
Toluene Di-Isocyanate (TDI)	European Union and Saudi Arabia	28/2025-Cus. (ADD)	19 August 2025	Anti-dumping duty extended till 1 March 2026
T-Shaped Elevator/Lift Guide Rails and Counterweight Guide Rails	China PR	F. No. 6/14/2024-DGTR	27 August 2025	Anti-dumping duty recommended to be imposed
Untreated Fumed Silica	China PR and Korea RP	F. No. 7/25/2023-DGTR	11 August 2025	Modification of quantum of anti-dumping duty recommended after anti-absorption investigation

Trade remedy measures against India

Product	Investigating Country	Document No.	Date of Document	Remarks
Barium Carbonate	European Commission	2025/1724	8 August 2025	Provisional anti-dumping duty imposed
Crystalline Silicon Photovoltaic Cells, whether or not assembled into modules	USA	FR Doc No: 2025-15251 and FR Doc No: 2025-15250	12 August 2025	Countervailing duty and Less-Than-Fair-Value investigations initiated

Product	Investigating Country	Document No.	Date of Document	Remarks
Freight Rail Couplers and parts thereof	USA	FR Doc No: 2025-15636 and FR Doc No: 2025-15633	18 August 2025	Countervailing duty investigation and Less-Than-Fair-Value Investigations initiated
Oleoresin Paprika	USA	FR Doc No: 2025-15435	14 August 2025	Reasonable indication of material injury by sale at less than fair value and subsidization
Polyethylene Terephthalate Film	USA	FR Doc No: 2025-14635	1 August 2025	ADD and CVD – Initiation of the five-year reviews (sunset reviews)
Quartz Surface Products	USA	FR Doc No: 2025-15784 and FR Doc No: 2025-16477	19 August 2025 and 28 August 2025	Affirmative sunset review of countervailing duty and anti-dumping duty



WTO News

- WTO panel asks EU to revise its measures on imports of biodiesel from Indonesia
- China initiates WTO dispute regarding Canadian surtaxes, quotas on steel and aluminium goods
- Brazil initiates WTO dispute regarding US tariff measures

WTO panel asks EU to revise its measures on imports of biodiesel from Indonesia

On 22 August, the WTO DSB circulated the panel report in the case brought by Indonesia in '*European Union - Countervailing Duties on Imports of Biodiesel from Indonesia*' (DS618). Pursuant to Article 19.1 of the DSU, the Panel recommended that the European Union bring its measures into conformity with its obligations under the SCM Agreement. It may however be noted that on certain points, the panel found that Indonesia could not establish that the EU acted inconsistently with certain provisions of the SCM Agreement in respect of disbursements to biodiesel producers.

China initiates WTO dispute regarding Canadian surtaxes, quotas on steel and aluminium goods

China has on 15 August 2025 requested WTO dispute consultations with Canada regarding Canadian measures imposing a surtax in the form of tariff rate quotas on the

importation of certain steel goods originating from Canada's non-free trade agreement partners, including China, as well as a surtax on certain steel and aluminium goods that contain steel or aluminium originating from China. The request was circulated to WTO members on 20 August. According to China, the measures are inconsistent with the Canada's obligations under the provisions of the GATT 1994, the Agreement on Rules of Origin, and the Agreement on Import Licensing Procedures.

Brazil initiates WTO dispute regarding US tariff measures

Brazil has requested WTO dispute consultations with the United States concerning US tariff measures which it says impose a 10% duty on all Brazilian products and an additional 40% duty on certain products of Brazilian origin. The request was circulated to WTO members on 11 August. According to Brazil, the US measures are inconsistent with the latter's obligations under the GATT 1994.

India Customs & Trade Policy Update



- Cotton, not carded or combed – BCD and AIDC exempted till 31 December 2025
- Jute imports from Bangladesh – Port restrictions imposed
- Diamond Imprest Authorisation – Imports not eligible for exemption from IGST and Compensation Cess
- Chemicals – EO period for imports under Advance Authorisations of products under mandatory QCOs extended
- Virgin Multi-layer Paper Board – Minimum import price imposed till 31 March 2026
- Natural honey – Minimum Export Price lowered

Cotton, not carded or combed – BCD and AIDC exempted till 31 December 2025

The Ministry of Finance has exempted cotton, not carded or combed, falling under Heading 5201 of the Customs Tariff Act, 1975, from the levies of Basic Customs Duty (BCD) and Agriculture Infrastructure and Development Cess (AIDC) on imports. The exemption is available from 19 August 2025 till 31 December 2025. Notification No. 35/2025-Cus., dated 18 August 2025 as amended by Notification No. 36/2025-Cus., dated 28 August 2025, has been notified for this purpose.

It may be noted that as per reports, Industry leaders had advocated for the removal of the 11% duty, both to lower input costs and as a strategic tool in trade negotiation with the USA. The temporary suspension of the duty is seen as a relief for the garment industry, which is reeling from a steep 50% tariff on shipments to USA.

Jute imports from Bangladesh – Port restrictions imposed

The Ministry of Commerce has imposed port restrictions on import of certain jute products from Bangladesh. Accordingly, imports of certain jute products falling under HS Codes 5310 90 (Bleached and unbleached woven fabrics of jute or of other

textile bast fibre), 5608 90 (Twine, cordage, rope, etc., of jute), 5607 90 (Twine, cordage, rope and cables) and 6305 10 (sacks and bags of jute) of the ITC(HS) Classifications are now not eligible for import through any land port on the India-Bangladesh border. The imports are, however, allowed only through Nhava Sheva Seaport. Notification No. 24/2025-26, dated 11 August 2025 has been issued for the purpose.

Diamond Imprest Authorisation – Imports not eligible for exemption from IGST and Compensation Cess

The Ministry of Commerce has amended Para 4.63 of the Foreign Trade Policy to state that exemption from whole of Integrated Tax (IGST) and Compensation Cess is not available to imports under Diamond Imprest Authorisations. Imports under DIA will however continue to enjoy exemption from BCD, Additional Customs Duty, Education Cess, Anti-dumping duty, Countervailing duty, Safeguard duty, and Transition Product Specific Safeguard duty. Notification No. 25/2025-26, dated 19 August 2025 issued for this purpose also amends Para 4.61 of the FTP to permit submission of CA certificate in place of latest ITR and then submit the proof of submission of ITR by 31st of December.

Chemicals – EO period for imports under Advance Authorisations of products under mandatory QCOs extended

The export obligation (EO) period against import of products subjected to mandatory Quality Control Orders (QCOs) by the Department of Chemicals & Petrochemicals, under Advance Authorisations, has been extended from 180 days to 18 months. As per the changes now made in Para 2.03(A)(i)(g) of the Foreign Trade Policy by Notification No. 28/2025-26, dated 28 August 2025, EO period for all Advance Authorisation holders will be now as per Para 4.40 of the Handbook of Procedures.

Virgin Multi-layer Paper Board – Minimum import price imposed till 31 March 2026

The Ministry of Commerce has imposed a minimum import price of INR 67,200/MT on imports of Virgin Multi-layer Paper Board. This import restriction on CIF value of goods will be there till 31 March 2026 and covers goods falling under ITC(HS)

Codes 4805 91 00, 4805 92 00, 4805 93 00, 4810 92 00, and 4810 99 00. Notification No. 26/2025-26, dated 22 August 2025 has been issued for the purpose.

It may be noted that vide Policy Circular No. 4/2025-26, dated 3 September, the DGFT has also clarified that imports of virgin multi-layer paper board by 100% EOUs and units located in SEZs shall not be subject to the minimum import price. Further, the Circular also states that imports under Advance Authorisation and under Duty Free Import Authorisation (DFIA) will also not be subject to this restriction.

Natural honey – Minimum Export Price lowered

The Ministry of Commerce has lowered the Minimum Export Price of Natural Honey from USD 2000/MT FOB to USD 1400/MT FOB. The relaxation is effective from 22 August 2025 till the original restrictions, i.e., till 31 December 2025. Notification No. 27/2205-26, dated 22 August 2025 has been issued for the purpose.



India FTA Update

- India and Eurasian Economic Union sign Terms of Reference to launch FTA negotiations
- India concludes FTA talks with Oman
- India, Australia conclude another round of talks for comprehensive trade pact

India and Eurasian Economic Union sign Terms of Reference to launch FTA negotiations

India and the Eurasian Economic Union (EAEU) comprising Armenia, Belarus, Kazakhstan, Kyrgyz Republic and the Russian Federation have on 20 August 2025 signed the Terms of Reference ('**ToR**') to launch negotiations on a Free Trade Agreement (FTA).

As per news report by *Money Control*, as available [here](#), Both sides noted the growing trade turnover between India and the EAEU, which stood at USD 69 billion in 2024, registering a 7 percent increase over 2023. With a combined GDP of USD 6.5 trillion, the proposed FTA is expected to expand market access for Indian exporters, support diversification into new sectors and geographies, enhance competitiveness against non-market economies, and deliver significant benefits to Micro, Small and Medium Enterprises (MSMEs).

India concludes FTA talks with Oman

India and Oman have concluded negotiations for a comprehensive trade deal, initiated in 2023. This agreement builds upon the longstanding strategic partnership between the two nations, fostering trade and investment. The two countries are strategic partners, and the bilateral trade and investment relationship between them has flourished since diplomatic relations were established in 1955, which was upgraded to a strategic partnership in 2008. See the *Financial Express* news item [here](#).

India, Australia conclude another round of talks for comprehensive trade pact

India and Australia have on 23 August 2025 concluded the 11th round of negotiations in New Delhi, aiming to broaden their economic partnership through a Comprehensive Economic Cooperation Agreement (CECA). As per Economic Times news report, available [here](#), discussions encompassed goods, services, digital trade, and various regulatory aspects. Both nations are committed to maintaining momentum through virtual sessions, striving for an early and mutually beneficial agreement.



Ratio Decidendi

- US Appeals Court rules against recent US tariffs, holding them illegal
- Advance Authorisation condition when not violated in case of transfer of duty-free goods to sister concern – *Gujarat High Court*
- Customs cannot confirm duty demand till EODC issued by DGFT is not cancelled – *CESTAT New Delhi*
- Confiscation under Section 111(d) – Violation of Rules 11 and 14 of the Foreign Trade (Regulations) Rules, 1993 not makes goods 'prohibited' – *Gujarat High Court*

US Appeals Court rules against recent US tariffs, holding them illegal

A US appeals court has deemed most of the recent US tariffs illegal, challenging the President's key economic policy. The court allowed a temporary stay until October 14 for a potential Supreme Court appeal. This decision, alongside a legal battle over Federal Reserve independence, sets up a major legal showdown over US President's economic policies, impacting trade relations and financial markets. According to the Court decision, the International Emergency Economic Powers Act (IEEPA) grants the President authority to deal with national economic emergencies, however, it does not explicitly provide power to impose tariffs and duties. See news report by *Mint* [here](#).

Advance Authorisation condition when not violated in case of transfer of duty-free goods to sister concern

The Gujarat High Court has upheld the CESTAT's finding of no violation of condition no. (vii) of Notification No. 43/2002-Cus., relating to Advance Authorisation in a case where the importer had transferred duty-free imported goods to its subsidiary concern who in turn manufactured cement which was

transferred back to the importer for further export. The Court noted that there was no transfer/sale of the imported duty-free coal and instead the manufacture of cement/clinker was done on job-work basis through the subsidiary. It was noted that the importer had issued debit notes by excluding customs duty and profit upon the subsidiary which adjusting such debit note transferred the cement clinkers to the importer for further export. Dismissing the Revenue department's appeals, the High Court also noted that there was no prohibition against utilization of the imported material after the export obligation was met as per the Advance Authorizations. *The importer was represented by Lakshmikumaran & Sridharan Attorneys here.* [*Commissioner v. Ultratech Cement* – 2025 VIL 885 GUJ CU]

Customs cannot confirm duty demand till EODC issued by DGFT is not cancelled

The CESTAT New Delhi has reiterated that the customs authority cannot confirm demand of Customs duty in the absence of any adjudication by the DGFT cancelling the Export Obligation Discharge Certificate (EODC) certificate issued by it, certifying that the export obligation was fulfilled by the assessee. The CESTAT thus observed that the Customs department would not have any jurisdiction to sit in judgment over the EODC issued by the DGFT. It was noted that the said EODC had not

been cancelled till date by the DGFT. The assessee had imported cars and used them in the hotel for rendering services like pick-up and drop from/to airport for its customers without charging any separate amount towards this service. Supreme Court's decision in the case of *Titan Medical Systems* and the Delhi High Court decision in the case of *Design Company*, were relied upon by the Tribunal while allowing assessee's appeal. *The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.* [*Bestech Hospitalities Pvt. Ltd. v. Commissioner* – 2025 VIL 1281 CESTAT DEL CU]

Confiscation under Section 111(d) – Violation of Rules 11 and 14 of the Foreign Trade (Regulations) Rules, 1993 not makes goods 'prohibited'

In a case where the Revenue department sought confiscation of goods under Section 111(d) of the Customs Act, 1962 alleging

violation of Rules 11, 14(1) and 14(2) of the Foreign Trade (Regulations) Rules, 1993, as the goods were cleared claiming exemption under Notification No. 53/97-Cus. by way of mis-declaration, the Gujarat High Court has upheld the Tribunal decision holding non-confiscation of goods. The Court here was of the view that the said Rules are applicable only for violation of the license issued under the Foreign Trade (Development and Regulations) Act, 1992. The Court also observed that only because such goods were sought to be cleared claiming exemption under Notification No. 53/97-Cus, it also cannot be said that the Tribunal erred in setting aside the order of confiscation as well as imposition of penalty. [*Commissioner v. Marvel Fashions* – 2025 VIL 906 GUJ CU]

News Nuggets.



- Stainless steel industry seeks anti-dumping duties on cheap imports
- USA imposes 50% tariffs on India from 27 August 2025, pharma and electronics exempted

Stainless steel industry seeks anti-dumping duties on cheap imports

The Indian stainless-steel industry is seeking anti-dumping duties on cheap imports, primarily from China, Vietnam, and Indonesia, which are impacting domestic players. The ISSDA has filed a petition with the DGTR, requesting an investigation into the dumping of stainless steel items. Rising imports, reaching 1.73 million tonnes in FY25, necessitate protecting homegrown companies amid global trade uncertainties.

USA imposes 50% tariffs on India from 27 August 2025, pharma and electronics exempted

The USA has notified the implementation of additional 25% duties on Indian goods, thereby raising the overall tariff to 50%,

to be effective from 27 August. According to the notice issued by the US Customs and Border Protection (CBP), the tariff will cover a wide spectrum of Indian exports, including textiles, gems and jewellery, leather, machinery, furniture and marine products. However, a few items like steel, copper and aluminium and sectors like pharmaceuticals, electronics and automobiles passenger vehicles like SUV and sedan have been exempted. The additional tariffs are being imposed to give effect to the President's Executive Order 14329 of 6 August 2025, titled 'Addressing Threats to the United States by the Government of the Russian Federation'. The CBP clarified that from 12:01 am eastern daylight time on 27 August, the higher tariffs will apply to all products of India that are either entered for consumption in the US or withdrawn from warehouses for consumption.

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