

JUDICIAL UPDATE: Union of India v. Agricas LLP

A full bench of the Supreme Court of India (**Court**) has, in the case of Union of India v. Agricas LLP¹, upheld the power of the Central Government to impose quantitative restrictions under the provisions of Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 (**FTDR Act**). Importantly, the Supreme Court has upheld that the Central Government need not follow the procedure under Section 9A of the FTDR and associated rules to impose quantitative restriction on imports.

Background

The case arose out of a series of writ petitions filed before different High Courts (which are the constitutional courts of the States), challenging the validity of certain notifications and trade notices² issued by the Directorate General of Foreign Trade (**DGFT**) amending the import policy for peas, pigeon peas and beans of moong and urad (**subject goods**) under Section 3(2) of the FTDR Act.

The notifications amended the policy condition for the subject goods from *free* to *restricted* requiring prior authorization from the DGFT for import. The notifications also restricted the total quantity of imports of moong, urad and peas to an annual quota of 1.5 lakh metric tonnes and pigeon peas to 2 lakh metric tonnes, per fiscal year.³

Grounds for Challenge

Importers of the subject goods challenged these restrictions on various grounds. Particularly, the Importers argued that the impugned notifications were in the nature of “quantitative restrictions” falling under Section 9A of the FTDR Act⁴, that could only have been imposed by the Central Government after conducting an investigation into whether “goods are imported into India in such quantities and under such conditions as to cause or threatens to cause serious injury to domestic industry.”

The Petitioners also alleged that the impugned notifications were in violation of Article XI of the GATT i.e. the general prohibition on quantitative restrictions, which was reflected in Section 3 of the FTDR Act.⁵

¹ Transfer Petition (Civil) Nos. 496-509 OF 2020, decided on 26.08.2020

² S.O. Numbers. 1478-E,1479-E, 1480-E and 1481 dated 29 March 2019.

³ A further Trade Notice issued by DGFT, dated 16 April 2019, laid down the modalities for making applications for import of the above products via an online system by filing form ANF-2 i.e. “Application Form for Import of Restricted Items”.

⁴ Section 9A (1) reads, “If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any goods are imported into India in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic industry, it may, by notification in the Official Gazette, impose such quantitative restrictions on the import of such goods as it may deem fit”.

⁵ *Supra* Note 1 at para. 32.

Analysis By The Court

The Court found that Section 9A of the FTDR Act does not negate the Central Govt's power to impose restrictions on imports under Section 3(2) of the FTDR Act. The Court held that the powers of the Central Government to restrict imports under Sections 3(2) and 9A of the FTDR Act were completely distinct and had no connection with Section 9A.

The Court held that the impugned notifications were issued under Section 3 (2) of the FTDR Act which permits the Central Government to "[m]ake provision for prohibiting, restricting or otherwise regulating...the import or export of goods" without any qualifications. Section 9A, on the other hand, was an enabling provision empowering the imposition of 'quantitative restrictions' (or a 'safeguard measure') after following the procedure therein. The Court found that Section 9A did not limit or restrict the scope of the powers of the Central Government to prohibit, regulate or restrict imports of goods under Section 3(2) of the FTDR Act.

Furthermore, in its analysis of whether the notifications were violative the GATT 1994 under domestic law, the Court observed that an international convention must go through "act of transformation" into municipal law before the it is enforceable.⁶ Accordingly, the Court found that Article XI of the GATT, had not been statutorily made a subject of "act of transformation" and incorporated in the domestic legislation, either under Section 3 or 9A of the FTDR Act.⁷

ELP Comments:

While the Supreme Court's order clarifies the scope of powers of the Central Government under Section 3 of the FTDR Act, it fails to address when such powers may be exercised given the specific provision on quantitative restrictions under Section 9A of the FTDR Act. The Order appears to suggest that the Central Government, at any time, may impose quantitative restriction on imports of goods without necessarily following the procedure under Section 9A (read with associated rules) of the FTDR Act.

Notwithstanding the ruling of the Supreme Court, the legality of quantitative restriction measures that do not follow necessary procedures laid out under the WTO rules remains questionable. However, the Order fails to clarify in what cases or circumstances such quantitative restrictions may be imposed.

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⁶ *Supra* note 1 para. 20.

⁷ *Supra* note 1 para. 37.

