
TRADE REMEDIES AS SHOCK ABSORBERS: ASSESSING THE LEGALITY OF INDIA'S ANTI-DUMPING AND COUNTERVAILING MEASURES TO CUSHION 50% U.S. TARIFFS UNDER WTO LAW

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ABSTRACT

The recent escalation of United States tariffs on Indian exports most notably the increase of Section 232 steel and aluminium duties to 50 percent has intensified pressure on India's export sectors. While these measures are framed as national security actions, their economic effect resembles a trade shock with immediate consequences for India's competitiveness. This paper examines whether India can lawfully deploy its anti-dumping and countervailing measures as "shock absorbers" to mitigate the adverse effects of such tariffs without breaching its obligations under the World Trade Organisation (WTO) framework. Using a doctrinal analysis of the GATT 1994, the Anti-Dumping Agreement, and the Agreement on Subsidies and Countervailing Measures, combined with case law and India's historical practice, the study evaluates the permissible scope for such measures. It also considers procedural safeguards, evidentiary burdens, and the risk of WTO dispute settlement challenges. The findings suggest that while legal space exists, its use requires rigorous compliance with investigative standards to avoid retaliation claims. The paper concludes by recommending a calibrated approach integrating trade remedies with broader industrial and diplomatic strategies to enhance economic resilience while remaining within WTO legal boundaries.

INTRODUCTION

Background and Context

In 2025, the United States intensified its protectionist trade policy under the Trump administration, introducing sweeping tariff measures aimed at reshaping global trade flows. Among the most consequential for India was the sharp escalation of Section 232 tariffs on steel and aluminium imports from 25 percent and 10 percent, respectively, to an unprecedented 50 percent coupled with a baseline tariff of 10 percent on most imports under the International Emergency Economic Powers Act (IEEPA). These measures, justified domestically as necessary for national security, have in practice imposed significant commercial barriers for Indian exporters. The resulting price disadvantage in the U.S. market has particularly impacted core sectors such as metals, engineering goods, and downstream manufacturing, threatening employment and revenue streams in India's industrial heartlands.

Research Gap

Much of the current academic and policy debate has concentrated on WTO dispute settlement or bilateral negotiations as India's primary avenues of response. However, the potential of India's own trade remedy framework specifically anti-dumping (AD) and countervailing duties (CVD) to cushion the effects of U.S. tariff hikes remains under-explored. While these instruments are designed to counteract unfair trade practices rather than serve as retaliation, their judicious use could provide lawful defensive relief if deployed within WTO parameters.

Research Question

This study seeks to answer: Can India employ anti-dumping and countervailing measures to mitigate the adverse economic impact of the United States' 50 percent tariffs, while remaining within its WTO obligations and bound tariff ceilings?

Objectives

The paper pursues three main objectives:

- **Legal Assessment:** Examine the permissible scope for AD and CVD measures under the WTO framework, including relevant treaty provisions and jurisprudence.

- **Feasibility Analysis:** Evaluate India's institutional capacity and procedural readiness to initiate and sustain such measures in targeted sectors.
- **Policy Recommendations:** Propose a framework for deploying trade remedies that reinforces India's economic resilience without inviting successful WTO challenges.

Through this lens, the article aims to bridge the gap between defensive trade policy and legal compliance, offering a pragmatic pathway for India to navigate an increasingly volatile trade environment.

CONCEPTUAL FRAMEWORK

Defining Trade Remedies

Trade remedies are policy instruments permitted under the World Trade Organisation (WTO) framework that allow members to impose temporary duties or restrictions on imports in specific circumstances. Their primary objective is not protectionism in the general sense, but the correction of market distortions caused by unfair or injurious trade practices.

- **Anti-Dumping (AD) Measures:** These are additional duties imposed on imports found to be sold at less than their "normal value," usually the price in the exporter's domestic market, when such pricing causes material injury to the domestic industry of the importing country. The legal basis is found in Article VI of the General Agreement on Tariffs and Trade (GATT) 1994 and elaborated in the WTO Agreement on Implementation of Article VI (Anti-Dumping Agreement).
- **Countervailing Duties (CVD):** These address injury resulting from subsidies granted by foreign governments to their exporters. The legal foundation lies in GATT Article VI and the Agreement on Subsidies and Countervailing Measures (SCM Agreement).

Purpose as "Shock Absorbers"

While AD and CVD measures are traditionally applied to counteract unfair trade, they can also serve as indirect "shock absorbers" against sudden adverse market conditions such as steep foreign tariff hikes if those conditions coincide with or exacerbate the effects of dumping or

subsidisation. Unlike retaliation, which is politically driven and may violate WTO principles, trade remedies must be rooted in evidence of unfair trade practices and material injury. In this sense, their function is corrective rather than punitive, aimed at restoring competitive equilibrium in the domestic market.

Legal Constraints on Use

The WTO framework imposes strict procedural and substantive constraints on the use of trade remedies:

- **Bound Tariff Commitments:** Members cannot exceed the maximum tariff rates (“bindings”) in their WTO schedules, except through authorised remedies.
- **Investigation Requirements:** Before imposing AD or CVD measures, the importing country must conduct a transparent investigation, provide notice to interested parties, and establish a causal link between the alleged practice (dumping or subsidisation) and the injury suffered by the domestic industry.
- **Duration and Review:** Measures are generally time-bound and subject to periodic review to ensure they remain necessary and proportionate. Failure to meet these obligations risks a successful challenge in WTO dispute settlement, turning a defensive strategy into a source of legal vulnerability.

INDIA’S LEGAL SPACE UNDER WTO LAW

Bound Tariff Commitments and Schedules

Under its WTO Schedule of Concessions, India has committed to specific “bound” tariff rates for each tariff line, which act as ceilings on the duties it may impose. In many industrial product categories, including steel and aluminium, India’s bound rates are significantly higher than its current applied rates. This gap often referred to as “tariff water” offers India some policy space to raise tariffs up to the bound level without violating GATT Article II. However, such unilateral increases must comply with the Most-Favoured-Nation (MFN) obligation in Article I, unless implemented under authorised exceptions such as trade remedies. Importantly, trade remedies, when properly conducted, are considered exceptions to the bound rate commitments,

as they are permitted under GATT Article VI and corresponding agreements.

Permissible Use of Anti-Dumping and Countervailing Duties

The WTO Anti-Dumping Agreement (ADA) and the Agreement on Subsidies and Countervailing Measures (SCM Agreement) provide members with a legal basis to impose duties above their bound rates if, and only if, a domestic investigation establishes:

- The existence of dumping or a prohibited/subsidised export measure.
- Material injury to the domestic industry.
- A causal link between the unfair trade practice and the injury.

Panels and the Appellate Body have emphasised these criteria in cases such as US – Hot-Rolled Steel (DS184), where injury analysis was closely scrutinised, and EC – Bed Linen (DS141), a dispute directly involving India's exports, which clarified how dumping margins and injury determinations must be calculated.

Limits to “Defensive” Use of Trade Remedies

Although the WTO allows trade remedies to breach bound tariff levels temporarily, they cannot lawfully be used as disguised retaliation against another member's measures. Article VI of GATT and the ADA make clear that remedies must respond to unfair pricing or subsidisation not to unrelated trade restrictions such as Section 232 tariffs. WTO jurisprudence, including US – Countervailing Measures on Certain EC Products (DS212) and China – Anti-Dumping and Countervailing Duties on Broiler Products (DS427), reinforces that improper purpose or inadequate evidence can render a remedy measure inconsistent.

For India, this means that any AD or CVD action taken in the wake of the U.S. 50% tariffs must be supported by robust, independent evidence of dumping or subsidies, and cannot merely reference the U.S. tariff action as the basis for the measure.

FEASIBILITY ANALYSIS: INDIA'S CURRENT AD/CVD ARSENAL

India's Institutional Capacity

India's Directorate General of Trade Remedies (DGTR), operating under the Ministry of Commerce and Industry, is the central authority responsible for conducting anti-dumping (AD), countervailing duty (CVD), and safeguard investigations. Over the past two decades, India has emerged as one of the most active users of AD measures globally, reflecting a well-developed legal and administrative framework. The DGTR possesses procedural expertise, established investigative protocols, and experience in handling cases across a diverse range of products, from chemicals and metals to consumer goods. However, the complexity of proving injury linked specifically to U.S. exports particularly in politically sensitive sectors would demand an even higher evidentiary standard to ensure WTO compliance.

Sectors of Opportunity

To deploy trade remedies effectively, India must target sectors where U.S. exports to India demonstrate either price undercutting or subsidisation that harms domestic producers. Potential candidates include:

- Industrial machinery and capital goods where U.S. firms compete with Indian manufacturers.
- Certain agricultural commodities notably edible nuts and pulses where price volatility can exacerbate injury.
- High-value industrial inputs such as polymers, specialty chemicals, and precision instruments.

In contrast, sectors like steel and aluminium may present limited scope for AD/CVD against U.S. exports, given that the trade flow in these categories is heavily in India's export direction rather than import reliance. This underlines the importance of focusing on import-competing industries.

Procedural Compliance Challenges

The legal defensibility of any AD/CVD measure hinges on strict adherence to WTO procedural requirements. Key challenges include:

- **Injury Quantification:** The domestic industry must present verifiable data showing

declining output, market share, or profitability attributable to the imports under investigation.

- **Causal Link Proof:** The DGTR must isolate the impact of dumping or subsidies from other factors, such as domestic policy changes, currency fluctuations, or unrelated global market trends.
- **Transparency and Due Process:** Interested parties, including U.S. exporters, must be given opportunities to present evidence and respond to claims. Procedural lapses have historically been a common ground for successful WTO challenges.

India's strong track record in remedy administration offers a foundation, but the politically charged backdrop of U.S.–India trade tensions raises the stakes. Any perception that measures are being used as disguised retaliation could invite both diplomatic friction and legal scrutiny in the WTO dispute settlement system.

RISKS OF WTO DISPUTE SETTLEMENT CHALLENGES

Likelihood of U.S. Complaints

The United States has a long history of actively challenging other members' trade remedy measures in the WTO when it perceives procedural flaws or substantive overreach. India's use of anti-dumping (AD) or countervailing duties (CVD) in the aftermath of the U.S. 50% tariffs could be viewed in Washington as retaliatory, even if grounded in legally permissible grounds. Given the political salience of U.S.–India trade relations, the probability of a dispute settlement filing would be high, especially if targeted sectors are of strategic export interest to the U.S.

Panel and Appellate Precedents

WTO jurisprudence has consistently demonstrated that panels and the (formerly functioning) Appellate Body scrutinise trade remedy measures closely. In *EC – Bed Linen* (DS141), a dispute involving Indian exports, the Appellate Body overturned aspects of the EU's dumping margin calculation methodology for failing to meet ADA standards. Similarly, in *US – Countervailing Measures on Certain EC Products* (DS212), the panel emphasised the importance of evidence-based determinations and procedural fairness. These cases underscore

that even minor technical shortcomings such as inadequate injury analysis or opaque data disclosure can result in findings of inconsistency.

Impact of Appellate Body Paralysis

Since late 2019, the paralysis of the WTO Appellate Body has altered enforcement dynamics. While a panel ruling can still be obtained, the losing party can effectively block its adoption by appealing “into the void,” delaying binding resolution. This enforcement gap could work both ways for India:

- **Short-Term Advantage:** If India were challenged and lost at the panel stage, it could file an appeal without immediate consequence, preserving the measure temporarily.
- **Long-Term Risk:** Such actions could erode India’s credibility as a rules-abiding member and undermine its ability to enforce rulings in future disputes where it is the complainant.

Reputational and Diplomatic Costs

Even absent an enforceable ruling, an adverse panel report would carry reputational consequences. It could also complicate ongoing negotiations in other trade forums, including bilateral investment treaties, free trade agreement talks, and plurilateral initiatives where trust in legal compliance is a prerequisite for deeper integration.

In sum, while WTO dispute settlement risks may be mitigated by procedural rigour and evidentiary strength, the politically sensitive context of India–U.S. trade relations means any such measure would operate under a high level of legal and diplomatic scrutiny.

ALTERNATIVE OR COMPLEMENTARY STRATEGIES

1. **Safeguard Measures under the Agreement on Safeguards:** Safeguard measures allow WTO members to impose temporary import restrictions when a sudden surge in imports causes or threatens serious injury to a domestic industry, regardless of whether the imports are fairly traded. For India, safeguards could be considered in sectors where increased import competition from the United States compounds the adverse effects of its own export losses due to U.S. tariffs. However, safeguards must be applied on an MFN basis, meaning they cannot target U.S. imports alone, which may limit their political utility but enhance

their WTO defensibility.

2. **Trade Diversification and FTA Leverage:** Rather than focusing solely on defensive measures, India can accelerate trade diversification strategies to reduce reliance on the U.S. market. This includes deepening engagement with existing free trade partners such as the UAE and Australia and expediting negotiations with the European Union, the United Kingdom, and the Eurasian Economic Union. Leveraging these agreements to secure preferential market access could offset export losses and broaden supply chain resilience.
3. **Negotiated Sectoral Arrangements:** India could explore targeted bilateral arrangements with the United States in sensitive sectors, such as metals, pharmaceuticals, or agricultural commodities. Such arrangements might take the form of voluntary export restraints, quota based exemptions, or mutual recognition of standards. While politically challenging, negotiated solutions could achieve tariff relief in specific sectors without resorting to retaliatory measures that risk WTO litigation.
4. **Domestic Support and Industrial Policy Alignment:** Parallel to trade measures, India can provide WTO consistent domestic support to affected industries. This includes capacity building investments, technology upgrades, and targeted infrastructure development, particularly in sectors most exposed to U.S. tariffs. By focusing on production efficiency and market adaptability, India can enhance competitiveness without breaching subsidy disciplines under the SCM Agreement.
5. **Coordinated Diplomatic Engagement:** Trade remedies, safeguards, and diversification strategies are more effective when integrated with diplomatic channels. Engaging the United States through high level trade dialogues, strategic forums like the Quad, and plurilateral trade negotiations could create opportunities for tariff reconsideration or mutual concessions, especially when combined with evidence of the broader economic costs of sustained trade barriers.

POLICY RECOMMENDATIONS

Design WTO-Compliant AD/CVD Investigations

- **Evidence before action:** Launch investigations only where prima facie data show (a)

dumping or subsidisation and (b) material injury trends (price undercutting, margin suppression, capacity idling, profit erosion).

- **Causation discipline:** Build an explicit non-attribution analysis (segregating effects of exchange rates, input shocks, domestic policy changes, and third-country competition).
- **Method rigor:**
 - A. **For AD:** transparent normal-value construction, product-matching, and adjustments; avoid “zeroing” or opaque sampling.
 - B. **For CVD:** identify specificity, calculate benefit accurately, and conduct pass-through analysis where intermediates are involved.
- **Process safeguards:** Full disclosure (non-confidential summaries), meaningful hearing rights, and defensible confidentiality treatment.
- **Lesser-duty rule:** Where injury can be removed by a lower duty than the dumping/subsidy margin, prefer the lesser duty to bolster proportionality and litigation resilience.
- **Sunset & interim reviews:** Time-limit all measures; schedule mid-term reviews to recalibrate or terminate if conditions change.

Targeting & Sector Prioritisation

- **Import-competing focus:** Prioritise tariff lines where U.S. exports materially compete in India (e.g., capital goods, select agri-inputs, specialty chemicals), not categories where India is predominantly an exporter.
- **Screen for spillovers:** Avoid measures that significantly raise costs for downstream MSMEs unless parallel support is provided.
- **Public-interest test:** Where appropriate, include a published balancing note weighing consumer/industrial user impacts.

Guardrails Against “Disguised Retaliation”

- **No tariff-shock shortcuts:** Keep all references to U.S. 50% tariffs out of the legal findings; remedies must stand solely on dumping/subsidy and injury evidence.
- **MFN consistency:** Ensure parallel treatment of like imports from other origins where evidence warrants, to reduce discrimination claims.
- **Avoid dual remedies:** Prevent double counting when both AD and CVD apply to the same transactions.

Remedies Mix & Flexibility

- **Price undertakings:** Actively solicit/accept exporter undertakings where feasible; they are often more defensible and less distortive than high duties.
- **Calibrated duty design:** Use product-control numbers and company-specific rates to reward cooperation and accuracy.
- **Anti-circumvention rules:** Prepare narrowly tailored anti-circumvention inquiries (substantial transformation, assembly operations) to protect measure efficacy without overreach.

Data, Analytics, and Administration

- **Early-warning dashboard:** Build a DGTR-MoCI dashboard that tracks surge imports, price gaps, inventory ratios, and injury indicators by HS line.
- **Econometric support:** Institutionalise injury and causation models (cost-price squeezes, demand elasticities) to withstand panel scrutiny.
- **Capacity building:** Specialised training on subsidies valuation, upstream/downstream pass-through, and confidentiality redaction standards.

Domestic Policy Alignment

- **WTO-consistent support:** Pair remedies with neutral productivity measures technology upgradation funds, logistics improvements, standards facilitation avoiding actionable subsidies.
- **Transition assistance:** Time bound adjustment programs for affected sectors so remedies are a bridge, not a crutch.

Dispute Strategy & Enforcement Realities

- **Litigation posture:** Prepare for panel scrutiny from day one comprehensive record-keeping, model work papers, and verifiable datasets.
- **Pathways after a loss:** If an adverse panel emerges, decide early between (a) undertaking/measure revision, (b) appeal into the void with a credible reform plan, or (c) opt-in to alternative appeal arrangements on a case-by-case basis.
- **Coordination with complainants:** Maintain open channels for technical consultations to resolve issues pre-panel where possible.

Diplomatic Synchronisation

- **Parallel track with the U.S.:** Use consultations to seek sectoral carve-outs, TRQs, or mutual recognition outcomes while DGTR processes run independently.
- **Leverage FTAs:** Accelerate market-diversification via partners where India has or is negotiating preferences, cushioning exposure to the U.S. market.

CONCLUSION

The escalation of United States tariffs to unprecedented levels particularly the 50 percent duties on steel and aluminium has intensified the challenges facing India's export driven sectors. In such a climate, trade remedies like anti-dumping (AD) and countervailing duties (CVD) offer

a lawful, WTO sanctioned avenue to address injury to domestic industries caused by unfair trade practices. However, their role as “shock absorbers” against foreign tariff shocks is neither absolute nor unconditional.

This study has demonstrated that while India’s WTO commitments, institutional capacity, and past experience provide legal and procedural space for deploying AD/CVD measures, their defensibility hinges on rigorous compliance with substantive and procedural obligations under the Anti-Dumping Agreement and the SCM Agreement. Any perception or evidence of disguised retaliation risks undermining their legitimacy, both legally and diplomatically.

The analysis further shows that effective use of trade remedies should be complemented by alternative strategies such as safeguards, market diversification, sector-specific bilateral arrangements, and WTO consistent domestic support to create a layered defence against external trade shocks.

Ultimately, AD/CVD measures should form part of a balanced policy toolkit one that safeguards domestic industry, preserves India’s credibility as a rules based trading partner, and advances its long-term objective of resilient, diversified, and competitive participation in global trade.

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