How US Tariff Increases May Affect Indian Businesses And Cross-Border Contracts

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The recent increases in US tariffs on imports from India present a complex set of legal and commercial challenges for businesses in both countries. While the tariffs aim to address trade imbalances, they bring increased costs and potential disruptions to established trade flows.

Changes by US government and exemptions

In a move aimed at addressing what the administration described as long-standing trade imbalances, US President Donald Trump recently announced a new tariff regime. This includes a baseline tax of 10% on imports from all countries, with significantly higher levies on nations that maintain a trade surplus with the US. India, due to its substantial trade surplus, has been particularly impacted with a flat tariff of 27%, now applied to all goods exported to the US. This policy is grounded in the principle of reciprocity, with the US administration stating its intention to counter tariffs and trade barriers imposed by other countries on American goods. The US president declared a national emergency, citing the persistent annual trade deficits as a threat to national and economic security.

The recent US tariff increases, while broad in their application, include certain exemptions for specific categories of goods. Notably, pharmaceuticals, semiconductors (chips), and copper products are among the products exempt from the new reciprocal tariffs.

The exemption for pharmaceuticals reflects the importance of maintaining a stable and affordable supply of medications in the US. The exclusion of semiconductors suggests a recognition of the interconnectedness of the global semiconductor supply chain and the potential negative impact of tariffs on this sector. However, it is important to note that these exemptions might be temporary or subject to future review.

Impact on cross-border contracts

We set out a few points for businesses on both sides of the customs frontier to be mindful of from a contracts and trade perspective.

· **Review existing contracts:** Businesses should immediately review their current international trade contracts, paying close attention to the agreed-upon Incoterms, pricing clauses (including adjustment or escalation mechanisms), and termination clauses. This review will help determine which party bears the initial responsibility for the increased tariffs and what contractual options might be available to address the new costs in the short, medium and long term. For example, FOB (free on board)/CIF (cost, insurance, and freight)/EXW (ex works) contracts would place the burden on the buyer; whereas a DDP (delivered duty paid) contract or deliveries from warehouses in the US would place the burden on the seller.

· **Consider and prepare for price renegotiations:** Businesses should proactively engage in discussions with their counterparties to renegotiate prices. This will be easier where the contract allows for this. Exploring options for sharing the burden of the increased tariffs or adjusting prices based on the new cost structure is crucial for maintaining viable trading relationships. The customers should also be

· **Consider the indirect impact:** Given that these tariffs are likely to cause a gradual shift and realignment in supply chains, it is important for businesses to consider ongoing raw material supplies and input materials to see whether those might require some realignment on deliveries and forecasts.

· **Assess any force majeure impact:** Typically, force majeure clauses do not consider the impact of increased tariffs as a defined 'force majeure' event. Also, in most common law systems (including India), economic hardship is not treated as "impossibility" of performance and parties may still be expected to bear some amount of the burden. Further, short-term unavailability of raw materials on account of an indirect impact of these tariff changes would also typically be excluded from force majeure clauses.

· **Monitor official announcements:** It is imperative for businesses involved in US-India trade to stay informed about any updates or changes to the US tariff policies and any potential retaliatory measures from India. Official government publications and legal alerts should be closely monitored.

The evolving trade relationship between the US and India, marked by these recent tariff increases, necessitates a strategic and legally informed approach for businesses to navigate the challenges and identify potential opportunities in this dynamic environment.

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