

India-US trade deal and international law

New Delhi must take care that tariff rates in the proposed bilateral agreement do not run afoul of WTO obligations

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The recent announcement of an India-US trade deal was followed by a joint statement on February 6, confirming a “framework” for an “interim agreement” aimed at reciprocal trade. This joint statement, which highlights both nations’ commitment to sign a broader bilateral trade agreement (BTA), contains some key elements that offer a sneak peek into what the interim and final trade agreements might encompass.



The larger normative question that developing countries face is whether to play ball with the US or champion the rules of trade multilateralism (AFP)

First and foremost, the US will reduce the reciprocal tariff rates on Indian goods to 18% and might lower them further during the BTA negotiations. The new tariff rates, while not returning to the previous era of low MFN rates of about 3%, will provide a breather to India’s labour-intensive exports, particularly in textiles, leather, and gems and jewellery. This change benefits these sectors by offering a more favourable rate than competitors in the US market. Nonetheless, it’s worth noting that even at 18%, the American tariffs continue to be in breach of the US’s two principal international law obligations under the World Trade Organization (WTO) — the MFN requirement to impose non-discriminatory tariffs and the obligation under Article II of the General Agreement on Tariffs and Trade (GATT), which is not to impose tariffs in excess of one’s schedule of commitments.

This joint statement should be read alongside the US president’s executive order of February 6, which states that the 25% additional tariff that the US had been imposing on India due to New Delhi’s purchase of Russian oil will be halted immediately. This is because, as the executive order says, India has committed

not to purchase Russian oil. However, as the order states, these tariffs will be slapped back if India resumes buying Russian oil.

As I have argued in these pages, the American action is a gross violation of international law. Under international law, as the International Court of Justice held in the *US v Nicaragua* case, States are under an obligation not to coercively interfere in the internal or external affairs of another State. The US, by insisting that India not buy Russian oil and linking this to the imposition of punitive tariffs, exemplifies coercive interference and the pursuit of what can be called coercive capitalism. International law expert Marko Milanovic theorises this as coercion-as-extortion — imposing unlawful costs on a country to compel it to change its policy. Who to buy oil from is India's sovereign decision, to be made by New Delhi based on its national interests.

As part of the trade deal, India will reduce tariffs on US products. Economic analysis aside, this raises a key question in international law. If India extends the preferences conferred on American goods to all like products imported from India's non-US trading partners, it will not pose problems because India's tariffs will be non-discriminatory. However, if India does not extend the preferences granted to American goods to its other trading partners, this might raise an issue of a potential violation of the MFN rule. If India's trading partners accuse it of MFN violation, how will New Delhi defend its actions? This is not a mere theoretical possibility. China has already started questioning countries at the WTO over the MFN-consistency of their deals with the US. While the US may not care for international law, India should.

Interestingly, the joint statement uses the term "interim agreement". Article XXIV of GATT allows countries to enter into an interim agreement, and thus deviate from the MFN rule, if it is necessary for forming a free trade area. Furthermore, this interim agreement must include a plan or schedule for establishing a free trade agreement — consistent with Article XXIV requirements — within a reasonable timeframe, typically not exceeding 10 years. If India and the US notify their interim agreement to the WTO, India can ward off the MFN challenges from other countries by taking refuge under Article XXIV of GATT. However, if the interim agreement isn't notified to the WTO as an Article XXIV arrangement, India should be ready to address questions from non-US trading partners on MFN. The MFN issue might arise even in the context of India's FTAs.

The joint statement also emphasises the need for the two sides to bolster their economic security alignment to strengthen supply chain resilience through "complementary actions" that address non-market policies of third parties. Perhaps, the implicit reference here is to China. It will be interesting to see how this principle is implemented. Under some recent US reciprocal trade agreements, such as those with Malaysia, if the US imposes trade restrictions on a third State for economic or national security reasons, Malaysia must impose the same restrictions on that country's imports. Notably, this requirement is not reciprocal. Malaysia cannot ask the US to impose restrictions based on its own concerns. This links Malaysia's interests to those of the US. Hopefully, the India-US interim agreement will avoid such one-sided "complementary actions".

Finally, the joint statement recognises that in the event of any change in the agreed-upon tariffs, the other side may modify its commitments. This works well for India because if the US Supreme Court, which is hearing a case on the legality of Trumpian tariffs, were to declare them illegal, India could renege on its commitments.

While it is understandable that any discussion of the India-US trade deal would focus on market access, one should not miss the forest for the trees. The Trump administration is clearly attempting to rewrite international trade law, prioritising its own interests at the expense of everyone else to preserve American hegemony.

The larger normative question that developing countries face is whether to play ball with the US or champion the rules of trade multilateralism, which, though not ideal, are better than the American project of unilaterally creating a new strong-arm imperialistic order.

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