



## **A Brief Assessment**

### **USTR -Proposed Action in Section 301 Investigation of India’s Digital Services Tax and Possible Adverse Impact on Indian Gem and Jewellery Sector**

#### **1. USTR Proposed Action in Section 301 – Background & Overview**

India has adopted a Digital Sales Tax (2% equalisation levy) on revenue generated from a broad range of digital services offered in India, including digital platform services, digital content sales, digital sales of a company’s own goods, data-related services, software-as-a-service and other categories of digital services. India’s DST only applies to “non-resident” companies.

On June 2, 2020, USTR initiated an investigation of India’s Digital Sales Tax(DST) pertaining to discrimination against US Companies; retroactivity, and possibly unreasonable tax policy. Report about DST India -

For Summary- Proposed Action in Section 301 Investigation of India’s Digital Services Tax – click below link:

<https://www.gjepc.org/download/FRNIndia.pdf>

On January 6, 2021, based on the information obtained during the investigation and the advice of the Section-301 committee, USTR determined that India’s DST is unreasonable or discriminatory and burdens or restricts US Commerce. Section 301 authorizes the USTR to impose duties on the goods of the foreign country subject to investigation.

As per this, USA has proposed retaliatory tariffs up to 25% on select Indian products including Gem & Jewellery for 2% equalization levy being levied by the Indian Government that would collect duties on goods of India in the range of the amount of DST that India is expected to collect from U.S. companies. Initial estimates indicate that the value of the DST payable by U.S.-based company groups to India will be up to approximately \$55 million per year. USTR further proposes that the goods of India subject to additional tariffs would be drawn from the preliminary list of products in the Annex to the notice, as specified by the listed eight-digit tariff subheadings.

We understand that the USTR has proposed such stringent action after conducting a detailed investigation in response to imposition of 2% Digital Services Tax (DST) which states that the DST is discriminatory because it applies only to non-Indian digital services providers and targets digital services, but not similar services provided non-digitally and so on.

At the same time from India’s perspective, the GJEPC understands that Indian digital services providers are already subject to tax in India and framing international taxation laws for digital economy as multilateral solution at the level of OECD has prolonged which must have resulted in adopting DST as an interim measure to cope with taxing the offshore digital service providers.

Under Section -301 , the USTR has listed specific products to be subjected to increased duties , including whether the tariff subheading listed should be retained or removed or whether tariff subheading not currently on the list should be added.

## 2. USTR Section 301 and Adverse Impact on Indian G&J Sector

Seventeen (17) Gem & Jewellery products are in the proposed list of products subject to have increase duties under section -301. It is to mention that the 17 products are related to Chapter-71-Gems and Jewellery (Refer Table-1) which are in the list of total 42 proposed products subject to attract duties so as to offset the amount of duties collected by India from US non-resident digital companies.

**Table -1 USA Imports of Products from India  
(Listed in the Proposed Action in Section 301 Investigation Docket )**

S.No.	HTS US Sub Heading	Product Description	2020 (US\$million)	2019 (US\$Million)	Duty	Rate Description
1	7101.22.30	Cultured pearls, worked, graded and temporarily strung for convenience of transport	0.00	0.06	Free	MFN Applied
2	7101.22.60	Cultured pearls, worked, not strung, mounted or set	0.06	0.11	Free	MFN Applied
3	7103.99.50	Precious or semiprecious stones, nesoi, worked, whether or not graded, but n/strung (ex. ungraded temporarily strung), mtd. or set	3.00	2.08	10.50%	MFN Applied
4	7104.90.50	Synth. or reconstruct. precious or semiprecious stones, wkd, whether or not graded, but n/strung (ex. ungraded temp. strung), mtd./set, nesoi	1.54	0.63	6.40%	MFN Applied
5	7106.10.00	Silver powder	0.27	0.03	Free	MFN Applied
6	7113.11.20	Silver articles of jewelry and parts thereof, nesoi, valued not over \$18 per dozen pieces or parts	5.46	8.36	13.50%	MFN Applied
7	7113.19.21	Gold rope necklaces and neck chains	11.33	11.5	5.00%	MFN Applied
8	7113.19.25	Gold mixed link necklaces and neck chains	6.07	4.71	5.80%	MFN Applied
9	7113.20.25	Base metal clad w/gold mixed link necklaces and neck chains	0.77	1.59	5.80%	MFN Applied
10	7113.20.50	Base metal clad w/precious metal articles of jewelry and parts thereof, nesoi	0.61	2.38	5.20%	MFN Applied
11	7114.20.00	Goldsmiths' or silversmiths' wares of base metal clad with precious metal	0.03	0.15	3.00%	MFN Applied
12	7116.20.05	Jewelry articles of precious or semiprecious stones, valued not over \$40 per piece	9.38	9.18	3.30%	MFN Applied
13	7116.20.15	Jewelry articles of precious or semiprecious stones, valued over \$40 per piece	2.61	5.48	6.50%	MFN Applied

S.No.	HTS US Sub Heading	Product Description	2020 (US\$million)	2019 (US\$Million)	Duty	Rate Description
14	7116.20.30	Semiprecious stones (except rock crystal), graded and strung temporarily for convenience of transport	0.41	1.77	2.10%	MFN Applied
15	7116.20.35	Semiprecious stone (except rock crystal) figurines	0.46	0.4	4.50%	MFN Applied
16	7116.20.40	Semiprecious stone (except rock crystal) articles (other than jewelry and figurines)	2.66	3	10.50%	MFN Applied
17	7116.20.50	Precious stone articles, nesoi	2.06	1.91	Free	MFN Applied
<b>USA Imports from India (US\$million)</b>			<b>46.72</b>	<b>53.34</b>		

Source: USITC 29<sup>th</sup> March 2021, World Tariff as on 29<sup>th</sup> March 2021

### 3. USTR Proposed Action and another Setback to India Gem and Jewellery Sector

USA is India's major export market for gem and jewellery products. Exports of around US\$9.3 billion goes to the USA market accounting for 25.6% of the total gem and jewellery exports of US\$36 billion from the country.

**Table- 2 USA is India's 3<sup>rd</sup> Largest Export Partner for G&J Products : 2019-2020**

Rank	Countries	Exports (US\$million)	% share
1	Hong Kong	9.52	26.3%
2	UAE	9.43	26.1%
3	USA	9.26	25.6%

Source : DGCIS

*It is to strongly mention that if the proposed action in terms of raising tariff rates on the import of the above stated gem and jewellery products get implemented (after the hearing process which is going to end in May 2021) this would adversely impact gem and jewellery exports of around US\$46 million to US\$53 million and be an another set-back to one of the most labour-oriented and export sector of the country.*

Prior to this, over the last decade due to the stringent policy changes by the USA Government towards Indian gem and jewellery sector in the following terms: the sector has already been facing its repercussions in a way of :

- a) declined exports of the key jewellery products
- b) declined % share in USA imports of gem and jewellery products
- c) Shift of India's businesses to its competitors including Turkey, Thailand, Singapore etc.

### 3.1 Exclusion of key gem and jewellery export commodities from GSP benefit by USA between 2007-2009

Eventual withdrawal of GSP benefit for the key jewellery products in the year 2007, 2008 and 2009 resulted attraction of MFN rate of around 5-6% at the USA customs territories and decline in exports of the various following high-volume jewellery exports from India.

- Articles of gold jewellery (HS Code 71131950)
- Gold rope necklaces and neck chains (HS code 71131921)
- Gold necklace and neck chains (HS code 71131929)
- Gold mixed links, necklaces and neck chains (HS code 71131925)
- Silver articles of jewellery and parts (HS code 71131150)

### 3.2 Withdrawal of BDC Status for India /Complete withdrawal of GSP Benefit w.e.f July 2019

After the termination of GSP designation of India by USA, exports of around 45 gem and jewellery commodities at HS code 8-digit level which were under the GSP-A and A\*category<sup>1</sup> i.e. Duty-Free benefit for Beneficiary Developing Country (BDC) have started attracting the import duties in USA. Consequently, 45 gem and jewellery commodities for which GSP benefit was available in USA had terminated after the complete withdrawal of GSP benefit for India as a whole resulting in terms of escalated prices and reduced export competitiveness of these products.

### 3.3 Adverse Impact on Indian Gem and Jewellery Sector

Above stringent measures undertaken by the USA Government in different phases have adversely impacted Indian gem and jewellery sector in the following forms :

#### a) Declined exports of the key jewellery products after 2007/2009

In total, imports of USA of the above products from India declined by US\$694.14 million (-28%) to US\$1793.61 million in 2019 from US\$2487.75 million in 2007/2009 (Table-3).

**Table -3 Declined exports of the key jewellery products after 2007/2009**

HS Code 8 Digit	Articles	USA imports from India 2007/2009 When GSP benefit was available	USA imports from India 2019
71131150	Silver articles of jewellery and parts	191.65	301.05
71131921	Gold rope necklaces and neck chains	64.38	11.38
71131925	Gold mixed link necklaces and neck chains	63.93	3.75
71131929	Gold necklaces and neck chains (except of rope or mixed links)	266.45	81.12
71131950	Precious metal (except silver) articles of jewellery & parts, whether or not plated or clad with precious metal	1901.34	1396.31
	<b>Total</b>	<b>2487.75</b>	<b>1793.61</b>

<sup>1</sup> As per the Harmonized Tariff Schedule of the United States (2019) , HTSUS : The special code A in special column indicates that the commodity is eligible for GSP benefit for all the Beneficiary Developing Countries Including India

### Declined exports of the 45 commodities after complete withdrawal of BDC status

This has been observed that 45 gem and jewellery commodities which have started attracting duties after the withdrawal of BDC status from India, its declined by around US\$11 million (- 13%) to US\$75.34 million in 2019 from US\$86.54 million in 2018 i.e. in less than one year of such change. (**Annexure -A**)

### b) Declined % share in USA imports of gem and jewellery products

It is due to several reasons including change in USA trade policy for Indian gem and jewellery products , India's share in USA has recorded a continuous fall from peak level of 19.96% in 2018 to historically low at 8.66%. It is indicating towards reduced presence of Indian G&J products in USA market (**Table-4**).

**Table-4**  
**Declined % share in USA imports of gem and jewellery products in recent years**

Year	USA Imports from World	% growth (y-o-y)	USA Imports from India	% growth (y-o-y)	India % Share in USA Imports
	US\$ Million		US\$ Million		
Year 2018	61208.54	3.52	12215.66	13.61	<b>19.96</b>
Year 2019	59767.92	-2.35	11257.43	-7.84	<b>18.84</b>
Year 2020	109151.92	82.63	9450.15	-16.05	<b>8.66</b>

Source: USITC 29th March 2021

### c) Shift of India's businesses to its competitors including China, Turkey, Thailand, Singapore etc.

USA imports from India have recorded a decline of US\$1807.43 million (-16.05%) to US\$9450.15 million in 2020 from US\$11257.43 million in 2019. While, its imports from other countries including India's competitor like Singapore, Colombia, South Korea, Turkey, Indonesia etc. have witnessed a significant/unusual rise (**Table-5**).

**Table -5 USA Imports of G&J products from the Selected Countries indicating shift of India Business**

Sr/No	Country	Year 2019	Year 2020	% growth
		US\$ Mill	US\$ Mill	
1	Switzerland	2571.42	31689.76	1132.38
2	India	11257.43	9450.15	-16.05
3	Canada	5839.77	8056.99	37.97
4	South Africa	3572.52	7845.52	119.61
5	Mexico	5217.25	5705.83	9.36
6	Singapore	280.62	5579.19	1888.17
7	Hong Kong	780.85	5465.48	599.94
8	Australia	436.04	5053.54	1058.96
9	Israel	7329.31	3690.80	-49.64
10	Germany	1833.20	3084.55	68.26
11	United Kingdom	1156.83	3033.95	162.26
12	Russia	2208.97	2655.38	20.21
13	Belgium	2758.15	2378.78	-13.75
14	Italy	1652.08	1736.51	5.11

Sr/No	Country	Year 2019	Year 2020	% growth
		US\$ Mill	US\$ Mill	
15	Colombia	765.75	1525.75	99.25
16	China	2622.19	1283.66	-51.05
17	Thailand	1227.71	1060.38	-13.63
18	France	1111.70	844.98	-23.99
19	South Korea	207.10	843.20	307.15
20	Turkey	335.53	800.60	138.61
21	Indonesia	418.56	641.10	53.17
22	Nicaragua	499.54	612.52	22.62
23	Argentina	294.17	505.48	71.83
24	Peru	683.98	442.14	-35.36
25	Japan	320.09	441.58	37.95
Others		4387.16	4724.10	7.68
<b>Total</b>		<b>59767.92</b>	<b>109151.92</b>	<b>82.63</b>

Source: USITC 29th March 2021

### **3.4 Proposed imposition of tariffs on gem and jewellery 17 products – a grave concern**

Proposed action of imposing additional tariffs on gem and jewellery products due to the lack of international taxation mechanism for digital economy is going to further dent its exports to the USA market which is really a grave concern for the overall gem and jewellery sector.

Based on the past/recent trends, this is also apparent that eventually India may further lose its % share in USA imports of G&J products from the World and also it can enhance sourcing of its products from our competitors.

Overall, there will be a lose of exports/business to the sector, employment to the people and foreign exchange to the government (US\$2 billion have been lost in 2020 , despite USA total imports of G&J have recorded an unusual rise to )

### **3.5 GJEPC strong request to devise a prudent solution to safeguard the Sectors under proposed action list including gem and jewellery sector :**

As, this is due to the absence of the standard international taxation mechanism for digital global economy and prolonged work by the OECD in this direction , therefore the GJEPC strongly request the Government to have dialogue with the USA for devising a prudent solution to address the concerns of the USA companies while fulfilling the objective of Government of India.

Consensus through dialogues or negotiations over the USA and India concerns would safeguard the various sectors from being adversely affected due to the imposition of the proposed tariffs by the USA which would be an unfair action by the State as the tax challenges posed by the digital economy is not an India versus USA problem, it is a global problem.

#### 4. USTR invites public comments

USTR invites comments from interested persons with respect to whether action is appropriate, and if so, the appropriate action to be taken.

At the above backdrop , you may please submit your comments.

#### Key Links to submit the comments at USTR

Step 1: Click link <https://comments.ustr.gov/s/>

Step 2 : Choose India block


### Comments Concerning Proposed Action in Section 301 Investigation of India's Digital Services Tax

#### Status:

The public docket for submitting comments opened on March 31, 2021.

The deadline for submitting comments is April 30, 2021.

 Access Public Docket

 Submit Comment

Step 3: Index of Comments Concerning Proposed Action in Section 301 Investigation of India's Digital Services Tax

<https://comments.ustr.gov/s/docket?docketNumber=USTR-2021-0003>

Step 4: For submitting comments: Click the button and furnish your information and upload your comments.

<https://comments.ustr.gov/s/submit-new-comment?docketNumber=USTR-2021-0003>

### **Analytics Team**

This is under the guidance of Shri Colin Shah, Chairman, GJEPC and Executive Director, GJEPC impact assessment of Section -301 on India's Gem and Jewellery Sector is done by Ms. Rashmi Arora, Assistant Director (Economist) and Alfred Cyril (Statistician), Statistics Department , GJEPC.

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**Annexure – A**  
**USA imports of G&J commodities from India in 2018**  
**on which GSP benefit would be withdrawn by USA**

<b>S.No</b>	<b>HS Codes</b>	<b>Product Description</b>	<b>USA imports from India (US\$ million) 2018</b>	<b>USA imports from India (US\$ million) 2019</b>
1	71031040	Precious stones (o/than diamonds) & semiprecious stones, simply sawn or roughly shaped	0.12	0.40
2	71039950	Precious or semiprecious stones, nesoi, worked, whether or not graded, but n/strung (ex. ungraded temporarily strung), mtd. or set	2.96	2.08
3	71049050	Synth.or reconstruct. precious or semiprecious stones, wkd, whether or not graded, but n/strung (ex.ungraded temp. strung), mtd./set,nesoi	0.64	0.63
4	71069150	Silver, unwrought (o/than bullion and dore)	0.01	0.02
5	71069250	Silver (including silver plated with gold or platinum), in semimanufactured form, nesoi	3.53	2.71
6	71070000	Base metals clad with silver, not further worked than semimanufactured	0.01	0.02
7	71081370	Gold (including gold plated with platinum), nonmonetary, in semimanufactured forms (except gold leaf), nesoi	0	0
8	71131110	Silver rope, curb, etc. in continuous lengths, whether or not plated/clad with other precious metal, suitable for jewelry manufacture	2.02	0.90
9	71131120	Silver articles of jewelry and parts thereof, nesoi, valued not over \$18 per dozen pieces or parts	9.61	8.36
10	71131910	Precious metal (o/than silver) rope, curb, etc. in continuous lengths, whether or not plated/clad precious metal, for jewelry manufacture	5.4	4.62
11	71131930	Precious metal (o/than silver) clasps and parts thereof	4.85	3.56
12	71132010	Base metal clad w/precious metal, rope, curb & like articles in continuous lengths, suitable for use in jewelry manufacture	0.03	0.01
13	71132021	Base metal clad w/gold rope necklaces and neck chains	0.11	0
14	71132025	Base metal clad w/gold mixed link necklaces and neck chains	3.45	1.59
15	71132029	Base metal clad w/gold necklaces and neck chains, nesoi	0.11	0.02
16	71132030	Base metal clad w/precious metal clasps and parts thereof	0.03	0.03
<b>S.No</b>	<b>HS Codes</b>	<b>Product Description</b>	<b>USA imports from India (US\$ million)</b>	<b>USA imports from India (US\$ million)</b>

			2018	2019
17	71132050	Base metal clad w/precious metal articles of jewelry and parts thereof, nesoi	1.1	2.38
18	71141110	Knives with handles of silver, whether or not plated or clad with other precious metal	0.01	0
19	71141120	Forks with handles of silver, whether or not plated or clad with other precious metal	0	0
20	71141130	Spoons and ladles with handles of sterling silver	0	0.01
21	71141140	Spoons and ladles (o/than w/sterling silver handles) of silver, whether or not plated or clad w/other precious metal	0.02	0
22	71141150	Tableware, nesoi, of sterling silver	0.19	0.17
23	71141160	Articles of silver nesoi, for household, table or kitchen use, toilet and sanitary wares, including parts thereof	0.05	0.05
24	71141170	Silversmiths' wares (other than for household/table/kitchen use & toilet and sanitary wares) of silver, nesoi	0.84	0.66
25	71141900	Precious metal (o/than silver) articles, nesoi, whether or not plated or clad with other precious metal, nesoi	0.13	0.06
26	71142000	Goldsmiths' or silversmiths' wares of base metal clad with precious metal	0.37	0.15
27	71159030	Gold (including metal clad with gold) articles (o/than jewelry or goldsmiths' wares), nesoi	0.49	0.30
28	71159040	Silver (including metal clad with silver) articles (o/than jewelry or silversmiths' wares), nesoi	0.5	0.10
29	71159060	Articles of precious metal (o/than gold or silver), including metal clad with precious metal, nesoi	0.01	0.01
30	71161010	Natural pearl articles	0	0.01
31	71161025	Cultured pearl articles	0.02	0.09
32	71162005	Jewelry articles of precious or semiprecious stones, valued not over \$40 per piece	8.81	9.18
33	71162015	Jewelry articles of precious or semiprecious stones, valued over \$40 per piece	6.06	5.48
34	71162030	Semiprecious stones (except rock crystal), graded and strung temporarily for convenience of transport	2.91	1.77
35	71162035	Semiprecious stone (except rock crystal) figurines	0.57	0.40
<b>S.No</b>	<b>HS Codes</b>	<b>Product Description</b>	<b>USA imports from India (US\$ million) 2018</b>	<b>USA imports from India (US\$ million) 2019</b>

36	71162040	Semiprecious stone (except rock crystal) articles (other than jewelry and figurines)	3.96	3.00
37	71171100	Cuff links and studs of base metal (whether or not plated w/precious metal)	0.07	0.26
38	71171915	Rope, curb, cable, chain, etc., of base metal (whether or n/plated w/prec. metal), val. n/over 33 cents/meter for jewelry mfr.	0.09	0.03
39	71171920	Rope, curb, cable, chain, etc., of base metal (whether or n/plated w/prec. metal), val. o/33 cents/meter, for jewelry mfr.	0.06	0.04
40	71171930	Religious articles of a devotional character, design. to be carried on the person, of base metal (whether or not plated with precious metal)	0.22	0.67
41	71171990	Imitation jewelry (o/than toy jewelry & rope, curb, cable, chain, etc.), of base metal (wheth. or n/plated w/prec.metal), nesoi	15.94	14.87
42	71179020	Rosaries and chaplets of a purely devotional character for personal use, of a material o/than prec. or base metals, nesoi	0.06	0.04
43	71179030	Religious articles of a purely devotional character designed to be carried on the person, nesoi	0.17	0.19
44	71179055	Imitation jewelry nesoi, not of base metal, n/o 20 cents/doz. pcs or pts	0.11	0.14
45	71179090	Imitation jewelry not of base metal or plastics, nesoi, over 20 cents/dozen pcs or pts	10.9	10.33
<b>USA imports from India – Total of 45 commodities</b>			<b>US\$ 86.54 million</b>	<b>US\$75.34 million</b>

Source: USITC 29<sup>th</sup> March 2021,