


From Tariffs to Tribunal: Countering Trade Turbulence

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As global trade rules tighten and protectionist measures rise, Singapore companies face growing exposure to foreign regulatory risks. Boards must stay alert to the spectrum of legal mechanisms and international obligations to navigate uncertainty, mitigate losses and preserve long-term value for their businesses.

Months after the Trump administration unveiled the “Liberation Day” tariffs, uncertainty continues to loom. Tariff rates continue to evolve, while implementation timelines and exemption criteria remain in flux. According to the World Trade Organisation (WTO), the world is now facing the largest disruption to the global trading system since World War II.

The tariffs subject all imports into the US to a baseline 10 per cent duty (nations considered the “worst offenders” face higher rates) and impact more than half of Singapore’s domestic exports to the US. Of even greater concern are sectoral tariffs that impose a much higher levy on specific types of goods, including major Singapore exports to the US. For example, a 100 per cent tariff on branded and patented pharmaceuticals was announced in September 2025, with the threat of a similar treatment on semiconductors.

When new tariffs or rules bite, Singapore companies selling to the US can face sudden disruptions and additional costs. Beyond commercial responses, businesses can seek recourse through investor-state dispute settlement (ISDS). This legal tool, often

under-appreciated, may be available under the US-Singapore Free Trade Agreement (USSFTA).

What is ISDS?

The usual ISDS mechanism is international arbitration, which provides investors with a neutral forum to pursue claims directly against a state. State-to-state dispute-resolution mechanisms are not available to private investors who may have suffered losses or been subjected to unfair treatment by a state in which their investment was made (a “host state”). This leaves a protection gap that ISDS bridges by enabling foreign investors to bring claims directly against a host state before a neutral, depoliticised tribunal.

Although international law provides state-to-state mechanisms for resolving trade disputes, these avenues are often not practical. Frameworks such as the WTO Dispute Settlement Understanding, designed to address disputes between member states concerning their rights and obligations under the WTO Agreement and other designated agreements, face criticisms of inefficiency, lengthy processes, limited enforceability and lack of practical remedies.

The system's paralysis since the 2019 suspension of the WTO's Appellate Body, which reviews legal aspects of cases, has further eroded confidence. Beyond these structural issues, trade disputes are inherently political by nature, prompting many states to pursue diplomatic engagement or retaliatory measures rather than formal legal processes. Singapore, for instance, has sought to engage the US in bilateral talks with mixed results, while countries such as China and Canada have declared retaliatory tariffs on US exports.

International arbitration avoids the potential bias (real or perceived) of a host state's domestic courts. Through arbitration, a state's obligations under an investment treaty or a free trade agreement (FTA) become legally enforceable, giving investors a practical means to hold governments to their commitments.

So long as the dispute falls within the scope of the tribunal's jurisdiction, the arbitration concludes with an award (i.e., a written determination of the dispute) that is binding on both the investor and the host state. If the investor prevails, it can take steps to enforce the award against the host state within its own jurisdiction or, under widely recognised international conventions (such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards), in countries around the world where the host state holds assets (subject to narrow grounds for challenging the award).

Put simply, ISDS converts treaty promises into enforceable rights, giving investors and businesses a practical means to hold governments accountable.

Why it matters for Singapore businesses

While the tariffs announced by the Trump administration have yet to trigger formal ISDS challenges under the USSFTA or other US investment treaties and FTAs, such challenges are not beyond the realm of possibility. Similar trade measures have been successfully challenged in the past through ISDS.

In *Cargill, Incorporated v. United Mexican States*, for example, the US food corporation commenced ISDS arbitration against Mexico under the North America Free Trade Agreement (NAFTA), arguing that Mexico violated its "national treatment" obligation by imposing a tax on all products containing sweeteners (such as HFCS, produced and distributed entirely by US-owned companies) other than cane sugar (produced by Mexican-owned companies).

Cargill also claimed that Mexico breached both its "national treatment" and "fair and equitable treatment" obligations by requiring import permits for HFCS from the US and then consistently denying those permits. The arbitral tribunal agreed and awarded Cargill US\$77.3 million (\$100.6 million) in damages. The case illustrates that discriminatory trade measures can amount to breaches under investment treaties/FTAs.

The USSFTA, signed in 2003, provides similar protections for Singapore investors in the US. Key guarantees in Article 15 include:

- **National Treatment** – Foreign and local investors should be treated alike in similar situations. If a rule hits a Singapore owned business harder than an equivalent US owned competitor without a good reason, this may be relevant.
- **Most Favoured Nation Treatment** – Singapore investors should not be treated worse than investors from other countries under comparable conditions.
- **Fair and Equitable Treatment** – Singapore investors are assured a baseline of fairness: predictable rules, due process and freedom from arbitrary or discriminatory conduct.

In a similar way, a Singapore investor could potentially bring a claim under the USSFTA if US measures were seen as unfairly targeting its business. For example, if a new US tariff or regulatory requirement applied in practice only to products made by Singapore-owned companies – but not to equivalent products made by US companies – that could raise concerns under the "national treatment" rule.

Leveraging ISDS to Navigate US Trade Uncertainty

The USSFTA gives Singaporean investors the option to use ISDS to challenge unfair treatment by the US government. Depending on the applicable rules, an ISDS arbitration commenced under the USSFTA typically unfolds as follows:



- **Engagement:** Before starting arbitration, the investor and the US government must attempt to settle the dispute through consultation and negotiation. If no amicable resolution of the dispute can be reached, the investor may then commence arbitration, subject to certain conditions (such as the giving of a 90-day advance notice and the waiting out of a six-month cooling period).



- **Commencement of arbitration:** Filing a notice of or request for arbitration based on the applicable procedural rules.



- **Selection of an arbitral tribunal.** The tribunal will comprise 3 arbitrators, with one arbitrator appointed by each party and the presiding arbitrator appointed by agreement.



- **Conduct of the arbitration proceedings, culminating in the issuance of the final award.** Note that the arbitration (including all filings and hearings) is by default public. The tribunal can award only “monetary damages and any applicable interest”, restitution of property and legal fees/costs.

Likewise, if the US imposed licensing or permit requirements on Singapore-owned businesses and then repeatedly refused those applications without clear reasons, investors might argue that the US had failed to provide “fair and equitable treatment”. Such scenarios mirror the issues raised in the Cargill case and show how discriminatory or arbitrary government actions can open the door to USSFTA claims (see box, “Leveraging ISDS to Navigate US Trade Uncertainty”).

Looking ahead

The Trump administration’s aggressive trade measures may be unusually blunt, but the broader trend of growing protectionism is not new. As global trade becomes more uncertain, export-driven economies like Singapore face higher risks.

As trade rules continue to evolve, export-oriented Singapore companies should routinely assess whether government measures overseas are unfairly singling out their products or businesses. Understanding when USSFTA protections may apply and how ISDS works equips boards with another lever to manage risk, recover losses and protect long-term value. ●

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