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Is the US GSP scheme benefiting India's trade?

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Abstract

The analysis of the operation of the US GSP scheme since it was introduced in 1976 reveals that although it has the potential to stimulate imports from developing countries, the structural deficiencies of the scheme have prevented it from making more than a nominal overall impact. The study identifies these shortcomings as limited product coverage, the competitive need limitations, discretionary decision making on specific aspects, requirement of reciprocity and the existence of several unilateral preferential schemes at the same time. However, it also makes the assessment that in the current environment of aggressive pursuit by the administration of reciprocal concessions from developing country trading partners, any suggestion for elimination of these inadequacies is likely to prove fruitless.

The reduction in MFN tariffs after successive rounds of multilateral trade negotiations has eroded the margin of preference and diminished the value of the GSP concessions. The simple average of MFN tariffs on non-agricultural products has come down to 3.2 per cent after the Uruguay Round. If there is eventual accord in the Doha Round, the range of MFN tariffs of 6 to 10 per cent will stand lowered to between 3.4 and 4.4 per cent. As a consequence, preferences under the GSP would largely pass into an era of near irrelevance. Despite the gloomy outlook at present, it would be worthwhile to persevere with it rather than make futile attempts to convince the USA of the need to make far-reaching improvements in its unilateral preferences.

JEL Classification: F13, F14, F15

Key Words: Generalised System of Preferences (GSP), preferential tariffs, United States of America (USA), India's exports

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Executive Summary

The US GSP scheme was introduced in 1976 on the basis of the recommendations made at the Second Session of United Nations Conference on Trade and Development (UNCTAD) held in 1968 for the establishment of a generalised, non-reciprocal, and non-discriminatory system of preferences in favour of developing countries. The objectives were to increase the export earnings of developing countries, promote their industrialization and accelerate their rates of economic growth. The paper undertakes an evaluation of the operation of the US scheme from India's perspective.

Designation of beneficiaries

From the outset, the US law required a measure of reciprocity from the beneficiary countries, despite the recommendation in the original UNCTAD decision for the preferences to be non-reciprocal. The US Trade Act, 1974, stipulated that in granting GSP benefit to individual developing countries, the President was required to take into consideration four factors viz., an expression of interest by the country concerned, the level of its economic development, including its per capita gross national product, whether other major developed countries had extended the benefit to the country concerned and the extent to which the country had provided assurance to the United States that it 'will provide equitable and reasonable access to the markets and basic commodity resources of such country'. The same Act also gave to the President the authority to withdraw, suspend or limit the GSP benefit in respect of a country at any time after the original designation as beneficiary. The conditions laid down for the designation or disqualification of countries as GSP beneficiaries at the outset also provided the basis for a review of beneficiary status at any time during the implementation of the programme. Over time, the requirement of reciprocity became stronger.

Product coverage and tariff treatment

The law authorises the President to designate any article as eligible for GSP on the basis of advice by the US International Trade Commission. It also generally bars the granting of the benefit to certain categories of products, including textiles and apparel articles, watches, import-sensitive electronic articles, import-sensitive steel articles, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, import-sensitive semi-manufactured and manufactured glass products, and any other article considered to be import sensitive. These mandatory exclusions cover labour intensive products, in which developing countries have comparative advantage, and thus severely curtail the usefulness of the US-GSP scheme for them.

The US GSP provides for the elimination of duty on all products included in the scheme. Special benefits are accorded to LDCs by way of wider product coverage.

Competitive need limitations

A central feature of the US GSP scheme is the competitive need limitations, whereby individual beneficiaries are excluded from the benefit once imports from them have crossed the limit of the total value of imports (set at US$145 million for 2010) or 50 per

cent share of imports from all beneficiaries in a particular year. The 50 per cent share limit does not apply if the value of imports is de minimis (set at US$20 million in 2010). A country affected by the competitive need limitations may be re-designated as a beneficiary if in any subsequent year imports from that country fall below the limits. However, the decision for re-designation is not automatic and the US administration is required to factor in such general considerations as the extent of beneficiary country's competitiveness and the anticipated impact on US producers.

The US President has been authorised by law to waive the application of the competitive need limitations with respect to any eligible article of a beneficiary country but for this a strong reciprocity element has been built into the rules.

Reciprocity and policy conditionality

When the GSP was re-authorised in the US Trade and Tariff Act, 1984, the US added tougher reciprocal requirements from beneficiary countries. Most importantly, the Act strengthened the reciprocity requirements in relation to internationally recognised workers' rights and intellectual property rights. The extent to which the developing country concerned reduced trade distorting investment practices and reduced or eliminated barriers to trade in services were added to the list of considerations for allowing GSP beneficiary status. These additions to the 1984 Act were an attempt to leverage the GSP benefits to secure goals that the US had set for itself in the multilateral trade negotiations that were launched in September 1986 and came to be known as the Uruguay Round. The US succeeded in securing its goals in the Uruguay Round to a great measure in respect of services, intellectual property rights and trade distorting investment measures. It did not achieve any success in respect of internationally recognised intellectual property rights and, not surprisingly, it has pursued its objectives in this area during the annual review of the implementation of the GSP programme. What has been unexpected is that despite the substantial success in securing its objectives on intellectual property rights in the Uruguay Round, the USA has not relented in pursuing these objectives through the GSP programme.

The element of reciprocity and policy conditionality in the US GSP is manifestly against the letter and spirit of the relevant decisions in UNCTAD and GATT, which emphasise that the programme has been conceived of as a non-reciprocal endeavour on the part of the developed countries. The study finds that the US has not been successful in securing the policy change that the US aimed at in individual cases, just as its conditional MFN policy had failed in the early 20th century.

Parallel Preferential Arrangements with Regional and Sub-Regional Groups

The unilateral preferential arrangements introduced by the US in favour of the Andean, Caribbean and African countries impinge on the operation of the GSP schemes and affect the interests of GSP beneficiaries. The trade coverage of these regional preferences has been more than twice of that of the GSP in recent years. The study recommends unification of all non-reciprocal preferential schemes.

Impact of the scheme on trade flows

Over the past decade, the trend in GSP imports into the US in absolute terms and as a proportion of MFN dutiable imports shows a lack of dynamism. Preferential imports from GSP beneficiaries were US$16 billion in 2000 and US$23 billion in 2010. As a proportion of the total dutiable imports, the preferential imports actually fell from 19 per cent in 2000 to 17 per cent in 2010. As a proportion of total dutiable imports from India, the GSP imports grew from 19 per cent in 2000 to 46 per cent in 2006 before sliding to 23 per cent in 2010. The study finds that the GSP concessions help to accelerate India's exports of individual products into the USA, but if the GSP imports from the country remain low in the aggregate it is due to structural deficiencies in the US scheme.

Way forward

The study finds that although the US scheme has the potential to stimulate imports from developing countries and from India, structural deficiencies in the scheme prevent it from making more than a nominal overall impact. The improvements that the authors suggest, implicitly or explicitly, are fundamental and they include expanding the product coverage, moderating the competitive need limitations, minimising the use of discretion in taking decisions on specific aspects, eliminating the requirement of reciprocity and unification of all unilateral preferential schemes. They acknowledge, however, that in the sentiment prevailing in the US after the 2008 financial and economic crisis, their suggestion for a radical overhaul in the US GSP scheme is a tall order.

The reduction of MFN tariffs after successive rounds of multilateral trade negotiations has eroded the margin of preference and diminished the value of the GSP concessions. If there is an eventual accord in the Doha Round, the generally applicable MFN duty on industrial products in the USA will come down from the range of 6 to 10 per cent to the range of 3.4 to 4.4 per cent. As a consequence, preferences under the GSP would largely pass into an era of near irrelevance. Though the prospects for a successful conclusion of the Doha Round in the near future look bleak at present, it would be worthwhile to persevere with it rather than make futile attempts to convince the USA of the need to make far-reaching improvements in its unilateral preferences.

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1. Introduction

USA was the last major developed country to introduce its GSP scheme in 1976, pursuant to Resolution 21 (II) adopted by the Second United Nations Conference on Trade and Development (UNCTAD 1968). The resolution had recommended the establishment by the developed countries of a "generalized, non-reciprocal, non-discriminatory system of preferences in favour of the developing countries, including special measures in favour of the least developed countries". The objectives were to increase their export earnings, promote their industrialisation and to accelerate their rates of economic growth. The generalised, non-reciprocal and non-discriminatory characteristics of the GSP were mentioned in the 1971 decision of Contracting Parties to the GATT (GATT 1971) granting a waiver from the MFN obligation of GATT. The 1979 decision of the Contracting Parties, "Differential and More Favourable Treatment, the Fuller Participation of Developing Countries" (GATT 1979), which gave a permanent basis to preferential tariff treatment of developing countries, also mentions these attributes of the Generalised System of Preferences.

The US GSP scheme was established by Title V of the US Trade Act, 1974 (P.L. 93-618) and some key changes were made in the US Trade and Tariffs Act 1984 (P.L. 98-573). In the Omnibus Budget Reconciliation Act, 1993 (P. L. 103-66), apart from a short extension of the validity of the scheme an amendment was made removing the USSR from the list of countries barred from beneficiary status. The GSP statute was substantially amended and reorganised once again in the GSP Renewal Act of 1996 (P.L. 104-188). The subsequent legislation has only extended the validity of the GSP scheme, the only exception being the Trade Act of 2002, which also added amendments requiring that beneficiaries support US efforts to combat terrorism and defined the term 'internationally recognised worker rights'.

Due to the need for fresh legislation from time to time to continue the scheme, a feature of the US GSP programme has been the lack of continuity; the preferences have not been operational for relatively prolonged periods. Sometimes, the period that elapsed between the expiry of an existing legislation and new legislation to renew the scheme, has been of only a month or two but there were longer intervals of 15 months between August 1995 to October 1996, four months between July to October 1998, five months and a half in July-December 1999 and 10 months from October 2001 to July 2002. Most recently, the programme expired on December 31, 2010 and it was only on October 21, 2011 that the US President signed into law the renewal legislation. As in the past, the GSP is being renewed retrospectively from December 31, 2010, when it expired. The lack of seamlessness in periodic renewals has led to an unstable trade

policy environment in the US for GSP beneficiary countries and eroded the value of the scheme.

After the economic reforms of 1991-92 in India, the evolving market access situation in foreign markets has been of vital concern to its economic operators for both goods and services. While the destination of India's exports is more diversified now than in the pre-reform era, and the major developed economies no longer have the pre-eminence of the past as our trading partners, they remain important. In recent years, the USA has had a share in the vicinity of 10 per cent in India's total exports. In this context, this paper undertakes an evaluation of the GSP scheme of the USA from India's perspective. How has this scheme evolved and what has been the trend in its operation and implementation? What does the future hold in respect of preferential tariff treatment under the GSP in the USA for countries like India? Section 2 takes up the structure and evolution of the scheme and Section 3 its operation and implementation. In Section 4, we offer our conclusions and recommendations

2. Structure and Evolution of the US GSP Scheme

Beneficiary countries

The US Trade Act, 1974, authorises the President to designate GSP beneficiary countries after taking into account certain criteria for exclusion or inclusion, which we analyse later in the section below titled 'Reciprocity and policy conditionality'. Here we mention only that, as was to be expected, the original law barred the designation of developed countries as GSP beneficiaries; the list included four countries in the Soviet bloc (Czechoslovakia, East Germany, Hungary, Poland, and the USSR). In addition, a general rule provided for the exclusion of Communist countries unless certain conditions were met such as membership of the GATT and the IMF. The end of the Cold War brought about a big change and most East European countries as well as Russia and CIS countries became beneficiaries. The 1984 Act withdrew the exclusion of Hungary and the 1993 Act of the USSR. The 1996 Act excludes only Australia, Canada, EU, Iceland, Japan, Monaco, New Zealand, Norway and Switzerland from eligibility for GSP benefits; thus, all countries formerly of the Soviet bloc have been made eligible. Subsequently, when the East European and Baltic countries acceded to the European Union, they once again lost the beneficiary status as they were counted as developed economies by virtue of their accession. An important addition made in the GSP Renewal Act of 1996 was the mandatory exclusion from GSP benefits of a country that 'aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism'. Iran and Libya have not been designated as beneficiaries pursuant to this provision.

Country graduation

Although the US Trade Act, 1974, laid down a number of criteria, that the President had to take into account for granting beneficiary status to developing countries, it did

not lay down a precise bench mark for mandatory exclusion of developing countries. Such a bench mark came later in the GSP Renewal Act, 1996, and it was stipulated that any country with a per capita income that meets the World Bank definition of 'high income' country would be excluded. In December 2010, the per capita income level defined by the World Bank as high income was US$12,196. From time to time, the US Government takes decisions to exclude countries that have crossed the high income level. Thus, in 1996, Cyprus was excluded and, in 2000, Slovenia was removed from the list of beneficiary countries even before they both acceded to the European Union in 2004. In addition, Section 504 (a) of the US Trade Act, 1974, gives to the President wide ranging authority to withdraw, suspend, or limit application of GSP after taking into account various factors listed in other sections of the Act for the designation of beneficiary countries. This authority gives a measure of flexibility to the US administration in taking a decision on graduating individual countries and thus, introduces a discretionary element in the process. Pursuant to this authority, in 1988, the President notified the Congress of his intention to remove Hong Kong, the Republic of Korea, Singapore and Taiwan from GSP beneficiary status on the ground that these beneficiaries had 'achieved an impressive level of economic development and competitiveness, which can be sustained without the preferences provided by the program.' On a similar assessment, Malaysia was excluded from GSP benefits in 1996.

It is also significant that China has never been considered for being granted beneficiary status under the US GSP.

Product coverage and tariff treatment

The President has been authorised to designate any article as eligible for GSP on the basis of advice by the US International Trade Commission, and taking into account the probable domestic impact of the preference. However, the law generally bars the granting of the benefit to certain categories of products, which have been subject to only minor definitional variations since the US Trade Act 1974 was enacted. These products are textiles and apparel articles, watches, import-sensitive electronic articles, import-sensitive steel articles, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, import-sensitive semi-manufactured and manufactured glass products, and any other article considered to be import sensitive. It would be noted that the mandatory exclusions cover labour intensive products, in which developing countries have comparative advantage, and thus severely curtail the usefulness of the US-GSP scheme for them.

Within these limitations, the US holds annual reviews at which requests for additions to the lists of eligible products are considered, along with the requests of domestic industries for exclusion of products that have already been included. As for agricultural products, most tropical products benefit from zero MFN tariffs and therefore do not find a place under the GSP. On the other hand, most temperate zone agricultural foodstuffs are not covered by the GSP.

The US GSP provides for the elimination of duty on all products included in the scheme. Shallow cuts in MFN duties, as practised by the EU, are alien to the structure of USGSP.

Competitive need limitations

From its inception, the USGSP programme has envisaged the mandatory application of certain limitations in the case of products in which the imports in a particular year meet the criteria of competitive need set in the statute. The US Trade Act, 1974, provided for two such criteria: first, if the imports from a beneficiary country exceed the value limit of $25 million in a calendar year, and second, if such import equals or exceeds a share of 50 per cent of total imports. The value limit was to be raised in future years by the same proportion as the US GNP grew in those years.

In the US Trade and Tariffs Act, 1984, an experiment was made to introduce the concept of graduation in the application of competitive need limitations. The US President was mandated to conduct a review of the operation of the programme and in cases in which it was found that a particular beneficiary had demonstrated a sufficient degree of competitiveness relative to other beneficiaries, the competitive need limitations were to be lowered for such beneficiaries. As against the increased value limit that was applicable in that year, the original value limit of $25 million was to apply for 1984 and the limit on share was to be reduced from 50 to 25 per cent for them. However, this change proved short-lived and was later withdrawn from the US law. The GSP Renewal Act of 1996 provided that the value limit for 1996 would be $75 million, which would be increased by $5 million each calendar year. Thus, the value limit for 2010 was $145 million. As we see later, one of the advantages given to the least developed countries is that the competitive need limitation does not apply to them. Also, the 50 per cent competitive need limitation does not apply with respect to any product if any like or directly competitive product is not produced in the United States. Further, if the imports in a year are below a certain level, the President may regard the imports as de minimis and not apply the competitive need limit of 50 per cent share. This level was fixed at $13 million for 1996, with provision for increase by $500,000 every year. Thus, the de minimis limit for 2010 was $20 million.

A country, which has been affected by the competitive limitation, may be re-designated as a beneficiary if in any subsequent year imports from that country fall below the limits. However, the decision for re-designation is not automatic and the US administration is required to factor in such general considerations as the extent of beneficiary country's competitiveness and the anticipated impact on US producers. Here too discretion plays a big role in decisions by the US government.

The competitive need limitations reduce hugely the value of the US scheme as a vehicle for 'the economic development of developing countries through the expansion of their export' as aimed at in the US legislation. The economic development of developing

countries requires sustained effort over a reasonably long period and the purpose is ill-served by granting short-term benefits. Industrialisation cannot be fostered if the benefit is switched off when a developing country's exports have had success in securing a good market share. A stable trade environment is a sine qua non for the expansion of trade as only certainty about the market remaining open for a reasonable period can foster investment. 'More than temporary programs…what poor countries need most is a stable commercial environment that encourages investment.' (James, Salllie, 2010, 2) Further, if the objective is to distribute the benefits among the beneficiary countries, it is a bad idea to allocate them equally irrespective of the size of the beneficiary economy.

Waiver of competitive need limitation

The US President has been authorised by law to waive the application of the competitive need limitation with respect to any eligible article of a beneficiary country if such action is considered to be in the national economic interest of the United States. A strong reciprocity element has been built into the rules by stipulating that, in taking a decision on waiver, the President should take into consideration the extent to which the country concerned affords to the US access to markets and commodity supplies and provides adequate and effective protection of IPRs. An overall limitation that was introduced in the US Trade and Tariffs Act, 1984, and remains valid is that waiver shall not be granted in respect of an eligible article if the share of imports of that article exceeds 30 per cent of the value of all GSP imports during the preceding year. Another limitation is that the aggregate value of imports of that article from the beneficiary developing country should not exceed 15 per cent of GSP imports from all beneficiary countries with a per capita GNP of $5,000 or more or from countries that had a share of more than 10 per cent in total GSP imports.

The above provisions add complexity to the structure of the GSP scheme by providing for graduation in considering whether waiver should be granted from the competitive need limitation. More importantly, they seek to provide one more opening to leverage the GSP benefit for obtaining improved market access as well as security of supplies for US businesses. We argue later that such attempts only cause annoyance at the other end and are pre-destined to fail.

Least Developed Countries

The US Trade Act, 1974, or the US Trade and Tariffs Act, 1984, did not contain any provision for special treatment to the least developed countries (LLDCs) in the USGSP. However, the GSP Renewal Act, 1996, contained two provisions for special treatment for this group of countries. Since the USGSP envisages duty free treatment for all beneficiaries, it was not possible to accord a better tariff treatment to LLDCs. However, more advantageous treatment was extended to them through wider product coverage. The LLDCs were made eligible for three out of six categories for which other

developing countries have been barred, viz., electronic articles, steel articles and semi-manufactured and manufactured glass products. The President was authorised to extend duty free benefit to them for products that are determined to be non-sensitive in the context of import from least developed countries. Pursuant to this provision, they were granted exclusive duty free treatment for a large number of products in 1997. As mentioned earlier, another element of special treatment is that the competitive need limitations do not apply to them.

Rules of Origin

The rule of origin requirement is much simpler in the USGSP. Unlike the complex process requirement for products using foreign components stipulated in the EU, the value addition rule applies in the US. The value of the domestic material used and the processing operations should constitute not less than 35 per cent of the appraised value of the imported product. For the purposes of meeting the rule of origin, there is provision for regional cumulation among members of six associations of developing countries, namely the Andean Group signatories of the Cartagena Agreement, the Caribbean Common Market (CARICOM), the West African Economic and Monetary Union (WAEMU), the Southern African Development Community (SADC), the Association of South Eastern Asian Nations (ASEAN) and the South Asian Association for Regional Co-operation (SAARC). Simple rules of origin are a plus point of the USGSP scheme and the fact that exporters claiming the benefit do not have to obtain a certificate of origin from an authorised signatory but only submit a declaration that the goods meet the criteria, improves matters further for the exporters.

Reciprocity and policy conditionality

The US Trade Act, 1974, as originally enacted, disqualified countries from designation as beneficiary developing countries eligible for the GSP benefit in the following circumstances:

- if it participated in action to withhold supplies of vital commodity resources from international trade;

- if it granted reverse preferences to a developed country adversely affecting US interest;

- if it had nationalised or expropriated US property or taken other action that amounted to such action;

- if it did not take adequate steps to co-operate with the USA on narcotic substances; or

- if it did not act in good faith in recognising as binding or in enforcing arbitral awards.

In granting GSP benefit to individual developing countries, the President was required to take into consideration four factors viz., an expression of interest by the country concerned, the level of its economic development, including its per capita gross

national product, whether other major developed countries had extended the benefit to the country concerned and the extent to which the country had provided assurance to the United States that it 'will provide equitable and reasonable access to the markets and basic commodity resources of such country'. The last of these factors sought to provide an entry point for the USA for seeking reciprocal concessions from the beneficiary countries.

Importantly, the US Trade Act, 1974. also gave to the President the authority to withdraw, suspend or limit the GSP benefit in respect of a country at any time after the original designation as beneficiary. The conditions laid down for the designation or disqualification of countries as GSP beneficiaries at the outset also provided the basis for a review of beneficiary status at any time during the implementation of the programme.

When the GSP was reauthorised in the US Trade and Tariff Act, 1984, the US went much further and brought about a major controversial change, adding tougher reciprocal requirements from beneficiary countries, making inroads into the domestic social and economic policy space. Most importantly, the Act strengthened the reciprocity requirements in relation to internationally recognised workers' rights and intellectual property rights. First, in the list of factors making developing countries ineligible for GSP benefit the clause was added, 'if such country has not taken or is not taking steps to afford internationally recognised worker rights to workers in the country (including any designated zone in that country'. Also at places where expropriation of property or similar action was mentioned, the words 'including patents, trademarks, or copyrights' were added.

Even more significantly, the US Trade and Tariff Act, 1984, added the following factors to the list of factors affecting country designation:

'the extent to which such country has assured the United States that it will refrain from unreasonable export practices:' 'the extent to which such country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights';

'the extent to which such country has taken action to—(A) reduce trade distorting investment practices and policies (including export performance requirements); and (B) reduce or eliminate barriers to trade in services; and 'whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognised worker rights.'

The above additions in the US Trade and Tariff Act, 1984 , were an attempt to leverage the GSP benefits to secure goals that the US had set for itself in the multilateral trade negotiations that were launched in September 1986 and came to be known as the

Uruguay Round. The US succeeded in securing its goals in the Uruguay Round to a great measure in respect of services, intellectual property rights and trade distorting investment measures. It did not achieve any success in respect of internationally recognised intellectual property rights and, not surprisingly, it has pursued its objectives in this area during the annual review of the implementation of the GSP programme. What has been unexpected is that despite the substantial success in securing the TRIPS Agreement in the Uruguay Round, the USA has not relented in pursuing its objectives with respect to intellectual property rights as well through the GSP programme.

The element of reciprocity and policy conditionality in the USGSP is manifestly against the letter and spirit of the relevant decisions in UNCTAD and GATT, which emphasise that the programme has been conceived of as non-reciprocal endeavour on the part of the developed countries. The question that remains is how effective the provision in the US law has been in securing the policy change that the US aimed at in individual cases.

Workers rights have figured significantly in the applications made by the domestic lobbies in annual reviews for denying beneficiary status to individual countries. According to the UNCTAD Handbook on USGSP, the issue figured in 121 of the 192 'country practices' petitions that were filed with the USTR during the period 1985-1999. Following these petitions, several beneficiary countries are mentioned as having taken steps to improve the enforcement of labour laws while several others were deprived of GSP benefits. Burma, Central African Republic, Chile, Maldives, Mauritania, Paraguay, Sudan and the Syrian Arab Republic had their benefits temporarily suspended, while Liberia, Nicaragua and Romania were excluded 'permanently' although they regained beneficiary status later. Belarus was also similarly suspended from the GSP benefit in 2000 and continues to be out of the list.

IPRs have also figured in actions by the US Government for limiting GSP benefit on account of 'country practices'. On April 1, 1987, Mexico was denied GSP treatment for 34 products on the ground of not making sufficient progress for the protection of IPRs (Hudec 1987, 123). In 1992, following a self-initiated Special Section 301 investigation, the USTR suspended India's GSP benefits for certain pharmaceuticals, chemicals, and related products (Stewart1999, 500). In 1997, Argentina was similarly subjected to curtailment of GSP benefit on account of a finding by the US Government in Special 301 proceedings that the new Argentine patent law did not conform to the requirements of the TRIPS Agreement (UNCTAD 2010, 27). Although the UNCTAD Handbook mentions that the threat of US action to withdraw preferences due to deficiencies in labour laws resulted in improvement in enforcement in some beneficiary countries, hard evidence is lacking to confirm the correlation. The only concrete evidence available is that, in several cases, the US failed to secure improvement and withdrew the GSP benefit . The most celebrated case is of Chile, which lost GSP beneficiary status as a part of concerted pressure put on the Pinochet regime in 1988 to bring about democratic reforms, including improvement in labour rights. Subsequently,

the beneficiary status of Chile was restored and according to one observer, 'this occurred after a new government had carried out a democratic reform that pointedly did not include improvement in labor law, which remains to this day considerably deficient in the protection of internationally-recognized workers rights' (Harvey 1995, 6).

The experience in respect of India broadly confirms the futility of the policy conditionality provision in the USGSP laws. As mentioned above, in the case of India too, the US government imposed a limitation on GSP benefit in 1992 and excluded the country from the preference in respect of chemicals, pharmaceuticals and related products in order to exert pressure on it to introduce legislation extending patents to chemical and pharmaceutical products. The US action did not create even a ripple in India. As events turned out, the Indian government did make the changes eventually as a part of the Uruguay Round results and not as response to the GSP action. In pursuing policy conditionality in the GSP, the USA seems to be ignoring the lessons of history in the management of trade policy. Policy conditionality in the USGSP is somewhat akin to the policy of conditional MFN pursued by the USA in trade negotiations up to early 19th century. The US government pursued such a policy in the belief that it would help to enhance its export opportunities. However, the policy proved counterproductive as it resulted in antagonism that harmed export interest. 'It then unilaterally abandoned the conditional policy in 1923, embarking on a program to negotiate reciprocal unconditional MFN agreements with its major trading partners' (Schwartz and Sykes, 1995, 65)

Ozden and Reinhardt (2003) argue that 'non-reciprocal preferences have the perverse effect of delaying trade liberalization by recipient countries.' They quote Hudec's observation that 'the non-reciprocity doctrine tends to remove the major incentive that [developing country] export industries have ... for opposing protectionist trade policies at home ... instead of trying to enlist the support of the export sector or liberal trade policy.' Among a few instances that they give is that of Chile, which reduced its tariffs from 20 per cent to 15 per cent and further to 11 per cent after the revocation of its beneficiary status (for democratic reforms, as already mentioned above) in 1988. They also note that the tariff reform stopped once the beneficiary status was restored in 1991. Although India has not been threatened with total exclusion, it has faced two actions that have affected its beneficiary status in a major way. The Ozden and Reinhardt hypothesis, however, is not borne out by India's experience. As mentioned earlier, in 1992, India was suspended from GSP in respect of pharmaceuticals and chemicals. The commencement of economic reforms, which induced the process of trade liberalisation, predated this action and was not influenced by it at all. The 1991 economic reforms brought about a steep reduction of peak import tariffs in industrial products from more than 150 per cent ad valorem to 10 per cent in 2007. In 2007, the US revoked the waiver from competitive need limitation in respect of major gems and jewellery item imported from India with a trade coverage of more than one billion US $. Coincidentally, the reduction in peak tariffs every year ceased in 2007 and peak tariffs on industrial tariffs have not been reduced further after 2007. The dynamics of decision

making in India on import tariffs has not shown any sensitivity to action by the USA to limit the GSP benefit to India.

Parallel Preferential Arrangements with Regional and Sub-Regional Groups

During the last three decades, the US has followed a policy of according better preferential benefits on a unilateral basis to regional or sub-regional groups of countries and territories. Here, we examine the three main preferential arrangements, viz., the Caribbean Economic Recovery Act (CBERA), the Andean Trade Preference Act (ATPA) and the African Growth and Opportunity Act (AGOA). Some of these initiatives have been in recognition of the overall economic situation of the regions, others have been taken pursuant to specific policy objectives, such as in response to economic crisis, natural disasters (such as the effect of hurricanes) or to help in combating the problem of narcotic drugs. Since unilateral preferences granted to a limited group of countries were not consistent with GATT 1947 and they continue to be at variance with the requirements of the WTO Agreement, the US has been obtaining waivers before implementing them.

Caribbean Basin Economic Recovery Act (CBERA)

The CBERA, which was enacted in August 1983, granted duty free treatment to selected products from 24 (subsequently 27) countries and territories of the region. Policy conditionality applied with elements similar to those that had been laid down in the GSP programme. In addition a few more conditions were added in the light of US political and economic interests in the region, such as signing extradition treaties with the US or not allowing broadcast of US copyrighted material without permission. Most categories of goods excluded from the GSP were also excluded from the CBERA preferences initially. In addition, canned tuna and petroleum and petroleum products were excluded. The rule of origin was similar to the GSP with the significant difference that a donor country content of 20 per cent was allowed in the 35 per cent value addition to be achieved in the beneficiary country.

In subsequent years, the preferential benefits for eligible Caribbean countries were successively improved through the Caribbean Basin Economic Recovery Act of 1990 and further, through the Caribbean Basin Trade Partnership Act (CBTPA) of 2000 as a response to the devastation caused by the hurricanes Georges and Mitch in 1998. Following the entry into force of NAFTA in 1994, there was a clamour for parity and substantial benefits were conceded to the Caribbean countries in CBTPA, including NAFTA type treatment to several products. Textiles too received NAFTA like treatment, which meant that the benefit was accompanied with a highly restrictive rule of origin. Textiles goods manufactured in the Caribbean were given duty free and quota free treatment provided they were assembled from fabrics made in the US from US yarn and also cut in the US. If the cutting operation was done in the beneficiary

country, the requirement for receiving the benefit was that it should be sewn together with US thread.

The CBTPA has not brought about stability in the trade regime governing trade relations between the Caribbean countries and the US. Negotiations by the US of new FTA agreements have been changing the competitive relationship among the trading partners of the US, making it imperative for the Caribbean countries to demand parity with the FTA partners. The parity question has arisen again for the Caribbean countries in relation to the Dominican Republic-Central America-United States Free Trade Area (DR-CAFTA) and has not been resolved. Action has been taken only in relation to Haiti, by granting them special benefits in respect of apparel exports through the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006. After the January 2010 earthquake, additional benefits were given through the Haiti Economic Lift Program (HELP) Act of 2010. .

The parity question raised by the Caribbean country beneficiaries following the establishment of NAFTA and subsequently of DR-CAFTA fully demonstrates the hazard of departing from the principle of uniform treatment of developing countries (except to the extent special benefits were allowed for the least developed countries), which was a core principle envisaged in UNCTAD Resolution 21 (II).

Andean Trade Preference Act (ATPA)

The Andean Trade Preference Act (ATPA) was enacted in 1991 to put in place a 10-year programme to promote the diversification of the economies of Bolivia, Colombia, Ecuador and Peru away from illegal drugs. The policy conditionality was on the same lines as in CBERA, including conditions relating to an extradition treaty with the US as well as disallowing broadcast without permission of US copyrighted material.

As in the case of GSP, certain categories of products viz., textiles, footwear and watches and watch parts were excluded from preferential treatment; in addition, canned tuna, petroleum and petroleum products, sugar, syrup and molasses and rum were also excluded. In respect of one category of goods, namely handbags, luggage, flat goods, work gloves and leather wearing apparel, there was provision for reduction of duty by 20 per cent. In the Andean Trade Promotion and Drug Eradication Act (ATPDEA), 2002, the programme was extended until 2006. The ATPDEA also enlarged the product coverage for duty free treatment to include footwear, watches, handbags and leather wearing apparel but textiles and apparel, rum and tafia, sugar and tuna remained excluded. For textiles and apparel, preferential treatment was granted on the restricted rules of origin requirement described above.

The ATPA programme expired on February 11, 2011, but has been renewed retroactively on October 21, 2011 along with the enactment of the implementing legislation of US-Colombia FTA. In the meantime, Bolivia has been suspended from

the ATPA benefits on account of dissatisfaction in the US over its non-co-operation in counter-narcotics action and Peru has entered into an FTA agreement with the US, making the unilateral preferences irrelevant for it. Once the US-Colombia FTA takes effect the ATPA will remain of interest only to Ecuador.

African Growth Opportunities Act (AGOA)

An enhanced GSP scheme for countries of Sub-Saharan Africa was introduced by the US Congress in May 2000 through the Africa Growth and Opportunity Act, or AGOA (Title I, Trade and Development Act of 2000; P.L. 106–200). The provisions of AGOA have been amended four times, by The Trade Act of 2002, which amended apparel and textile provisions under AGOA and by the AGOA Acceleration Act of 2004, which extended the expiration date from 2008 that was originally fixed to 2015. Further amendments were made in the programme in the Miscellaneous Trade and Technical Corrections Act of 2004 (P.L. 108-429) and in December 2006 by the Africa Investment Incentive Act of 2006 (Title VI of P.L.109-432). The Sub-Saharan countries are entitled to the benefits of enhanced GSP under the AGOA but they must fulfil certain preconditions in addition to the conditions stipulated for the GSP beneficiaries generally. The important additional preconditions are that the countries concerned are making progress towards establishing a market-based economy, do not engage in activities undermining US national security and foreign policy interests and further do not engage in gross violations of internationally recognised human rights or provide support to international terrorism. Eight out of the 48 countries have not been designated as beneficiaries of AGOA preferences for non-fulfilment of these conditionalities.

The AGOA countries are entitled to receive duty free treatment on products including the categories that are excluded from the GSP, except for textiles and apparel products. Preferences are extended even to textiles and apparel products but under special rules of origin on the lines of the CBTPA and ATPA. Liberalised rules of origin apply to the less-developed beneficiaries (those with a per capita gross national product of $1500) and they are entitled to use fabric from third countries (outside the Sub-Saharan region or the US) and they still get the benefit of preferential treatment. Of the 40 countries eligible for AGOA benefits, only 27 are eligible for textile and apparel benefits, and 26 of these (excluding South Africa) are entitled to import fabric from third countries for manufacture of apparel, which receive preferential treatment on being imported into the US. Since, as mentioned earlier, these unilateral preferential schemes are not consistent with WTO obligations and have been implemented by the USA after obtaining temporary waivers in the WTO, sooner or later, they will have to be withdrawn and absorbed into a WTO-consistent arrangement such as the GSP. Gresser (2010) has argued for the merger of GSP, AGOA, ATPA, CBI and HOPE into a single and simpler programme with improvements in some aspects, including differentiation among developing countries. Merger of these preferential schemes into one grand scheme under the GSP would greatly improve equity in distributing trade benefits among

beneficiary countries. However, greater differentiation among the beneficiary countries (beyond the special treatment of the least developed countries) has the potential to make the equity situation worse because of the propensity of governments to accord greater importance to political relations rather than economic merit. Differentiation in respect of rules of origin and tariff treatment would militate against simplicity and nullify the simplification objective of unification of diverse schemes.

3. The US- GSP Schemes in Operation

Impact of US- GSP on imports from beneficiary countries

In the early years of implementation of the US-GSP , several studies examined its impact on trade flows. Using an ex ante technique , Baldwin and Murray (1977, 37) estimated gross trade creation resulting from the US programme to be US $236 million against the 1971 imports of US$820 million. Of this, trade diversion accounted for about US$46 million or about 20 per cent. Using an ex post facto method, Sapir and Lundberg (1984, 219) obtain trade creation of about US$660 and trade diversion of about US$270, totalling up to gross trade creation of about US$930 million, which amounts to 15 per cent of GSP duty-free imports from beneficiaries by the USA in 1979. Since then, the MFN duties have been cut twice, in the Tokyo Round and in the Uruguay Round, bringing down the simple average level of tariffs from about 8.1 per cent to 3.2 per cent on non-agricultural products. The ensuing erosion of the margin of preference would have reduced the trade creating stimulus of the GSP concession. After reviewing the results of several studies on the increase in trade volumes and export earnings in preference receiving countries, Grossman and Sykes (2008, 274) reach the conclusion that 'a consensus view might be that the revenue gains have been modest but not trivial.'

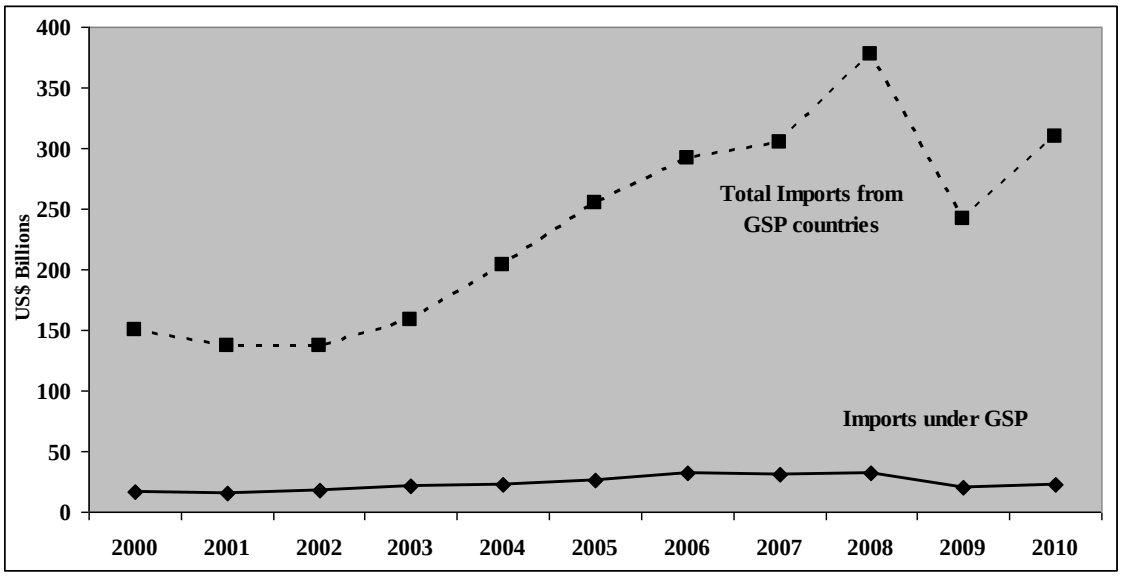
In the analysis that follows of the trends of imports into the USA from the GSP beneficiary countries in general and from India in particular, we examine the impact on trade flows in recent years. Is there any evidence of increase in imports benefiting from preferential treatment and of adverse effect when such treatment ceases to apply as a result of changes in beneficiary status or competitive need limitation? For our purposes, it is not relevant whether there is trade creation or trade diversion because increased exports from developing countries have a positive effect on export earnings, industrialisation and economic growth of these countries.

Trade diversion undoubtedly has adverse welfare effects for the donor countries but in introducing preferences, the developed countries have implicitly agreed to the sacrifice of welfare involved with the objective of achieving the higher purpose of aiding the development of developing countries.

Trends in preferential imports into the US under the GSP

The USGSP scheme was implemented more than 35 years ago but its total impact has remained remarkably limited. As Figure1 shows, while total imports from GSP countries have been going up steeply, a flat line reflects the trend in preferential imports from these countries.

Figure 1: US Imports from GSP Eligible Countries (US$ Billion)



Source: US ITC, Trade Dataweb

The absence of dynamism in the overall GSP imports into the US is the cumulative result of the built-in structural shortcomings in the USGSP scheme as well as the way the scheme has been implemented in recent years. The first important deficiency is the limited product coverage of the USGSP scheme. The USGSP scheme envisages a priori exclusion of several categories of products such as textiles and apparel, footwear, leather goods and electronic products, all labour intensive products, which are the very areas in which many developing countries specialise. As Table I shows. over the last 10 years, the proportion of GSP imports relative to dutiable imports, already low at about 1/5 in 2001, has come down to 1/6 in 2010. Outside the categories that are barred by law against inclusion, there is some room for manoeuvre for the Administration to include new items. However, since 2001, petitions have been accepted for inclusion in respect of only 34 products for all developing countries while 27 petitions have been accepted for exclusion.

The implementation of the competitive need limitation provision during the years from 2001 to 2009 has tended to whittle down progressively the scope of the USGSP. As pointed out above, exclusion is mandatory when the thresholds are crossed but re-designation is discretionary when the exports fall below the threshold. During these years, 112 products were excluded by virtue of competitive need limitation while only 67 products were re-designated for restoration of GSP treatment. There have been no favourable decisions on re-designation during the last four years and all petitions (146 in 2008 and 176 in 2009) have been rejected. Up to 2005, waiver requests from

competitive need limitation were considered positively and as many as 21 were allowed between 2001 and 2005. From 2006, the trend changed and, between 2006 and 2009, 13 existing waivers were revoked while only 8 new waiver requests were granted.

Besides, there is an ever-present real threat of the US limiting the benefits for individual beneficiaries on account of the controversial US law provisions on country practice reviews. It is not only that the provisions exist in the US statutes but also that the business associations and individual corporate entities are active in seeking recourse to these provisions. Every year, the Administration considers petitions for reviews related to workers rights (from AFL-CIO or ILRF) or to IPRs (from IIPA) or to miscellaneous questions such as arbitral awards (from individual companies). In 2009, two petitions were accepted for review, one against Sri Lanka from AFL-CIO on workers rights and another from Azurix Corporation against Argentina on arbitral awards.

Table 1: Imports into US from Beneficiaries (US$ Billion)

	Total Imports into US	Total Imports from GSP countries	Total Dutiable Imports from GSP countries	GSP Imports
2000	1,205	150	83	16
2001	1,133	137	73	16
2002	1,155	137	72	18
2003	1,250	158	79	21
2004	1,460	204	87	23
2005	1,662	254	107	27
2006	1,845	291	126	33
2007	1,943	305	132	31
2008	2,090	378	161	32
2009	1,549	241	112	20
2010	1,899	310	138	23

Source: USITC, Trade Dataweb

The importance of the GSP in US trade with developing countries, already reduced by statutory exclusion of several products, and increasingly emasculated by the lop-sided implementation of the competitive need limitation has diminished further under the twin impact of unilateral preferences granted to groups of countries in a region or sub-region as well as reciprocal preference in the framework of FTA agreements. The establishment of NAFTA was a big step that immediately resulted in a huge redirection of trade, and several other FTA agreements have entered into effect. The US President has signed into law the implementing legislation of three more (Korea, Colombia and Panama) on October 21, 2011. The relative magnitude of trade under the preferential arrangements already in force and of trade under the GSP can be seen in Table 2.

India is one of the 10 major beneficiaries of the US GSP scheme as shown in Table 3. Its share of GSP imports into the US reached a peak of 17 per cent in 2006 but has fallen to 15 per cent in 2010.

Table 2: Imports into US under Preferential Agreements (US$ Billion)

	Imports under GSP	Imports under FTAs	*Of which imports from Mexico*	Imports under AGOA, Andean Act and Caribbean
2000	16	209	*84*	5
2001	16	196	*81*	12
2002	18	203	*85*	12
2003	21	209	*88*	22
2004	23	233	*96*	33
2005	27	264	*107*	48
2006	33	304	*127*	54
2007	31	314	*134*	57
2008	32	330	*141*	77
2009	20	240	*107*	39
2010	23	311	*141*	54

Source: USITC, Trade Dataweb

US GSP and India

Thailand was the largest beneficiary in 2010 and Angola the second largest, although the position of the latter is largely due to its exports of crude petroleum, which product has very low MFN duty and the GSP concession is nominal.

Table 3: GSP Imports from the Top GSP Beneficiaries (US$ Million)

	Country	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
1	Thailand	2,205	2,201	2,312	2,702	3,143	3,575	4,252	3,820	3,533	2,886	3,612
2	Angola	2,844	2,511	2,826	3,883	3,066	4,098	6,774	6,924	7,529	4,142	3,544
3	India	1,138	1,334	2,041	2,646	3,270	4,179	5,678	4,735	3,965	2,848	3,482
4	Brazil	2,086	1,950	2,124	2,490	3,168	3,628	3,738	3,427	2,754	1,978	2,124
5	Indonesia	1,369	1,322	1,513	1,347	1,290	1,594	1,946	2,243	2,161	1,455	1,856
6	Equatorial Guinea	136	116	401	764	895	1,487	1,559	1,313	2,805	1,677	1,275
7	South Africa	583	506	553	670	949	1,017	1,066	1,190	1,457	742	1,200
8	Philippines	745	676	708	895	967	1,008	1,141	1,165	913	734	913
9	Turkey	435	437	472	723	970	1,068	1,126	1,128	917	644	793
10	Russia	515	378	381	430	554	738	512	469	594	252	578
	Sub-Total of top 10	*12,056*	*11,431*	*13,331*	*16,550*	*18,271*	*22,394*	*27,792*	*26,413*	*26,627*	*17,359*	*19,377*
	Total GSP Imports	**16,439**	**15,726**	**17,663**	**21,278**	**22,709**	**26,747**	**32,598**	**30,850**	**31,663**	**20,259**	**22,554**

Source: USITC Tariff and Trade DataWeb

Table 4 gives the picture of preferential imports from India relative to total imports. GSP imports as a proportion of total dutiable imports from India reached a peak of about 46 per cent in 2006 but thereafter it has fallen to about 24 per cent in 2010.

Table 4: Imports from India into US (US$ Million)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total	10,680	9,708	11,790	13,034	15,503	18,710	21,674	23,857	25,866	21,228	29,614
MFN Dutiable	5,885	5,586	6,689	7,542	8,306	10,643	12,333	13,015	12,550	10,697	14,777
Imports under GSP	1,138	1,334	2,041	2,646	3,270	4,179	5,678	4,735	3,965	2,848	3,482

Source: USITC Tariff and Trade DataWeb

Table 5 gives a break up of the products imported from India receiving GSP treatment. In 2010, automobile vehicles and parts were the largest item imported from India under the GSP followed by other engineering items under machinery, articles of iron and steel and electrical machinery. The importance of organic chemicals and plastics and articles thereof is also increasing. During the years 2003-2007, the GSP imports of gems and jewellery grew rapidly and at one time, this became the largest single item on India's GSP exports, accounting for 40 per cent or more of the total GSP imports from India. Thereafter, jewellery imports under the GSP declined as rapidly as they had grown. The main reason for the fall in the proportion of GSP imports from India was the revocation in 2007 of competitive need limitation waiver (originally granted in 2001) in respect of certain jewellery items (HSUS 71131929 and 71131950) and further revocation of the 2001 waiver in 2009 of another category (HSUS 71131925). The US took further action to exclude in 2009 one other category (HSUS 71131921) on account of the competitive need limitation. The GSP imports of gems and jewellery fell from $2,441 million in 2006 to 163 million in 2010.

Table 5: Top Imports into US under GSP from India (US$ million)

HS	Chapter	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
87	**Vehicles & Parts**	99	85	109	109	156	224	268	310	335	256	424
84	**Nuclear Reactors & Machinery**	70	81	91	113	168	283	406	479	523	321	383
73	**Articles of Iron or Steel**	141	150	147	153	217	269	314	373	408	293	321
29	**Organic Chemicals**	0	0	0	0	0	54	167	152	214	199	320
39	**Plastic & Articles thereof**	75	72	79	127	131	221	298	225	273	235	275
85	**Electrical Machinery**	78	79	76	127	142	240	495	370	267	189	266
71	**Gems & Jewellery**	103	285	862	1,204	1,508	1,798	2,441	1,538	492	279	163
57	**Carpets & Other Floor Coverings**	0.02	1	15	11	0	38	100	106	102	82	121
76	**Aluminium and Articles thereof**	28	29	32	40	61	96	112	104	120	81	95
68	**Articles of Stone, Plaster, Cement**	83	90	109	148	211	184	138	142	114	79	79

Source: USITC Tariff and Trade DataWeb

Table 6 gives details of total imports from India into the USA irrespective of whether these were made on a dutiable or duty free basis, or whether the duty free status was available on MFN or GSP imports. This brings out certain other aspects of the impact of GSP on India's exports. Among the most dynamic exports from India are diamonds and other precious stones and pharmaceutical products (which are both duty free on an MFN basis) and refined petroleum products, which although not duty free attract very nominal duties (10 cents per barrel). Textiles and apparel items (Chapters 61, 62 and 63

of HS), which attract relatively high duties, and are additionally handicapped on account of FTAs and special schemes for certain regions and sub-regions (African, Andean and Caribbean countries and territories), are doing well nevertheless. The level of India's competitiveness in textiles and clothing vis-à-vis domestic suppliers in the US is high enough for Indian exporters to overcome the tariff handicap, although less so than some other developing country exporters to the US who are registering a rate of growth higher than India.

Table 6: Top Imports into US from India **(US$ million)**

HS	Chapter	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
71	Gems & Jewellery	3,346	2,642	3,661	3,958	4,517	5,031	5,861	6,200	5,600	4,555	6,856
Of which 71023900 &71039100	*Diamond & other precious stones, worked, but not mounted/ set*	*2,627*	*2,029*	*2,739*	*2,671*	*2,966*	*3,200*	*3,369*	*3,817*	*4,013*	*3,172*	*5,308*
30	Pharmaceutical Products	6	94	223	359	255	291	438	842	1,479	1,657	2,387
27	Mineral Fuels & Petroleum	68	175	214	229	251	590	284	769	337	435	2,324
62	Articles of Apparel & Clothing	1,374	1,272	1,380	1,476	1,583	2,126	2,075	1,901	1,784	1,645	1,727
29	Organic Chemicals	289	323	305	402	511	664	874	1,247	1,451	1,315	1,702
85	Electrical Machinery	236	266	255	392	514	760	1,243	1,244	1,395	1,171	1,562
63	Other Made Up Textile Articles	469	496	612	706	837	1,017	1,104	1,184	1,260	1,185	1,540
61	Articles of Apparel & Clothing	472	502	559	583	673	938	1,160	1,315	1,326	1,233	1,412
84	Nuclear Reactors & Machinery	222	246	303	339	485	723	949	1,123	1,461	1,103	1,299
73	Articles of Iron or Steel	268	266	305	326	472	680	659	1,231	1,684	1,120	1,170

Source: USITC Tariff and Trade DataWeb

Competitive Need Limitations and India

How has India fared under the provisions on the competitive needs limitation? As India has become a more successful exporter and its export volumes have increased, it has become more vulnerable to exclusions under the competitive need limitation. Simultaneously, India has also been denied requests for redesignation when export volumes have fallen below the threshold. During the decade 2001-2010, no product was re-designated at all for India and, in fact, all nine requests in 2008 and all 14 in 2009 were declined. India has also received fewer waivers from the application of competitive need limitation and there has been a greater readiness to revoke earlier waivers than to grant new ones. During the period 2007-09, waivers were granted for two products but revoked in four. Table 7 shows the cumulative position each year during the period 2001-10 of the number of products that remained excluded for India (net of redesignation and waivers) each year due to the competitive need limitation and the trade coverage of the exclusions. It would be seen that both the numbers of excluded products and their trade coverage increased significantly during the decade.

The main reason for the decline in GSP imports from India was the exclusion of items (mainly gems and jewellery) due to the competitive need limitations.

Table 7: Imports from India subject to CLNS Exclusions (US$ million)

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
No of excluded Tariff lines	13	10	11	12	13	17	21	21	31	34
Import value of excluded products	601	56	79	89	260	316	2,509	1.783	1,877	2,271
Total imports from India	9,708	11,790	13,034	15,503	18,710	21,674	23,854	25,866	21,228	29,614
GSP imports from India	1,334	2,041	2,646	3,270	4,179	5,678	4,735	3,965	2,848	3,482

Source: Office of the United States Trade Representative (USTR), Notice of the Results of the Annual Product Reviews, various years

What can be said about the difference that the duty free treatment under the GSP is making for India's exports? Export trends in respect of items in which India has been excluded from GSP treatment due to competitive need limitation or for any other reason give some idea about the value of GSP benefit.

Table 8: Jewellery Imports from India affected by CNLS Exclusion*

HS	**71131150**	**71131921**	**71131925**	**71131929**	**71131950**
Products	Silver articles of jewellery and parts, valued over $18 per dozen pieces or parts	Gold rope necklaces and neck chains	Gold mixed link necklaces and neck chains	Gold necklaces and neck chains (except of rope or mixed links)	Precious metal (except silver) articles of jewellery and parts, whether or not plated or clad with precious metal
MFN Tariff (2010)	***5.00***	***5.00***	***5.80***	***5.50***	***5.50***
CNLS exclusion	2009	2009	2009	Before 2001	Before 2001
Waiver granted			2001	2001	2001
Waiver revoked			2009	2007	2007

Total Imports (US$ Millions)					
2000	15	7	33	26	565

2001	16	14	4	23	493
2002	27	7	5	39	773
2003	32	3	3	59	1,061
2004	37	1	4	65	1,355
2005	54	0	6	60	1,608
2006	72	0	6	89	2,211
2007	91	3	26	266	1,901
2008	143	60	64	197	1,014
2009	197	71	66	56	883
2010	270	47	33	45	1,001

Source: USITC Tariff and Trade DataWeb, The Federal Register (various years)
** The shaded area shows the years in which the product was excluded*

Table 8 gives the data for India's exports of five jewellery sub-headings in which competitive need exclusions took place. It is seen that in four of them, the withdrawal of duty free treatment had a pronounced effect and reduced overall imports. From this the inference can also be drawn that the preferential duty free treatment has stimulated India's exports in jewellery items in which the MFN duty is in the range of 5-5.5 per cent. In one, silver articles of jewellery, there seems to have been no immediate impact and the volume of imports has continued to surge forward. The export trend will have to be observed over a longer period on all these items to evaluate the effect of tariff elimination as the imports of jewellery items can be influenced by multiple factors, including the difference in competitiveness between domestic and foreign producers, fashion trends etc

As mentioned earlier, another group of products that was affected by competitive need exclusions was certain chemicals. In fact, as we have noted earlier, chemical items were excluded from GSP for India in 1992 when the US took the decision under Special 301 investigations launched against India for perceived shortcomings in its protection of IPRs and India remained excluded until 2005 when its new patent legislation entered into force granted patent protection to chemical and pharmaceutical products. Table 9 gives the data in respect of these items.

During the period before 2005, when chemicals imported from India were denied GSP treatment, imports of these chemicals into the US from India were negligible. The imports took off however soon after the GSP preference was restored in 2005. The relatively impressive rise in imports led subsequently to exclusion because of the competitive need limitation. Withdrawal of duty free treatment dampened the imports somewhat in two out of three items (HSUS 29189930 and 29269030) in which the MFN duty is 6.5 per cent. However, in a third item (HSUS 29335959), the withdrawal of duty free treatment does not seem to have had an effect as imports from India. These have continued to march forward from $105 million in 2008 when the concession was withdrawn to $180 million in 2010.

Table 9: Chemical Imports from India affected by CNLS Exclusion*

HS	29189930	29269030	29335959
Products	Aromatic drugs derived from carboxylic acids with additional oxygen function, and their derivatives	Other aromatic nitrile-function pesticides	Non-aromatic drugs of heterocyclic compounds, with nitrogen hetero-atom(s) only
MFN Tariff (2010)	***6.50***	***6.50***	***3.70***
Year of CNLS exclusion	2008	2006	2008
Year Waiver granted			
Year Waiver revoked			
Total Imports (US$ Millions)			
2000	0	3	4
2001	0	1	0
2002	0	6	1
2003	0	1	2
2004	0	2	2
2005	0	9	4
2006	0	28	6
2007	43	39	23
2008	39	44	106
2009	22	44	143
2010	39	36	180

Source: USITC Tariff and Trade DataWeb, The Federal Register (various years)
** Shaded area shows the years in which the product was excluded*

The conclusion that can be drawn from the above analysis is that the trends in products exported by India generally reflect a favourable effect of the GSP concession. However, due mainly to the application of the competitive need limitations, this favourable trend in individual products does not translate into a trend of overall growth of India's exports of products covered by the US GSP.

4. Conclusions and recommendations:

Has the US GSP scheme stimulated imports from India?

Over the past decade, the trend in GSP imports into the US in absolute terms and as a proportion of MFN dutiable imports shows a lack of dynamism. Preferential imports from GSP beneficiaries were US$16 billion in 2000 and US$23 billion in 2010. As a proportion of the total dutiable imports, the preferential imports actually fell from 19 per cent in 2000 to 17 per cent in 2010. The USGSP imports from India grew from US$1138 million in 2000 to US$5678 in 2006 but fell off to US$3482 in 2010. As a proportion of total dutiable imports from India, the GSP imports grew from 19 per cent in 2000 to 46 per cent in 2006 before sliding to 23 per cent in 2010.

Although trade trends are influenced by myriad factors, including the economic cycle and the gap in competitiveness among rival external suppliers on the one hand and domestic suppliers on the other, the weight of evidence is that the GSP concessions helped to accelerate India's exports into the USA. If the GSP imports in the aggregate are low, nevertheless, it is due to structural deficiencies in the US scheme.

Structural deficiencies of US GSP scheme

The two biggest limiting factors are that some of the most important products in the export basket of developing countries in general and India in particular, such as textiles and apparel, footwear and leather flat goods, are barred statutorily from inclusion in the scheme and the competitive need limitation emasculates the benefit when the preference begins to show a favourable effect. What diminishes the value of the GSP concession even further is the uncertainty surrounding the operation of the scheme because there is some amount of discretion in the way the US authorities implement the provisions on competitive need limitation with respect to re-designation when imports fall below the threshold and waivers from the application of the limitation. There is a large amount of discretion also in withdrawing such waiver after it has been granted. Use of discretion by the importing countries in altering the relative competitiveness of contending suppliers constitutes a big demerit of the system that the USGSP scheme has put in place .

Reciprocity and policy conditionality

The strong element of reciprocity in the operation of the GSP scheme and the proclivity of the US administration to leverage the GSP programme to achieve its economic and political objectives is against the fundamental requirement of non-reciprocity spelt out in the relevant UNCTAD and GATT decisions on the programme. What is even more significant is that with its major developing country trading partners the reciprocity requirement has proved to be ineffectual. The USA took a decision in 1992 to exclude India from the benefit of GSP on HS Chapter 28 to 38 because of shortcomings in the latter's patent law. There is no evidence to suggest that the loss of GSP benefit weighed with the Government of India at all. If the patent law was eventually amended, it was more because of the WTO Agreement and because of the economic reforms introduced by the Government of India and not because the pain caused by the exclusion from GSP of chemicals and pharmaceuticals exported by India made the government rethink the patent issue.

The reciprocity requirement in the US GSP is somewhat akin to the conditional MFN requirement, which was an integral part of US trade policy in early 19th century, but was abandoned on account of its futility in achieving policy objectives. In introducing a reciprocity element in its GSP, the USA seems to ignore the lessons of history.

Parallel regional preferential schemes

The unilateral preferential arrangements introduced successively in the last two decades of the 20th century in favour of the Andean, Caribbean and African countries obviously impinge on the operation of the GSP schemes and affect the interests of GSP beneficiaries. The trade coverage of these regional preferences has been more than twice of that of the GSP in recent years. A feature of these regional preferences is their ad hocism, motivated as they were by the effect of natural calamities, hurricanes and earthquakes. Trade measures are singularly unsuited as temporary humanitarian responses to natural calamities as they harm the interests of other competing suppliers.

These arrangements are covered by temporary WTO waivers, which currently run up to 2014-15. Their consolidation and unification into one grand GSP scheme is obviously the best course to follow. The alternative course − of replacing these arrangements with FTAs − also exists but FTAs would have to be reciprocal arrangements and the requirements of GATT 1994 and GATS would apply. If the option of absorbing them into the GSP scheme is to be preferred, then it would be important to avoid differentiation among beneficiaries beyond what is permissible in respect of the least developed countries. The improved product coverage of these schemes (textiles, apparel, footwear etc) is the least that all GSP beneficiaries deserve. As for economic and political policy conditionality at present woven into the regional schemes, we consider that these objectives should be pursued through the formidable diplomatic influence of the USA rather than by leveraging preferential benefits.

Way forward

It would be seen from the foregoing analysis that although the US scheme has the potential to stimulate imports from developing countries and from India, structural deficiencies in the scheme prevent it from making more than a nominal overall impact. The improvements that we suggest, implicitly or explicitly, are fundamental and they include expanding the product coverage, moderating the competitive need limitations, minimising the use of discretion in taking decisions on specific aspects, eliminating the requirement of reciprocity and unification of all unilateral preferential schemes. Given the sentiment prevailing in the USA since the financial and economic crisis of 2008 and the aggressive pursuit by the administration of reciprocal concessions from developing country trading partners, our suggestions for a radical overhaul in the USGSP scheme are a tall order, notwithstanding their inherent rationale. Opportunities would also be lacking in the near future for making demarches for improvement as the US President has signed into law the legislation for renewal of the GSP programme as recently as October 21, 2011.

The reduction of MFN tariffs after successive rounds of multilateral trade negotiations has eroded the margin of preference and diminished the value of the GSP concessions. We noted that the simple average of MFN tariffs on non-agricultural products has come down from the pre-Tokyo Round (1979) level of 8.1 per cent to the post Uruguay Round level of 3.2 per cent (2000), although some tariff peaks remain in position. In

the Doha Round, if there is an eventual accord on the Swiss formula and the coefficient of 8 proposed by the Chairman of the Negotiating Group (WTO 2011), the highest level of bound MFN duty on industrial products in the USA will come down from 48 to 6.9 per cent and the range of 6 to 10 per cent will stand lowered to 3.4 to 4.4 per cent. As a consequence, preferences under the GSP would largely pass into an era of irrelevance. Though the prospects for a successful conclusion of the Doha Round in the near future look bleak at present, over time, there are better chances of overcoming the deadlock in the multilateral trade negotiations than of convincing the USA of the need to make far-reaching improvements in its non-reciprocal preferences.

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