

## **Update on United States' Intention to Withdraw GSP Benefit to India**

On March 4, 2019, the Office of the United States Trade Representative (“USTR”) issued a [Press Release](#) conveying the intention of the United States (“US”) to terminate the Generalized System of Preferences (“GSP”) treatment provided to India. According to the Trade Act of 1974, the intended change of the GSP status for India cannot take effect for at least 60 days after the notification is given to the Congress and the Government of India. Any time after 60 days, the withdrawal of GSP can be given effect through an Executive Order or Presidential Proclamation, for which the said Trade Act of 1974 has not provided any timeline (19 U.S. Code § 2462).

### **Background**

The GSP is a mechanism for enabling preferential treatment to imports from developing countries and is considered to be an exception to the Most Favored Nation (“MFN”) principle, which dictates that WTO member countries cannot normally discriminate between their trading partners.

The Trade Act of 1974, which gives the US President the power to provide duty-free treatment under GSP to an eligible article from a designated beneficiary developing country under 19 U.S. Code § 2461 and 19 U.S. Code § 2462, also gives the President the power to withdraw, suspend or limit such duty-free treatment given to any beneficiary developing country. In fact, the question of whether a beneficiary developing country is eligible to continue to receive the duty-free treatment that was earlier conferred is determined by the President, who is required to take into consideration certain factors. The intention to terminate GSP status to India appears to follow from one of such factors – India’s alleged failure to provide any assurance to the US that it will provide equitable and reasonable access to its market, especially in the market of certain medical devices and dairy products.

In April 2018, the USTR self-initiated a review of India’s GSP status and accepted two petitions filed by (i) the National Milk Producers Federation and the U.S. Dairy Export Council and (ii) the Advanced Medical Technology Association.

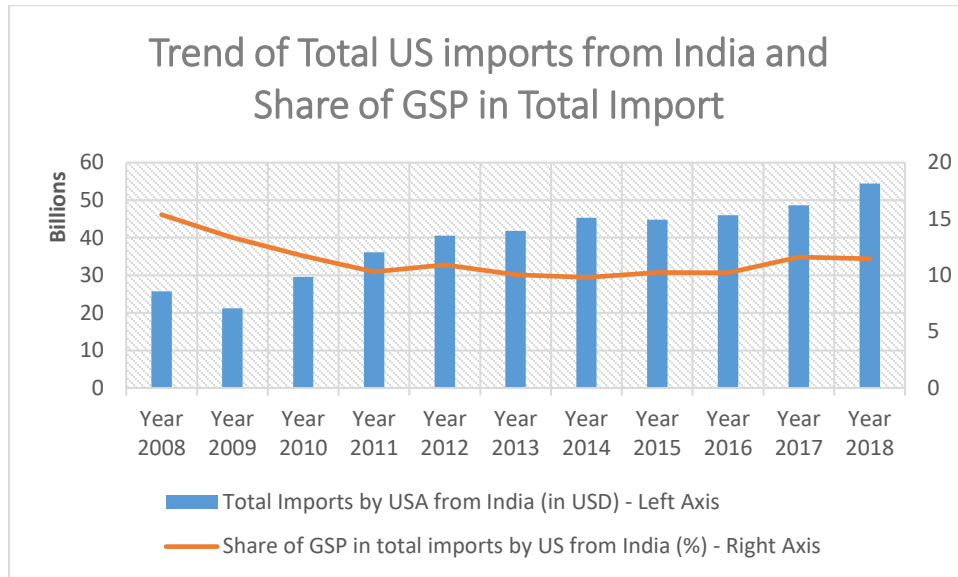
At the public hearing held by the GSP Subcommittee in June 2018 pursuant to the initiation of GSP review, India was afforded the opportunity to present its views. The Government of India opined that the withdrawal of tariff preferences would cause “irreparable” damage to India’s exports to the US and would be arbitrary, discriminatory and detrimental to the finance and trade needs of India. India further argued that the US’s expectation of receiving any reciprocal acts from India such as assurances on market access etc., violates the obligation to maintain non-discriminatory and non-reciprocal benefits to developing countries as adopted by the WTO in 1979 (popularly called “the Enabling Clause”) and would be contradictory to the objectives enshrined in the Trade Act of 1974.

### **Impact on Indian Exports**

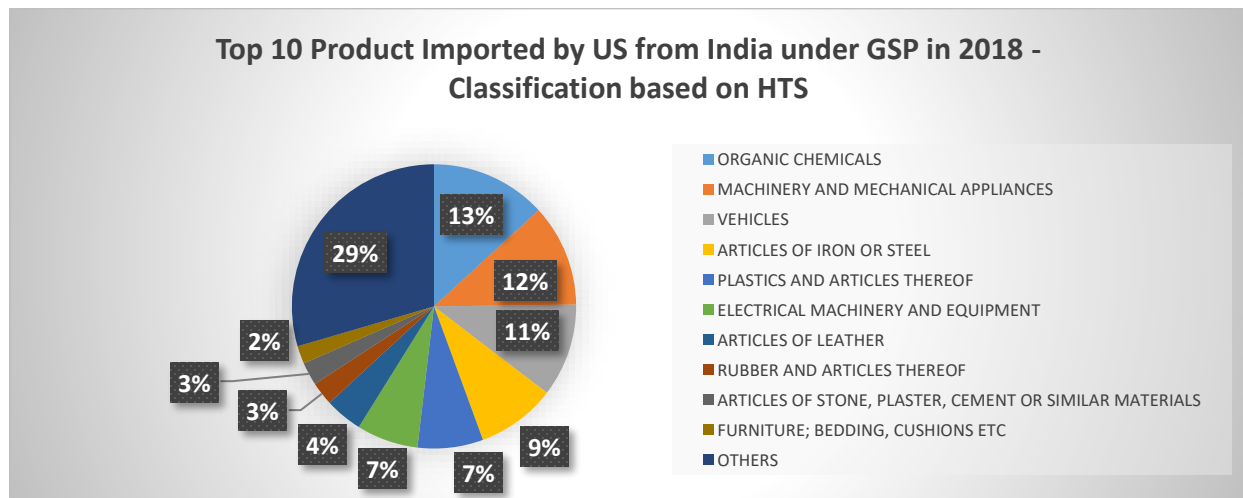
The [transcript](#) from the public hearing of the GSP Subcommittee records India’s contention to the US that the withdrawal of GSP benefits would cause irreparable damage to India’s exports. However, this was not the position taken by the Indian Government in its [press statement](#), according to which GSP concessions extended by the US amounted to duty reduction of only 190 million dollars per annum.

An analysis of the import data reported by [US International Trade Commission](#) (“US ITC”) indicates that India’s exports to the US under the GSP exemptions have been increasing over recent years, moving from 4.7 billion dollars in 2016 to 5.6 billion dollars in 2017, to just over 6.2 billion dollars in 2018. Total exports

from India to the US were well over 54 billion dollars in 2018 and the GSP-classified exports accounted for less than 11.5% of India's exports to the US in 2018.



As per official GSP data available with [US ITC's](#), the sectors predominantly concerned with the Indian exports under GSP are Organic chemicals, Machinery and mechanical parts, Vehicles, Articles of iron or steel, Plastics, Electrical machinery; among others. Further analysis of the nature of goods reveal that most of the goods imported by US under the GSP route falls under "industrial supplies" – which implies withdrawal of GSP benefit can potentially raise the cost of production of domestic industries in the US.



**Sum of % of Total Imports by US from India under GSP in 2018 -  
Classification based on Broad Economic Categories**



Finally, the withdrawal of GSP benefits could potentially have a second order effect whereby some of the exports from India would now face MFN rate duties. As a result of this the prices for the US importers would increase, who would potentially substitute Indian products with products from alternate sources at cheaper prices. This “substitution effect” will see India lose some significant business.

**Way-forward**

As mentioned above, India had objected to the proposed withdrawal of the GSP status at the relevant forum. According to the [UNCTAD](#), the preferences given to developing countries under the GSP are *privileges* and not enforceable *rights* as per the Enabling Clause. Having said that, India has previously in the [EC-Tariff Preferences \(2004\)](#) case at WTO successfully challenged the EU’s violation of the Enabling Clause – though it must be noted that there are some factual and legal differences in the two cases. It remains to be seen if India will take this issue to the WTO, if and when the US President enacts the removal of India’s GSP, considering that stakeholders in the Indian government have already made statements claiming a minimum impact on India’s export revenue.

Under the US Trade Act of 1974, once 60 days have passed after the issuance of US intention to withdraw India’s GSP status to the Congress and India, the US President may issue the Proclamation – however, there is no prescribed timeline. This means that if India and the US enter into bilateral talks to resolve their concerns on GSP and the US market access issues, US may retract from its decision to withdraw the GSP status to India.

In any case, owing to the current impasse of trade wars and the US blockage of appointment of members to the WTO Appellate Body, India approaching the WTO against the US action may not reach finality. Moreover, it may be challenging for India to enter into consultations with the US at the WTO unless India gives a certain degree of deference to US concerns of market access. Additionally, considering the WTO dispute settlement mechanism is time consuming, it would be in the interests of both the US and India to resolve their concerns bilaterally.

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