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Article 文章

US withdrawal of GSP benefits for India

美国撤销对印度的普惠制

By **Bhargav Mansatta**

Generalised System of Preferences (GSP) means a mechanism by which imports from developing countries are subject to lower tariffs in the importing country. This system has been implemented by the developed countries such as Canada, EU, US, Australia, Japan, Iceland and Switzerland. The Enabling Clause permitting implementation of GSP by WTO Members is “1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries”. GSP is an exception to the principle of non-discrimination between WTO member countries, i.e. Most-Favoured Nation Principle.

The United States Trade Act, 1974 provides for preferential tariff for several identified products when it is imported from developing countries. However, the GSP beneficiary country is required to, *inter alia*, assure the United States that it will provide “reasonable and equitable market access”.¹ It states:

“FACTORS AFFECTING COUNTRY DESIGNATION
In determining whether to designate any country as a beneficiary developing country under this subchapter, the President shall take into account—

.....

(4) the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity

resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices.”

Failing this requirement, the duty-free treatment to imports of the developing country may be withdrawn.² India is a beneficiary country under the GSP regime of the United States. The review of GSP benefits granted to India was initiated in April 2018 by the US Trade Representative (USTR). The USTR concluded that India does not provide reasonable and equitable market access and has therefore failed to meet the eligibility criteria as provided in the statute. The United States has notified its intention to withdraw the GSP benefits to India on all applicable tariff lines. The United States has cited “wide array of trade barriers” by India that create serious negative effects on United States Commerce.³ Over time the United States has opposed, among others, the introduction or existence of following ‘trade barriers’ by India:

- Price caps on sale of medical devices such as stents, knee implants, etc.
- The certification requirements that seek to ensure that dairy product is sourced from animal that has never been fed animal derived blood meal.

² 19 U.S.C. Section 2462(d)

³ *United States will Terminate GSP Designation of India and Turkey*, available at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/march/united-states-will-terminate-gsp>, 4th March 2019.

¹ 19 U.S.C Section 2462(c)(4)

- High customs duties on motorcycles, mobiles, telecom network equipment, smart watches, etc.
- Localisation of data rules mandating that companies collecting critical data about consumers must store and process them within the borders of the country.
- Export incentives to industries under various schemes.

The United States is India's second biggest trading partner after China. India's export to the US is approximately \$50 billion. Almost 16% of India's exports is to the United States. India has a trade surplus with the United States⁴. Withdrawal of GSP benefits will not affect all critical sectors of export interest because not all products of export interest were eligible for duty-free treatment. For example, textile products (Chapters 50 to 62), which are of critical export interest, were not eligible for duty-free treatment when imported into the United States from India. Steel and aluminium products, which is also of substantial export interest for India, are already subject to very high additional duty⁵. Customs duty by the United States on import of goods is very low on many products even without the GSP benefit and therefore absence of GSP benefit will not have significant impact. However, it seems that the withdrawal will indeed impact some products of export interest such as chemical products, which will become costlier by 5%.⁶

⁴ India-US trade spat: Higher tariffs on exports under GSP will kick in after 60 days, available at https://economictimes.indiatimes.com/news/economy/foreign-trade/india-us-trade-spat-higher-tariffs-on-exports-under-gsp-will-kick-in-after-60-days/articleshow/68279178.cms?utm_source=ETMyNews&utm_medium=HPMN&utm_campaign=AL1&utm_content=17

⁵ On March 8, 2018, under 19 U.S.C. 1862, additional import duties for steel mill and aluminium articles were imposed by the United States, which became effective from March 23, 2018.

⁶ India-US trade spat: Higher tariffs on exports under GSP will kick in after 60 days, available at https://economictimes.indiatimes.com/news/economy/foreign-trade/india-us-trade-spat-higher-tariffs-on-exports-under-gsp-will-kick-in-after-60-days/articleshow/68279178.cms?utm_source=ETMyNews&utm_medium=HPMN&utm_campaign=AL1&utm_content=17

Be that as it may, it is clear that the United States' decision is anything but fair and India may not accept it lying down. Special and differential treatment to developing countries is recognised under the GATT and WTO framework. Preamble to the WTO Agreement notes that there is a need for 'positive efforts' to ensure that developing countries secure a share in their growth in international trade commensurate with the needs of their economic development. GSP is one of the few effective ways of implementing this principle. It is, by definition, a unilateral extension of tariff preferences by developed countries. Thus, non-reciprocity is the very essence of GSP system. The United States has effectively introduced reciprocity as the requirement for enjoying continued benefit under the GSP. The United States also cannot unilaterally determine what type of 'trade barriers' are acceptable to it. It is nobody's case that there should not be any 'trade barriers' by India. Many of these so-called trade barriers, for example high import tariffs, are well within India's scheduled commitments under the WTO.

More importantly, keeping aside the fairness of the decision, the United States' decision also goes against the fundamental principle of most favoured nation enshrined in the WTO. The United States is continuing its GSP benefits in favour of host of other developing countries. Withdrawal of GSP benefit will result in discrimination between developing countries which are in similar situation. The United States is under an obligation to not discriminate between "similarly situated" developing countries. Differential treatment between developing countries, if introduced, should be to respond to "different financial, developmental and trade needs of developing countries". GSP benefit to India is not being

[kick-in-after-60-days/articleshow/68279178.cms?utm_source=ETMyNews&utm_medium=HPMN&utm_campaign=AL1&utm_content=17](https://economictimes.indiatimes.com/news/economy/foreign-trade/india-us-trade-spat-higher-tariffs-on-exports-under-gsp-will-kick-in-after-60-days/articleshow/68279178.cms?utm_source=ETMyNews&utm_medium=HPMN&utm_campaign=AL1&utm_content=17)

withdrawn by the United States because it is un-comparable to other developing countries in terms of its developmental or trade needs.

In the case of *European Communities — Conditions for the Granting of Tariff Preferences to Developing Countries (EC-Tariff preferences)*, WTO Appellate Body, decided that discrimination between similarly situated developing countries is not consistent with the WTO obligations of the member country.

As of now India has downplayed the impact of the announcement of withdrawal of GSP

benefits by the United States. Even if some of the trade barriers are WTO inconsistent or unduly harsh, it is clear that the United States has jumped the gun. If India wishes to fight back and is unwilling to allow, what the United States considers as 'reasonable and equitable market access' or impose retaliatory tariffs, a formal WTO dispute is the clear way forward.

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Trade Remedy News 贸易救济新闻

Trade Remedy measures against China

对中国采取的贸易救济行动

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Aluminum extrusions 铝型材	Canada 加拿大	ADD and CVD expiry review initiated 发起反倾销和反补贴期终复审	Canada Border Service Agency Press Release dated 11-3-2019 2019年3月11日, 加拿大边境服务署发布新闻
Aluminum Wire Cable 铝芯电缆	USA 美国	Postponement of Preliminary Determination of Antidumping Duty Investigation 延期发布反倾销调查初裁	84 FR 10032 [A-570-095], dated 19-3-2019 2019年3月19日, 84 FR 10032 [A-570-095]
Aluminum foil 铝箔	Argentina 阿根廷	Initiation of ADD investigation 发起反倾销调查	MOFCOM news, dated 11-3-2019 2019年3月11日, 商务部新闻
Aluminum sheets 铝板	Argentina 阿根廷	Initiation of ADD investigation 发起反倾销调查	MOFCOM news, dated 1-3-2019 2019年3月1日, 商务部新闻
Articulated chain 铰接链	Turkey 土耳其	Final affirmative ADD circumvention determination issued 发布反倾销反规避调查最终肯定性裁决	MOFCOM news, dated 13-3-2019 2019年3月13日, 商务部新闻

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Carbon and Alloy Steel Threaded Rod 碳合金钢螺杆	USA 美国	Initiation of Countervailing Duty Investigations 发起反补贴调查	84 FR 10040 [C-570-105], dated 13-3-2019 2019年3月13日, 84 FR 10040 [C-570-105]
Carbon and Alloy Steel Threaded Rod 碳合金钢螺杆	USA 美国	Initiation of Less-Than-Fair-Value Investigations 发起低于正常价值调查	84 FR 10034 [A-570-104], dated 19-3-2019 2019年3月19日, 84 FR 10034 [A-570-104]
Cast Iron Soil Pipe 铸铁污水管	USA 美国	Final Affirmative ADD and CVD Determination issued 发布反倾销和反补贴肯定性最终裁决	MOFCOM news, dated 27-2-2019 2019年2月27日, 商务部新闻
Ceramic tableware and Kitchenware 餐厅和厨房陶瓷餐具	EU 欧盟	Initiation of ADD circumvention investigation 发起规避反倾销调查	Commission Implementing Regulation (EU) 2019/464, dated 21-3-2019 2019年3月21日, 欧盟执行委员会公告第2019/464号
Circular Welded Carbon Quality Steel Pipe 圆形焊接碳钢管件	USA 美国	CVD - Final Results of the Expedited Second Sunset Review 反补贴-第二次快速日落复审发布最终裁决	84 FR 11050 [C-570-911], dated 25-3-2019 2019年3月25日, 84 FR 11050 [C-570-911]
Citric Acid 柠檬酸	Columbia 哥伦比亚	Final negative ADD Determination issued 发布反倾销否定性最终裁决	MOFCOM news, dated 4-3-2019 2019年3月4日, 商务部新闻
Crystalline Silicon Photovoltaic Cells 晶体硅光伏电池	USA 美国	Continuation of Countervailing Duty and Anti-dumping duty Orders 继续反补贴和反倾销征税令	84 FR 10299 [C-570-980] and 84 FR 10300 [A-570-979], both dated 20-3-2019 2019年3月20日, 84 FR 10299 [C-570-980] 和 84 FR 10300 [A-570-979]
Fabricated Structural Steel 装配用结构钢	USA 美国	Initiation of Less-Than-Fair-Value and CVD Investigations 发起低于正常价值和反补贴调查	84 FR 7330 [A-570-102] and 84 FR 7339 [C-570-103], both dated 4-3-2019 2019年3月4日, 84 FR 7330 [A-570-102]和 84 FR 7339 [C-570-103]
Hand pliers 手钳	Argentina 阿根廷	Final Affirmative ADD Determination issued 发布反倾销肯定性最终裁决	MOFCOM news, dated 4-3-2019 2019年3月4日, 商务部新闻

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
HFC containing mixtures HFC 混配制冷剂	Argentina 阿根廷	Initiation of ADD investigation 发起反倾销调查	MOFCOM news, dated 1-3-2019 2019年3月1日, 商务部新闻
Large Diameter Welded Pipe 大口径焊接管	USA 美国	Countervailing Duty Order issued 发布反补贴征税令	84 FR 807 [C-570-078], dated 6-3-2019 2019年3月6日, 84 FR 807 [C-570-078]
Multilayered Wood Flooring 多层木地板	USA 美国	Initiation of Antidumping Duty New Shipper Review; 2017-2018 发起 2017-2018 年反倾销新出口商复审	84 FR 9494 [A-570-970], dated 15-3-2019 2019年3月15日, 84 FR 9494 [A-570-970]
Plastic Decorative Ribbon 塑料装饰带	USA 美国	Corrected Final Affirmative Countervailing Duty Determination issued 发布经修改的反补贴肯定性最终裁决	84 FR 7019 [C-570-076], dated 1-3-2019 2019年3月1日, 84 FR 7019 [C-570-076]
Polyvinyl Alcohol 聚乙烯醇	USA 美国	Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review 发起反倾销情势变更复审并作出初步裁决	84 FR 7337 [A-570-879], dated 4-3-2019 2019年3月4日, 84 FR 7337 [A-570-879]
Power Transformers 变压器	Australia 澳大利亚	Initiation of ADD investigation 发起反倾销调查	Anti-Dumping Notice No. 2019/35, dated 18-3-2019 2019年3月18日, 反倾销公告第 2019/35 号
Refillable Stainless Steel Kegs 可重复使用不锈钢啤酒桶	USA 美国	Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations 延期发布低于正常价值调查初裁	84 FR 10033 [A-570-093], dated 19-3-2019 2019年3月19日, 84 FR 10033 [A-570-093]
Sandals and Uppers of rubber or Plastics 凉鞋和凉拖鞋	Peru 秘鲁	ADD expiry review and Changed Circumstances Review initiated 发起反倾销期终复审合并情势变更复审	MOFCOM news, dated 1-3-2019 2019年3月1日, 商务部新闻
Silicon Metal 金属硅	Canada 加拿大	Expiry review finding likelihood of resumption of dumping and subsidizing 期终复审认定倾销和补贴可能再次发生	Canada Border Service Agency Press Release dated 15-3-2019 2019年3月15日, 加拿大边境服务署发布新闻

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Sodium Hexametaphosphate 六偏磷酸钠	USA 美国	Antidumping Duty Order continued after sunset review 日落复审后继续反倾销征税令	84 FR 7021 [A-570-908], dated 1-3-2019 2019年3月1日, 84 FR 7021 [A-570-908]
Solid Base Angle 角钢	Australia 澳大利亚	Initiation of ADD investigation 发起反倾销调查	Anti-Dumping Notice No. 2019/26, dated 26-2-2019 2019年2月26日, 反倾销公告第2019/26号
Steel Racks and Parts 钢制货架	USA 美国	Preliminary Determination of Sales at Less Than Fair Value 初步裁决低于正常价值	84 FR 7326 [A-570-088], dated 4-3-2019 2019年3月4日, 84 FR 7326 [A-570-088]
Steel wheels 钢制轮毂	USA 美国	Final Affirmative ADD and CVD Determination issued 发布反倾销和反补贴肯定性最终裁决	MOFCOM news, dated 25-3-2019 2019年3月25日, 商务部新闻
Uncoated Paper 非涂布纸	Korea RP 韩国	Preliminary Affirmative ADD Determination issued 发布反倾销肯定性初裁	MOFCOM news, dated 1-3-2019 2019年3月1日, 商务部新闻

Trade Remedy actions by China

中国采取的贸易救济行动

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
M-dihydroxybenzene 间苯二酚	Japan and USA 日本和美国	Final Affirmative ADD Determination issued 发布反倾销肯定性最终裁决	MOFCOM Announcement No. 10 of 2019, dated 22-3-2019 2019年3月22日, 商务部公告2019年第10号
Stainless Steel Billet and Hot-rolled Stainless Steel Plate (Coil) 不锈钢钢坯和不锈钢热轧板/卷	EU, Japan, Korea RP, Indonesia 欧盟、日本、韩国和印度尼西亚	Preliminary Affirmative ADD Determination issued 发布反倾销肯定性初裁	MOFCOM Announcement No. 9 of 2019, dated 22-3-2019 2019年3月22日, 商务部公告2019年第9号



WTO News 世贸组织新闻

巴西、澳大利亚和危地马拉对印度给予甘蔗和白糖支持提出争端解决

巴西、澳大利亚和危地马拉已向世贸组织请求与印度就印度向甘蔗和糖生产商提供的国内支持措施和所谓的出口补贴进行磋商。巴西列举了印度实施的各种国内支持措施和出口补贴，称印度大幅提高了对甘蔗和糖的国内支持水平。据称，这些措施违反了世贸组织《农业协定》的各项规定，因为它们超过了该协定第 6.4 (b) 条规定的最低 10% 的限度。关于出口补贴，印度还被指控违反《补贴与反补贴协定》第 3 条。据称，由于产量超过国内需求，印度定期干预市场。这些请求分别于 3 月 5 日、7 日和 25 日在世贸组织内分发。

中国的农业补贴违反了世贸组织规定：专家组报告

2 月 28 日，世贸组织就美国提出的“中国-对农业生产者的国内支持争端案” (DS511) 发布了专家组报告。在这场争端中，美国质疑在 2012 年至 2015 年期间，中国通过对小麦、水稻、粳稻和玉米进行市场价格支持，为生产商提供国内支持。专家组审查了用于计算可允许的支持的数学公式中的要素，即适用的行政价格 (AAP)、固定外部参考价格 (FERP) 和获得适用的行政价格相应的生产数量 (QEP)。对于这些要素，专家组认为：

- FERP 应以 1996-1998 年为基础，源自中国计划表第四部分，而不是根据 AOA 附件 3 第 9 段列出的 1986-1988 年为基础。专家组得出这一结论，包括通过评估自 1995 年以来加入世贸组织的 36 个成员国的生产计划 (MPS) 承诺这一背景，这些成员国通常使用 1986-1988 年以外的基准期。专家组的理由是，1996-1998 年的使用也与中国加入世贸组织时和专家组程序期间计算中国对农业生产者支持的方式保持一致，允许进行“苹果对苹果”的比较。
- AAP 在双方之间没有争议，因为双方都同意它是相关法律文书中规定的每年每种产品的价格。

- 关于 QEP，专家组发现，在中国被质疑的措施中没有任何明确或隐含的限制，小麦和大米的 QEP 是相关特定省份的全部产量。除排除粮食质量不足外，专家组在措施内容和时间表第四部分均未发现此类限制。

根据这些调查结果，专家组确定了中国对小麦、水稻和粳稻的市场价格支持率，并发现，在 2012-2015 年的每一年，中国都提供了超过了其对这些产品的 8.5% 的最低支持水平。专家组随后发现，由于中国的支持水平超过了最低水平，这也超过了中国在中国计划表第四部分第一节中规定的“零”承诺水平。在此基础上，专家组得出结论，中国的行为不符合其在 AoA 第 3.2 条和第 6.3 条下的义务。

突尼斯向世贸组织提出申诉，反对摩洛哥对练习册征收关税

2 月 27 日，世贸组织向其成员国发布了突尼斯对摩洛哥的磋商请求。该请求涉及摩洛哥对从突尼斯进口的学校练习册征收最终反倾销税。据突尼斯称，这些措施违反了《关于实施 1994 年关贸总协定第六条的协定》的各项规定。据称，国内产业提出的起诉书中不包含倾销、损害或因果关系的充分证据。值得注意的是，突尼斯于 2018 年 7 月就摩洛哥在对练习册实施临时反倾销措施时已经提出了一项争端案 (DS555)。

保障措施调查

- 菲律宾已于 2019 年 2 月 19 日开始对透明和有色的浮法玻璃进行保障措施调查。该事项已于 2019 年 3 月 13 日通知世贸组织保障措施委员会。
- 南非于 2019 年 3 月 1 日开始对钢铁螺纹紧固件进行保障措施调查。此事已于 3 月 4 日通知保障措施委员会。
- 俄罗斯联邦已经启动了两项保障措施调查：(a) 于 2019 年 3 月 1 日开始对进口到欧亚经济联盟关税区的微波炉进行调查；(b) 于 2019 年 3 月 4 日开始对进口到欧洲经济联盟关税区的不锈钢焊接管进行调查。这两件案件都已于 3 月 19 日通知保障措施委员会。



India Customs & Trade Policy Update 印度海关和贸易政策更新

事先授权、资本货物出口促进计划和出口型企业 – 综合税和费用免除延期

根据事先授权、资本货物出口促进计划和出口型企业实施的免征综合税（IGST）和费用再次延长。这一次豁免已延长一年，有效期至 2020 年 3 月 31 日，而不是 2019 年 3 月 31 日。《对外贸易政策》第 4.14、5.01 (a) 和 6.01 (d) (ii) 段已通过 2019 年 3 月 20 日发布的第 57/2015-20 号对外贸易总局的通知作出了修改。

批准农产品的运输和营销援助计划

印度政府批准了一项名为“运输和营销援助”（TMA）的计划，用于特定的农产品。该计划将为这些产品的空运和海运出口提供国际货运和营销援助。该方案将缓解特定农产品出口运输成本较高的弊端，促进印度农产品在海外市场的品牌认知度。商工部已于 2019 年 2 月 27 日就此发出通知。

经济特区-本地投入的价值不包含在净外汇收入中

印度商工部修订了 2006 年经济特区规则，规定计算净外汇的公式中的投入值总和[A-B>0 公式中的 B]不包括用于授权经营的本地投入的价值。值得注意的是，在 2018 年 9 月 21 日之前，政府对该问题的立场是相同的，政府在 2018 年 9 月 19 日的通知中对《经济特区规则》第 53 条插入了对本地投入的含义。为此，印度政府于 2019 年 3 月 7 日发布了第 G.S.R.200 (E) 号经济特区公告。

信托也可成立经济特区-经济特区（修正案）条例颁布

印度总统于 3 月 2 日颁布了《2019 年经济特区（修订）条例》。根据自 2019 年 3 月 2 日起生效的最新修正案，信托公司或中央政府通知的任何实体也可以设立一个经济特区用作生产商品或提供服务。印度政府已经对 2005 年经济特区法第 2 节第 (v) 款中“人”的定义进行了修订。内阁于 2019 年 2 月 28 日批准了该条例。



Ratio Decidendi 判决理由

反倾销税-对征收反倾销税裁决提出上诉的地方标准-作为出口商的能力是必要的

欧洲联盟法院撤销了普通法院的裁决，该法院应 Marquis Energy 进行价格承诺的申请，宣布撤销对原产于美国的生物乙醇进口征收最终反倾销税的欧盟执行委员会第 157/2013 号裁决，但仅限于该价格承诺。法院认为，普通法院在法律上犯了错误，认为 Marquis Energy 直接受到相关条例的关注。法院注意到，一项价格承诺不能被一项仅因其存在作为受关税约束的产品生产商的能力而将征收反倾销税的法规直接视为与其有关，因为在这方面，作为出口商的能力至关重要。委员会早些时候公告了该价格承诺企业（马奎斯能源公司）作为出口生产商抽样的一部分，然而最终建议在全国范围内以 9.6% 的普遍税率实施最终措施。

[Council of the European Union v. Marquis Energy LLC – Judgement dated 28-2-2019 in Case C-466/16 P, CJEU]

反倾销税

在涉及对印度某些耐腐蚀钢产品征收反倾销税的案件中，美国国际贸易法院得出结论，商务部修改了对印度出口商（上诉人——Uttam Galva）加权平均倾销幅度的计算，这一做法不符合法律规定。

商务部重新计算了出口商的退税调整，将进口关税退税进行分配并且在总出口中豁免了出口的制成品，并且（在正常价值中）作出了额外的“销售调整”，根据该情况，上诉人的加权平均倾销幅度从 3.05% 变为最终裁决中的 3.11%。商务部增加了出口商的正常价值，

即美国销售的退税金额与出口商报告的生产成本中的进口关税金额之间的差额。上诉人认为，正常价值的增加使出口价格中规定的退税调整无效。

然而，法院在区别“*Saha Thai Steel Pipe (Public) Co. Ltd.*诉美国”案中较早的一项裁决的同时，认为商务部修订的退税调整计算不符合法律规定。它注意到，*Saha Thai*案中引用的段落涉及对该公司所述特定事实、豁免计划和记录保留做法，从而对正常价值进行调整，这不应扩展到包含对所有退税调整的计算。[*Uttam Galva Steels Limited v. United States* - Slip Op. 19-34, dated 12-3-2019, US CIT]

反倾销税不适用于二手机器

金奈中央货物和服务税上诉法院认为进口二手机械不应征收针对新机械实施的反倾销税（ADD）。法院指出，对于二手机械，反倾销的目的是通过对申报价值的重新评估来实现的，而征收附加税只会带来双重危险。法院在作出裁定的同时，驳回了要求追加强制执行和将该事项移交反倾销法庭。法院还注意到，2009年实施的反倾销税公告不能被反加在于2007年从一个特定国家制造和出口的货物上。[*Commissioner v. Trinity Exporters* - Final Order No. 40357/2019, dated 20-2-2019, CESTAT Chennai]

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