Delhi Policy Group
Advancing India's Rise as a Leading Power

DPG POLICY BRIEF

India-US Trade Issues Still Await Resolution

Author

V. S. Seshadri

Volume VII, Issue 2

January 9, 2022

Delhi Policy Group
Core 5A, 1st Floor, India Habitat Centre, Lodhi Road, New Delhi- 110003
www.delhipolicygroup.org

Delhi Policy Group
Advancing India's Rise as a Leading Power

DPG Policy Brief Vol. VII, Issue 2
January 9, 2022

ABOUT US

Founded in 1994, the Delhi Policy Group (DPG) is among India's oldest think tanks with its primary focus on strategic and international issues of critical national interest. DPG is a non-partisan institution and is independently funded by a non-profit Trust. Over past decades, DPG has established itself in both domestic and international circles and is widely recognised today among the top security think tanks of India and of Asia's major powers.

Since 2016, in keeping with India's increasing global profile, DPG has expanded its focus areas to include India's regional and global role and its policies in the Indo-Pacific. In a realist environment, DPG remains mindful of the need to align India's ambitions with matching strategies and capabilities, from diplomatic initiatives to security policy and military modernisation.

At a time of disruptive change in the global order, DPG aims to deliver research based, relevant, reliable and realist policy perspectives to an actively engaged public, both at home and abroad. DPG is deeply committed to the growth of India's national power and purpose, the security and prosperity of the people of India and India's contributions to the global public good. We remain firmly anchored within these foundational principles which have defined DPG since its inception.

Author

Dr. V.S. Seshadri, I.F.S (Retd.), Senior Fellow for International Trade, Delhi Policy Group

The views expressed in this publication are those of the author and should not be attributed to the Delhi Policy Group as an Institution.

Cover Photographs:

India's The United States Trade Representative, Ambassador Katherine Tai meets the Union Minister for Commerce & Industry, Shri Piyush Goyal, in New Delhi on November 22, 2021
Source: Press Information Bureau

Union Minister for Commerce and Industry, Shri Piyush Goyal and US Trade Representative Ambassador Katherine Tai, hold the 12th India-US Trade Policy Forum Meeting on November 23, 2021
Source: piyushgoyal.in

Delhi Policy Group
Core 5A, 1st Floor,
India Habitat Centre,
Lodhi Road, New Delhi- 110003
www.delhipolicygroup.org

India-US Trade Issues Still Await Resolution

by

V. S. Seshadri

Contents

India-US Trade Issues Still Await Resolution

by
V. S. Seshadri

Abstract

The recent visit to India of the US Trade Representative Katherine Tai resulted in no immediate deliverables but charted a course of action for addressing the several bilateral trade issues that await resolution. This brief assesses the outcome in the context of the Biden Administration's priorities, the visible protectionist strains and its engagement with other trading partners. It particularly examines the EU-US deal on steel and aluminium tariffs that has far greater implications, including for India. Based on these elements, the brief suggests an approach for India for the year 2022.

———

The several outstanding issues relating to India-US trade and investment have to wait for some more time for resolution. The visit of USTR Katherine Tai to India from November 22-24, 2021 resulted only in the bilateral Trade Policy Forum (TPF) tasking the five working groups under it - on agriculture, non-agricultural goods, services, intellectual property and investment - to develop plans for action by March 2022, and for the senior officials from both sides to identify specific trade outcomes by the middle of the year. But unlike the last TPF meeting in 2017, when not even a joint statement could be issued and the then USTR released his own statement conveying that both sides had differing views across many areas that could not be resolved immediately, the joint statement this time[1] appeared more understanding of each other's perspectives. It also positively recognised the recent initiatives taken by India on retrospective taxation, liberalisation of the insurance sector and the regulation of prices of certain medical devices using the trade margin rationalisation approach.

Coinciding with the TPF, the two finance ministries also announced an in principle agreement[2] for phasing out the 'equalisation levy' imposed by India on e-commerce supply of services, a measure that the US has long objected to. The final terms of the transition agreement will be bilaterally worked out by February 1, 2022 which will apply till the multilaterally agreed solution kicks in from 2024 as per Pillar 1 of the OECD initiated global initiative on digital

[1] https://pib.gov.in/PressReleasePage.aspx?PRID=1774426
[2] https://pib.gov.in/PressReleseDetailm.aspx?PRID=1774692

taxation. Consequently, the USTR also announced termination of Section 301 action against India which, if implemented, would have involved punitive tariffs on several key export items from India. Resolution of this issue by the US was however not unique to India. Such agreements have also been arrived at by the US in recent months with several other countries that had imposed similar taxes.

Commerce Minister Goyal appeared upbeat[3] after the USTR visit, saying that there was a good degree of convergence on several issues this time and that the mood in the meeting itself was very positive. The meeting also took place at a time when bilateral goods trade had shown a sharp rebound from the dip in 2020. India's exports to the US during the ten months January-October 2021 showed an increase of 48% to US$ 58.72 bn and imports from the US rose by an even higher 55% to US$ 34.2bn[4]. The figures for the full calendar year are therefore poised to exceed US$ 100 bn, and may reach US$ 110 bn.

Aspects covered by the Joint Statement issued after the TPF meeting

While the two sides would have discussed the entire pending laundry list on market access, regulatory and other issues concerning each side, the joint statement specifically identified certain agricultural products of interest to either country on which regulatory processing has advanced but has not been completed. The US conveyed its intention to finalise regulatory approvals concerning Indian pomegranates and their shrills, mangoes and table grapes. Similarly, India conveyed its intention to complete phytosanitary approvals on cherries and alfalfa hay, and to finalise the export documentation required on pork and pork products from the US. India also pushed for access in the US market for water buffalo meat and the restoration of market access for wild caught shrimp, while the US side sought regulatory approvals for distillers' dried grains with solubles. The US further reiterated its interest in supplying ethanol for fuel blending purposes.

Interestingly, the issue about India's high tariffs found no mention in the joint statement, unlike the singular focus it received during the Trump administration. Instead, the statement talked about potential targeted tariff reductions which may be a more pragmatic way to proceed. On the restoration of GSP concession to India, on which India expressed its interest, the US side only stated that this could be considered, as warranted, in relation to the eligibility criteria determined by the US Congress. With the authorisation for

[3] See https://economictimes.indiatimes.com/news/economy/foreign-trade/burying-past-baggage-biggest-outcome-of-talks-with-ustr-piyush-goyal/articleshow/87920483.cms

[4] As per Department of Commerce, Government of India. However, the bilateral trade figures as per the US Census bureau indicates a very similar trend.

the entire US GSP programme having expired in December 2020, draft bills according fresh authorisation are still doing the rounds in the US Congress. How these will get eventually approved remains to be seen, even as a significant number of congressmen and senators have supported restoration of GSP to India[5].

The importance of promoting services trade between the two countries was recognised and there was specific mention this time of legal, accounting and nursing services, apart from digital services including digital payment services. The two sides also decided to engage further on visa facilitation and conclusion of a totalisation agreement. Presumably, because of the wide differences between the two countries on a possible agreement on digital trade, the joint statement restricted itself to exploring adoption of joint principles that ensured that the internet remained open for free exchange of ideas, goods, and services.

The Biden administration is placing emphasis on a US worker centred trade policy. It was, therefore, not surprising to find a reference to labour issues in the joint statement. Other aspects addressed in aspirational terms included development of resilient supply chains, implementation of the WTO agreement on trade facilitation and action on environment and clean technology. While the two countries agreed to engage on finding mutually agreed solutions on outstanding WTO disputes between them, there was no specific reference in the statement to tariffs imposed by the US on aluminium and steel imports on national security grounds from March 2018, that have also affected Indian exports of these items (see Box 1).

Comparing the Tai visit outcomes to US engagement with other trade partners

At one level, the outcome of the much awaited Tai visit to India could be seen as setting in motion a process to resolve pending issues, possibly by mid 2022. But coming as it did after the Trump era with its hardline approach, the absence of any early deliverables even after ten months into the Biden administration was a disappointment.

That said, the Biden administration appears to be proceeding cautiously on trade issues even with other countries, and has shown no hurry to dismantle the Trump legacy. Rather, it seems willing to wait and to use the Trump tariffs and other hardline measures as a leverage in defining its way forward. Prospect of sensitive trade issues impacting the outcome of mid-term elections in 2022

[5] https://www.hindustantimes.com/world-news/us-lawmakers-urge-katherine-tai-to-look-for-a-deal-during-india-visit-101637519501127.html

may also be a consideration behind this caution. The China tariffs are, therefore, still mostly in place. In fact, competition with China and strategies to deal with it have figured prominently in practically all bilateral interactions of this administration with third countries.

Even with its close ally Japan, which Tai visited just before her trip to India, there were no breakthroughs. The two countries did announce a new trade partnership to inter alia discuss their common global agenda, cooperation in the Indo-Pacific and bilateral trade cooperation. But nothing was publicly stated about any follow up to the Phase-1 deal of their bilateral FTA initiated by the Trump administration, nor about TPP/CPTPP. Nonetheless, unlike in India's case, the two sides agreed to hold consultations on steel and aluminium tariffs.

With the UK as well, bilateral FTA talks remain where they stood after five rounds under Trump. British analysts see little appetite from across the Atlantic[6] and consider progress unlikely at least till 2023.

It is only in the case of the European Union that tangible progress has been made on some trade policy issues. The US and the EU ended their dispute about each other's aircraft subsidies in June this year (a similar deal was also concluded between the US and UK). On October 31, they further agreed to a temporary deal on the steel and aluminium tariffs, that replaces these tariffs with quotas. This is apart from deals on digital tax arrived at with several EU countries that had imposed such taxes.

Do these limited trade deals provide some insight into the policy direction of the Biden administration? While they do indicate a certain willingness to adopt a collaborative approach with allies and strategic partners, and to evolve mechanisms to deal with competition from China, they also point to certain protectionist strains. In this context, certain elements of the EU-US deal on steel and aluminium tariffs, and what it may mean for countries like India, is of particular importance.

Background to the EU-US deal on steel and aluminium tariffs

It will be recalled that early in his administration, President Trump had ordered an internal investigation under Section 232 of the US Trade Act (also referred to as the 'national security clause') on the surges in imports of these two metals to assess whether they were undermining the country's national security. An

[6] https://theconversation.com/why-the-uks-ambitious-plans-for-a-trade-deal-with-the-us-have-been-shelved-168685

affirmative finding resulted in the imposition in March 2018 of 25% and 10% additional import duties on several steel and aluminium items. Few countries were excluded at that time (Argentina, Brazil and South Korea) because of their willingness to voluntarily restrain their exports at a certain agreed level. Australia was the only country exempted without quotas. Even allies like the EU and Japan and the NAFTA countries had to face these tariffs, just as India did. Canada and Mexico were later exempted as part of the revised NAFTA deal (USMCA) signed in December 2019, that inter alia required these countries to introduce a system for monitoring and curbing import surges of these metal items into the United States.

Many affected countries, including India, raised disputes against the US in the WTO on these duties. Several also imposed retaliatory tariffs. The US in turn also raised disputes in the WTO against these retaliatory duties. The EU itself announced retaliatory tariffs on imports from the US of various products equivalent to the affected steel and aluminium imports, in two stages. At the first stage, tariffs were imposed roughly on about 50% of specified items in June 2018, and the balance were to be imposed in March 2021 if the US did not revoke the US 232 duties. That deadline for the second imposition of tariffs was extended to December 1, 2021 which is why there was pressure on the Biden Administration to try and resolve the matter.

Components of the EU-US deal

The EU-US deal signed on October 31, 2021 was projected as a joint effort by the US and the EU to defend workers, industries and communities from global overcapacity and climate change, and to discourage trade in high carbon steel and aluminium. It had two components. A bilateral component[7] lifted the US 232 duties for the EU in return for a quantitative annual import limit of 3.3 million metric tonnes of steel and 366,000 tonnes of aluminium from the EU into the US, with the quantities so determined based on import levels before the onset of the duties. Steel exported by the EU to the US, however, had to be melted and poured in the EU to qualify, and aluminium exports from the EU also needed to have certifications ensuring their origin.

The second component was a joint statement about a global arrangement to be set up for steel and aluminium[8] in two years' time. The US and EU are to cooperate in negotiating such an arrangement, also inviting like minded countries to join, which will restrict market access for non-participants in the

[7] https://ustr.gov/sites/default/files/files/Statements/US%20232%20EU%20Statement.pdf
[8] https://ustr.gov/sites/default/files/files/Statements/US-EU%20Joint%20Deal%20Statement.pdf

arrangement that do not meet the dual conditions of a market orientation and certain standards for low carbon intensity. A technical working group was set up to discuss the details, including methodologies for setting such carbon intensity standards.

The US-EU deal also required the two parties to suspend the WTO disputes that had been initiated by each party against the other on these duties or retaliatory measures. Should any party feel at any stage that the deal was not providing the envisioned benefits, it could take the entire matter to be settled by arbitration arrangements under Article 25 of the WTO understanding on settlement of disputes.

What does the deal mean for India and the rest of the world?

1. The deal clearly signals that the Trump tariffs on trade in steel and aluminium imports into the US are not a one-off incongruity. Trade in these items with the US (and perhaps the EU as well) will likely not be free in the future as well, but will be managed. Market orientation and carbon intensity, as are defined and benchmarked during the technical working group process, could become the determining factors.

2. The deal will bring together low carbon intensity countries (as determined only for these two industries and not economy-wide) that also have a market orientation. Those not party to such a club are likely to be restricted in their steel and aluminium exports to the club members. Imports from even a low carbon intensity producer will be restricted if its production is based in a non-club country. Conversely, even a carbon intensive producer from a club member will be free to export without restriction.

3. The EU itself has been pushing to introduce a Carbon Border Adjustment Mechanism (CBAM) starting from 2026 for energy intensive trade exposed (EITE) sectors - iron, steel, aluminium, fertilisers, cement and electricity. Under the EU proposal, which is still in the process of going through its multilayered internal decision making process, EU importers of these items will have to buy carbon certificates corresponding to the prevailing carbon price in the EU. The amount of certificates required in each case would depend on the embedded emission in the imported goods. As per the EU proposal, it appears that each producer of such exports will be benchmarked, and not the exporting country as such.

4. Both these differently dressed and rationalised initiatives will impact market access for a country like India. One is a plurilateral process

designed to gain wider legitimacy. The other is a unilateral EU proposal externalising internal EU mechanisms for reaching climate targets and preventing 'carbon leakage'. Both thwart the principles of equity and common and differentiated targets and responsibilities under the UNFCC climate discussions. India has already criticised the EU proposal as being arbitrary and unfair, and the BRICS and BASIC forums have also done so.

5. India could also end up not being invited to be part of the US-EU initiative, in view of India's substantial reliance on coal for producing the two metals. The absence of any mention of US steel and aluminium tariffs in the joint statement of the recently held US-India TPF may well be an indicator of things to come. This is even as India is neither a contributor to global overcapacity nor can it be deemed non-market oriented.

6. India will need to examine these proposals carefully and find possible leeways or options available. For a developing country like India at its stage of development, it will be decidedly unfair to be excluded when it is taking on onerous commitments on emission reductions and carbon neutral targets. Strategic mechanisms such as the Quad or the supply chain resilience initiatives in the Indo-Pacific will not be meaningful if market oriented developing economies like India are excluded from restrictive US-EU deals on steel and aluminium trade.

Way ahead for India

Box 1 India's exports of steel and aluminium to the US under Section 232 measures

Import restrictions were imposed on several steel and aluminium tariff lines with effect from 23rd March 2018 by the United States under Section 232 of the US Trade Expansion Act on all but a few exempted countries. India was not exempt. The restrictions were in the form of 25% additional tariff on a host of steel tariff lines under HS Chapters 72 and 73 and a 10% additional tariff on a number of lines under HS 76. In January 2020 certain additional steel and aluminium derivative products from HS 73 and HS 76 were added to the 232 measures with effect from 8 February 2020. Table 1 captures India's exports to the US of these four sets of covered items during the period 2015 to 2020 as per US import figures

Table 1 Imports into the US from India of covered items under 232 measures (in US$ m)

	2015	2016	2017	2018	2019	2020
Covered steel lines (2018)	856.3 (3.12)*	366.15 (1.81)	758.88 (2.83)	407.4 (1.53)	275.83 (1.29)	179.11 (1.17)
Covered steel derivative lines (2020)	11.76 (4.48)	16.39 (6.72)	22.24 (8.79)	32.68 (9.28)	26.27 (7.6)	15.7 (5.02)
Covered aluminium lines (2018)	139.03 (1.11)	111.2 (0.87)	381.9 (2.27)	595.1 (3.43)	571.96 (3.86)	284.6 (2.5)
Covered aluminium derivative lines (2020)	1.66 (7.61)	1.62 (6.19)	1.95 (8.68)	3.4 (12.28)	7.59 (16.5)	4.39 (11.2)

Steel It is evident from Table 1 that India's exports and market shares of steel and steel articles steadily declined from 2018 onwards when the 232 measures came into force. This is also true of a few more steel articles which got added to the list in 2020. With the EU now securing a tariff rate quota with zero additional duties with effect from 1 January 2022 (in addition to the already exempted countries that include Canada and Mexico) India's exports of the covered items can be expected to dip further.

Aluminium. The aluminium story is somewhat different since the 232 tariff was only 10% in this case and the GSP concession was available for India till June 2019 for several of the covered tariff lines under 232 which gave India certain edge. But even here a decline is seen in the figures for 2020 when Canada and Mexico got freed from 232 duties. However, the full data for 2021 may be needed to get a clearer picture about the impact of 232 measures on India's aluminium exports.

* Figures in parentheses indicate India's market share in US imports.

1. It is fairly evident that under the Biden administration, there will be no major trade deals at least through 2022. What may be best possible are smaller 'give and take' reciprocal deals which are seen to address the core concern of being 'worker centric'. Indian negotiators may be well advised to look for such deals among the list of pending issues of each side. Reinstating GSP for India could be one such outcome. This will, however, depend on GSP legislation pending in the US Congress, which in turn will be influenced by guidance from the USTR. There are likely to be reciprocal expectations from the US side, even though GSP is supposed to be a

unilateral programme. An earlier DPG policy report[9] had pointed out the adverse impact of GSP withdrawal on India's exports in some detail. With per capita income of around US$ 2000, it is quite illogical for the US side to talk about India not being a developing country.

2. India should favourably consider accepting reasonable quantitative limits for its steel and aluminium exports to the US, if these are offered. While such voluntary restraint arrangements are expressly against the free trade principles of the WTO, and India has been against their use, this may be the best possible avenue available in the prevailing circumstances, at least for steel, for the next few years. As will be seen from Box 1, India's steel exports have been significantly dented due to the US's 232 measures. With several countries now accepting such quotas with the US, India's market share could dip further. In any case, India should not repeal the retaliatory tariffs[10] it had imposed on US imports in lieu of the 232 measures until the issue is satisfactorily resolved.

3. Meanwhile, India should carefully monitor how the proposed global arrangement for trade in low carbon intensity steel and aluminium set in motion by the US and EU evolves. In this regard, we will particularly need to watch how countries like Brazil and Argentina, that have already agreed to quantitative arrangements with the US, might be inducted into the US-EU arrangement.

4. The India-US TPF joint statement sets out promising ideas about health, pharmaceuticals and medical devices that carry substantial mutuality of interests. Similarly, in trade in services, there is significant scope for accommodating each other's interests. Investments in resilient supply chains and critical technologies form other areas where the PLI schemes of India offer possibilities. All these are apart from the regulatory and market access issues in agricultural products which are specifically identified in the joint statement. If the TPF working groups can come up with actionable points on all of them, and these can then be turned into concrete outcomes by senior officials, 2022 can still be a productive year for India-US trade.

5. Bilateral trade has seen a strong revival in 2021. The United States is India's No.1 export partner, in both goods and services. For US exports as well,

[9] Review of India's exports to the US in 2020: Need for Vanijya Bharat, DPG Policy Report Vol.VI Issue 23, July 2021, by V.S.Seshadri and Shruthi Menon

[10] https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1576941

India provides a steadily growing outlook. Building on the positives, which appeared to be the focus of USTR Tai's visit, will be the best option for boosting the momentum of bilateral trade in 2022.

***

Delhi Policy Group
Core 5A, 1st Floor,
India Habitat Centre, Lodhi Road
New Delhi - 110003
India

www.delhipolicygroup.org