Sunflag Iron And Steel Co Ltd vs Union Of India & Anr. on 28 March, 2025

Author: Sachin Datta

Bench: Sachin Datta

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment pronounced
+ W.P.(C) 1685/2025
JSW STEEL LIMITED & ANR. .....P
Through: Mr. Ramesh Singh, Sr. Adv.,
Mr. Shankh Sen Gupta, Mr. Suj
and Mr. Shreyansh Sharma, Adv
versus
UNION OF INDIA & ORS. .....Resp
Through: Ms. Nidhi Raman, CGSC, Mr. Ar
Mittal and Mr. Akash Mishra,
for UOI.
Mr. Pragyan Pradip Sharma, Sr
Mr. Rajesh Shrma, Mr. Nikhil
Sharma and Mr. Hardik Jain, A
for intervenor.

+ W.P.(C) 2107/2025
M/S. TRAFIGURA INDIA PVT. LTD. & ANR. .....
Through: Mr. V. Lakshmikumaran, Ms.
Charanya Lakshmi Kumran, Mr.
Yogendra Aldak, Mr. Kunal Kap
and Mr. Yatharth Tripathi, Ad
versus
UNION OF INDIA & ORS. .....Res
Through: Ms. Nidhi Raman, CGSC, Mr. Ar
Mittal and Mr. Akash Mishra,
for UOI.
Mr. Pragyan Pradip Sharma, Sr
Mr. Rajesh Sharma, Mr. Nikhil
Sharma and Mr. Hardik Jain, A
for intervenor.

+ W.P.(C) 931/2025 and CM APPL.6671/2025
JSW STEEL LIMITED & ANR. .....Peti
Through: Mr. Ramesh Singh, Sr. Adv.,

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Shankh Sen Gupta, M
Mr. Shreyansh Sharma

versus

UNION OF INDIA AND ORS. .....Respo
Through: Ms. Nidhi Raman, CGSC, Mr. Arna
Mittal and Mr. Akash Mishra, A
for UOI.
Mr. Anurag Ojha, Sr. SC, Mr.
Subham Kumar, Mr. Dipak Raj, M
Kumar Abhishek, Advs. for R-3.
Mr. Pragyan Pradip Sharma, Sr.
Mr. Rajesh Sharma, Mr. Nikhil
Sharma and Mr. Hardik Jain, Ad
for intervenor.

\+ W.P.(C) 1292/2025 and CM APPL.6425/2025
SUNFLAG IRON AND STEEL CO LTD ...
Through: Ms. Malvika Trivedi, Sr. Adv.
Jafar Alam, Mr. Ashwin Raman
and Ms. Ankita Kamth, Advs.

versus

UNION OF INDIA & ANR. .....Res
Through: Ms. Radhika Bishwajit Dubey,
(CGSC) along with Ms. Gurlee
Waraich and Mr. Vivek Sharma
Advocates for UOI.
Mr. Pragyan Pradip Sharma, S
Mr. Rajesh Sharma, Mr. Nikhi
Sharma and Mr. Hardik Jain,
for intervenor.

\+ W.P.(C) 1430/2025
M/S TRAFIGURA INDIA PVT LTD & ANR. .....P
Through: Mr. V. Lakshmikumaran, Ms.
Charanya Lakshmi Kumran, Mr.
Yogendra Aldak, Mr. Kunal Kap
and Mr. Yatharth Tripathi, Ad

versus

Signature Not Verified
Digitally Signed By:ROHIT KUMAR PATEL
Signing Date:29.03.2025
21:03:05

W.P.(C) 1685/2025 & connected matters

UNION OF INDIA & ORS.
Through: Ms. Nidhi Raman, CGS
Mittal and Mr. Akash
for UOI.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. These petitions have been filed by the petitioner, seeking that notification no. 44/2024-25 dated 26.12.2024 issued by the respondent/s, whereby quantitative restrictions have been imposed on import of Low Ash Metallurgical Coke (hereinafter referred to as LAM Coke) should not affect import of such quantities of LAM Coke for which Irrevocable Commercial Letters of Credit (ICLC) have been opened by the petitioners prior to the issuance of the aforesaid notification dated 26.12.2024.

2. The genesis of the controversy involved in the preset case is that on 30.06.2023, the Directorate General of Trade Remedies (DGTR) issued a notification initiating a safeguard investigation concerning the imports of LAM Coke into India. This investigation, which focused on imposing quantitative restrictions, was initiated under Rule 5 of the Safeguard Measures (Quantitative Restrictions) Rules, 2012. Subsequently, on 29.04.2024, the DGTR, through its final finding, recommended the imposition of quantitative restrictions on the import of LAM Coke into India. Subsequently, on 26.12.2024, based on the DGTR's recommendations, the Central Government issued Notification No. 44/2024- 25, introducing quantitative restrictions on the import of LAM Coke from various countries. As per the notification, these restrictions became effective from 01.01.2025.

3. The grievance of the petitioners in each of these petitions is summarized hereunder:-

> W.P.(C) 931/2025 & 1685/2025 i. On 26.11.2024 and 03.12.2024, JSW Steel Limited (JSW) and Amba River Coke Limited (ARCL) entered into contracts with M/s. Hong Kong Jinteng Development Ltd. for the import of LAM Coke to be used in steel manufacturing.
>
> ii. Accordingly, on 04.12.2024, irrevocable letters of credit (ICLCs) were executed for import of 3,40,000 metric tons of LAM Coke. At the time of execution of the ICLCs, LAM Coke was categorized as "free" under the prevailing import policy.

JSW and ARCL are actual users of LAM Coke for utilization in the integrated steel plants of JSW Group across India.

iii. Subsequently, on 26.12.2024, the Central Government issued Notification No. 44/2024-25, imposing quantitative restrictions on the import of LAM Coke. Pursuant to the Notification, in compliance with Paragraph 1.05(b) 1 of the Foreign Trade "(b) Item wise Import /Export Policy is delineated in the ITC (HS) Schedule I and Schedule II respectively. The importability/exportability of a particular item is governed by the policy as on the date of import/export. The date of import/export is defined in para 2.17 of HBP 2023. Bill of Lading and Shipping Bill are the key documents for deciding the date of import and export respectively. In case of change of policy from 'free' to 'restricted /prohibited/state trading' or 'otherwise regulated', the import/ export already made before the date of such regulation /restriction will not be affected. However, the import through High Sea sales will not be covered under this facility. Further, the import/export on or after

the date of such regulation/restriction will be allowed for importer/exporter who has a commitment through Irrevocable Commercial Letter of Credit (ICLC) before the date of imposition of such restriction/ regulation and shall be limited to the balance quantity, value and period available in the ICLC For Operational listing of such ICLC. The applicant shall have to register the ICLC with jurisdictional RA against computerized receipt within 15 days of imposition of any such restriction/ regulation. Whenever Government brings out a policy change of a particular item, the change will be applicable prospectively (from the date of Notification) unless otherwise provided for.

Policy 2023 (FTP), JSW and ARCL submitted their respective applications to the regional authority of the Directorate General of Foreign Trade (DGFT), within 15 days of the Notification, seeking registration of their ICLCs.

iv. It is stated that while their ICLC Applications were pending, JSW and ARCL, relying on the expectation that the DGFT would adhere to the FTP, proceeded with partial fulfillment of their contractual obligations, and imported approximately 103,312 metric tons of LAM Coke. These shipments, which arrived in India on 31.01.2025 and 06.02.2025, are currently awaiting clearance from the DGFT.

v. The DGFT, through a letter dated 06.02.2025, rejected their ICLC Applications.

W.P.(C) 1292/2025 vi. On 29.08.2024, Sunflag Iron and Steel Co. Ltd. ("Sunflag") entered into a long-term contract with M/s. Hong Kong Jinteng Development Ltd. for the import of LAM Coke from Indonesia for use in steel manufacturing. This contract was executed before the issuance of the Notification, with a commitment to procure LAM Coke from M/s. Hong Kong Jinteng Development Ltd.

vii. It is stated that on 07.12.2024, Sunflag executed an irrevocable letter of credit ("Sunflag ICLC") amounting to USD 5,570,000.00 (approximately INR 48,22,59,850.66) for the import of 22,000 MT of LAM Coke from Indonesia. At the time of execution, LAM Coke was classified as "free" under the prevailing import policy. It is emphasized that Sunflag had already received multiple shipments under previous ICLCs executed pursuant to the same contract.

viii. Following the issuance of Notification No. 44/2024-25 on 26.12.2024 by the Central Government, which reclassified LAM Coke under the "Restricted" category, Sunflag submitted a representation to the DGFT on 04.01.2025. In its representation, Sunflag informed the DGFT of the ICLCs opened prior to the Notification, including the ICLC dated 07.12.2024, and requested the issuance of any necessary authorizations at the earliest.

ix. Since, the DGFT failed to respond to Sunflag's representation, Sunflag filed the present Writ Petition.

x. On 03.02.2025, this Court directed the DGFT to decide on Sunflag's representation within one week. On 10.02.2025, the DGFT issued an email advising Sunflag to submit an application through the DGFT Import Management System portal for ICLC registration. In compliance, Sunflag

submitted its online application for registration of the ICLC dated 07.12.2024 on 11.02.2025.

xi. It is submitted that based on the stand taken by DGFT in these proceedings, Sunflag has a reasonable apprehension that its Online Application would be rejected by the DGFT based on extraneous grounds.

W.P.(C) 1430/2025 and 2107/2025 xii. On 16.12.2024, Jayaswal Neco Industries Ltd. entered into a contract with Trafigura India Pvt. Ltd. for procuring 50,000 MT (+/- 10%) of LAM Coke. In turn, Trafigura entered into a contract with a foreign entity to import the required LAM Coke for supply to Jayaswal.

xiii. On 17.12.2024, Trafigura India Pvt. Ltd. executed an Irrevocable Commercial Letter of Credit (ICLC) in favor of the foreign entity. The last date of shipment as per this ICLC was 05.02.2025, however, Trafigura renewed the ICLC, extending its validity until 21.03.2025.

xiv. Subsequently, on 26.12.2024, based on the DGTR's recommendations, the Central Government issued Notification No. 44/2024-25, introducing quantitative restrictions on the import of LAM Coke from various countries. As per the notification, these restrictions became effective from 01.01.2025.

xv. On 02.01.2025, in accordance with Para 1.05 of the Foreign Trade Policy, 2023 (FTP), Trafigura filed an application seeking the registration of the ICLC dated 17.12.2024 xvi. On 12.02.2025, the Foreign Trade Development Officer (FTDO) rejected Trafigura's application dated 02.012025, through a letter bearing reference number F. No:-

> MUMREGCAPPLY 00000008AM25.
>
> SUBMISSIONS ON BEHALF OF THE PETITIONERS
>
> 4. The contentions raised by learned counsel for the petitioners are identical in terms. The same are broadly as under:-
>
> i. It is contended that the petitioners' ICLCs were opened when the import policy with respect to importation of LAM Coke was under the 'free category'. The notification imposing quantitative restriction was issued only on 26.12.2024. In other words, the said import continued to be 'free' till the notification date.
>
> ii. Reliance is placed on Para 1.05(b) of the Foreign Trade Policy, 2023 which states that if an import policy is shifted from 'free' to 'restricted,' imports made on or after the date of such restriction will still be permitted for importers who have a commitment through an ICLC opened before the restriction's imposition. Furthermore, paragraph 1.05(b) of the FTP requires such importers to register their ICLCs with the relevant regional authority within 15 days of the restriction being imposed.

iii. It is pointed out that JSW and ARCL submitted their ICLCs for registration on 04.01.2025. Furthermore, Trafigura also submitted its ICLC for registration on 02.01.2025. It is submitted that, Sunflag submitted the details of its ICLCs via its representation dated 04.01.2025. Vide order dated 03.02.2025, this Court directed the DGFT to decide on the said representation. Thereafter, the DGFT advised Sunflag to apply through its online portal, and Sunflag has complied with that requirement as well. It is submitted that substantial compliance with Paragraph 1.05 of the FTP has been duly made by Sunflag.

It is submitted that the requirement of registration within 15 days is a directory rule rather than a mandatory one. The said clause does not prescribe any penalty for failure to comply with the prescribed timeline. Therefore, this procedural requirement must be construed as a directory provision rather than a mandatory one. Reliance in this regard has been placed on Sharif-ud-din v. Abdul Gani Lone (1980) 1 SCC 403. It is submitted that a substantive right granted under law cannot be taken away merely due to an alleged procedural lapse iv. In view of the above, it is contended that since the contracts were executed prior to the date of notification and also the ICLCs were executed before the concerned Notification was published (i.e. on 26.12.2024), and since parties submitted their ICLCs for registration within the prescribed period of 15 days, the imports being made by the petitioners on the strength of the said ICLC ought to be allowed.

v. It is averred that DGFT cannot introduce additional and extraneous considerations while applying Para 1.05(b) of the FTP. The FTP is notified under Section 5 of the FIDR, and thus, has a statutory flavour. The Notification itself says it is being issued in exercise of the powers conferred under section 5 of the FTDR along with sections 3 and 9A, read with Paras 1.02 and 2.01 of the FTP. In light of this, the DGFT cannot act in a manner which unilaterally modifies or amends the requirements under Para 1.05(b) as it could only do so by an amendment for which a notification had to be published in Official Gazette. Reliance in this regard is placed on DGFT v. Kanak Exports, (2016) 2 SCC 226.

5. Ms. Nidhi Raman, learned CGSC appearing for the respondent (DGFT) has contended that the applications filed by the petitioners for the registration of their ICLCs have been rejected, inasmuch as the said applications failed to withstand the test of reasonableness and merit.

6. It is further submitted that Notification No. 44/2024-25, dated 26.12.2024, is referable to the exercise of power under Section 9A of the FTDR Act. It is pointed out that although the notification references other provisions of the FTDR, namely Sections 3 and 5, these provisions serve only as enabling provisions for the implementation and operation of the notification. The substantive provision under which the notification dated 26.12.2024 has been issued is Section 9A of the FTDR Act.

7. It is submitted that the Central Government has the power to invoke Section 9A or Section 3 of the FTDR Act to impose quantitative restrictions. It is emphasized that in the present case, quantitative restriction has been imposed under Section 9A based on the detailed investigation carried out by Directorate General of Trade Remedies (DGTR) and recommendation made

thereunder by the authorized officer in terms of Section 9A read with Safeguard Measures (Quantitative Restrictions) Rules, 2012.

8. It is contended that Sections 3 and 9A of the FTDR operate in parallel. Section 3 has been part of the Act since its inception in 1992, whereas Section 9A was introduced through an amendment on 25.08.2010 to empower the government to address incidents of serious injury to the domestic industry, as per the rules notified in this respect. The authority of the respondent under Section 3(2) to impose restrictions on the import or export of particular goods or services remains unaffected and unhindered by the procedures contained in Section 9A of Chapter IIIA, which pertains to quantitative restrictions.

9. It is further submitted that Section 9A is a self-contained and standalone provision that addresses a distinct situation in which quantitative restrictions are imposed on goods when they are imported into the country in such increased quantities and under such conditions that they threaten the domestic industry. It is contended that the objective and purpose of imposing quantitative restrictions under Section 9A of the FTDR Act is to provide a remedy for serious injury suffered by the domestic industry due to a surge in imports of a particular good.

10. Further, it is submitted that before an action is initiated under Section 9A, the respondent conducts a prior detailed investigation through the authorized officer, in consultation with and with prior knowledge of industry stakeholders, including importers and exporting countries, to consider the recommendations of the DGTR in terms of the Safeguard Measures (Quantitative Restrictions) Rules, 2012. Such a detailed investigation is not required for restrictions imposed under Section 3 of the FTDR, where importers or exporters, in the customary course of proceedings, would not have been aware of the restrictions imposed by the Government of India to address unforeseen contingencies. Reliance is placed in this regard on the Safeguard Measures (QR) Rules, 2012, specifically Rules 2(d), 5, 6, 8, 9, and 10.

11. It is pointed that Section 3 of the FTDR is a general provision that empowers the government to implement changes to the import policy of a product, shifting it from the 'free' category to the 'Restricted,' 'Prohibited,' 'State Trading,' or 'Otherwise Regulated' category at any time in the larger public interest. Additionally, the Foreign Trade Policy includes a provision for Transitional Arrangements under Paragraph 1.05 to address situations involving prior confirmed commitments. Paragraph 1.05 of the FTP is intended to mitigate the impact of changes introduced under the authority of Section 3. However, it cannot be treated as an omnibus clause overriding specific restrictions imposed by subsequent provisions of the FTDR that are designed to protect the domestic industry from injury. Otherwise, Paragraph 1.05 itself could cause harm to the domestic industry if not used by importers in a bona fide manner.

12. It is submitted that the Central Government in exercise of its power under Section 5 of the FTDR formulated FTP, 2023. Clause 1.02 which precedes Clause 1.05 contemplates that the amendment in the policy can be made in exercise of powers of the Central Government under Section 3 and Section 5 of the FTDR and nowhere does it mention the applicability/requirement of Section 9A.

13. Notifications under Section 9A of the FTDR are issued within the purview of the WTO Commitments and apply exclusively to unexpected imports causing injury to the domestic industry. Hence, measures under Section 9A are emergent in nature and are enforced only after providing opportunity to interested parties and exporting members. The intention behind transitional arrangement under Para 1.05 is to extend the benefit outside the safeguard measures to protect domestic industry. The objective of Para 1.05(b) is to achieve normalcy within normal course of international trade against genuine hardships in cases of an unforeseen contingencies.

14. It is submitted that the intent behind Para 1.05(b) of the FTP,2023 was to extend the benefit of "Transitional Arrangements" in case of genuine hardship, in as much as, where importers or exporters in customary course of proceedings would not have been aware of the restrictions to be imposed by the Govt. of India under Section 3 of the FTDR against unforeseen contingency. It is submitted that the words used in paragraph 1.05 of Foreign Trade Policy, 'restricted/prohibited/state trading' or 'otherwise regulated' are identical to the words used in Section 3 (2) i.e. for prohibiting, restricting or otherwise regulating. It is contended that a plain reading of Section 3(2) and paragraph 1.05 of FTP demonstrates that paragraph 1.05 is applicable only in case of quantitative restriction imposed under Section 3(2) of the Act.

15. It is submitted that the quantitative restriction imposed under Section 9A is an exceptional measure beyond the powers given under Section 3 of the FTDR Act. The provisions under Section 9A are to protect domestic industries from surge in imports. Therefore, it is essential that safeguard restrictions remain pre-emptive and retroactive in nature to adversity/harm to domestic industry. Reliance in this regard is placed on Para viii and xi of the order dated 06.02.2025 of the Respondent, while rejecting application/s for registration of ICLC.

16. It is contended that the petitioner was aware of the investigation and impending restrictions under Section 9A through stakeholder meetings and public discussions. Despite this, the petitioner proceeded with transactions for personal gain. Granting Registration Certificates for these transactions would unfairly impact domestic industry protection.

17. In support of the above submissions, reliance is placed on the following authorities:-

a) Union of India and Ors vs Agricas LLP & Ors. (2021) 14 Supreme Court Cases 341.

b) M/s Hira Traders vs DGFT and Ors. (2020) 14 GSTR-OL 218

18. It is submitted that the order dated 06.02.2025 is well-reasoned, based on a careful examination of the legal framework, factual circumstances, and the conduct of the parties. The respondents argue that the goods in question were shipped after country-wise quantitative restrictions had already been imposed following a safeguard investigation by DGTR under the Safeguard Measures (Quantitative Restrictions) Rules, 2012. These restrictions were notified vide Notification No. 22/4/2023-DGTR dated 29.04.2024 read with Notification dated 28.05.2024.

19. It is submitted that the petitioners even after being fully aware of the safeguard investigation and the possibility of quantitative restrictions being imposed proceeded with large-scale imports. By 31.12.2024, they had imported 2,70,121 MT of LAM Coke from Indonesia, which exceeded the total imports from Indonesia in the last three financial years combined. Tabular representation showing the total imports of LAM Coke made by the Petitioners in the preceding years is as follows:-

> Financial Imports from Country of Origin Total Productio Coke Procured Total Met Coke Year Import n of Met directly and Requirement/Availabil Indone Chin Aus Poland Coke Coke procure ity sia a from the under coke conversion Oven arrangement Batteries form Domestic (Qty in sources MT) 2021-22 38500 3350 - 45676 117683 6887231 647522 7652436 2022-23 103242 2788 7243 - 454563 7596003 206937 8257503 88 3 2023-24 84380 3300 2200 - 139380 8081131 192345 8412856 0 0 2024-25 270121 - - - 270121 6244330 88820 6603271 (April 24 to 31st Dec 2024) Total 496243 3453 9443 45676 981747 28808695 1135624 30926066 95 3

20. It is further submitted that the petitioners' contracts include a Force Majeure clause on account of which the Buyer can rescind the contract citing a force majeure event (being quantitative restriction by the government in the present case). The Letter/s of Credit (LC) explicitly states that it is subject to US, EU, UN, and Indian sanctions, meaning the quantitative restrictions imposed by the Indian government fall within this clause. Therefore, the petitioners have already hedged their risks but are now selectively relying on certain contractual provisions to challenge the restrictions.

21. It is submitted that the notification dated 26.12.2024 was issued in larger public interest after extensive consultations under Section 9A of the Foreign Trade (Development & Regulation) Act (FTDR). Section 9A is a standalone provision where detailed inquiry is conducted keeping various stakeholders duly informed. Unlike Section 3, which is a broad provision for immediate trade restrictions, Section 9A requires evidence of import surges due to unforeseen developments and proof of serious injury to domestic industries. It is averred that the technicalities cannot be put to overcome a notification issued in larger public interest. It is further submitted that the claim of legitimate expectation must always yield to the larger public interest. Reliance in this regard is placed on Sivanandan C.T. and Ors. Vs. High Court of Kerala and Ors. 2023 INSC 709.

22. It is emphasized that the notification imposes a six-month country- wise quantitative restrictions from 01.01.2025 to 30.06.2025, with a quota of 66,364 MT for Indonesia. If the petitioners' imports are allowed, the total imports from Indonesia would reach 6,10,121 MT, far exceeding the allocated quota, thereby undermining the entire purpose of the restriction.

23. It is strenuously submitted by Ms. Nidhi Raman, learned Standing Counsel for the Union of India that given the quantity sought to be imported by the petitioner in the present batch of petitions, the quantitative restriction sought to be imposed vide notification dated 26.12.2024 and which are necessary to protect the domestic industry, shall be completely undermined, if the imports to such a huge extent are permitted.

24. Further, it is also pointed out that most of the contracts contain a failsafe mechanism whereunder, the importer is precluded of his obligation under the contract in the event of any "sanctions" or measures of the kind subsumed under the notification dated 26.12.2024. As such, it is contended that no prejudice is caused to the petitioners on account of the import being restricted in terms of the notification dated 26.12.2024.

25. In rejoinder, the petitioners have controverted the proposition that paragraph 1.05(b) of the FTP would not apply where a quantitative restriction has been notified pursuant to proceedings/measures under Section 9A of the FTDR Act and the rules framed thereunder.

26. It is pointed out that the notification dated 26.12.2024, in substance seeks to amend Chapter 27 of ITC (HS), 2022, Schedule I (Import Policy), by inserting a new policy condition at Sl. No. 8 in the said Chapter. In other words, the notification clearly seeks to amend the FTP and particularly provision in ITC (HS) 2022.

27. It is submitted that a bare reading of paragraph 1.05(b) of the FTP shows that the provision concerns the item wise Import/Export policy as delineated in the ITC (HS) Schedule I and Schedule II respectively. The said paragraph also provides for 'change of policy from free to restricted...'. Hence, on the face of it the substantive subject matter of the DGFT Notification is fully covered under said paragraph 1.05(b) of the FTP.

28. It is contended that on a fair reading of the provisions of Par 1.05 (b) of the FTP renders the DGFT's present submission untenable, inasmuch as:-

> a. Para 1.05 (b) of the FTP does not use any restrictive phrase, much less one indicating that the provision is limited to cases under Section 3 and Section 5 only.
>
> b. Even while using the phrase 'in case of change of policy from free to restricted..', Para 1.05(b) does not employ any restrictive language suggesting that the provision is confined to cases under Section 3 and Section 5 only.
>
> c. Further it is contended that, if the DGFT's interpretation regarding the non-applicability of Para 1.05(b) is accepted, it would result in the denial of the benefit of the transitional provision, even in cases where the export of the goods in question had already been made before the issuance of the quantitative restrictions. This benefit is otherwise contemplated under the provision. Such an interpretation would lead to extremely drastic and manifestly unreasonable consequences. It submitted that it is a well-settled legal position that an interpretation leading to such a result must be rejected.

29. It is submitted that Section 3 of the FTDR Act empowers the Central Government to develop and regulate foreign trade. Section 9A of the FTDR Act, enacted in 2010, substantially incorporates Article XIX of the General Agreement on Tariffs and Trade (GATT) and serves as an enabling provision for imposing quantitative restrictions following a prescribed procedure on the import of

goods. Section 9A is not a special provision operating as an independent mechanism that can disregard other provisions of the FTDR Act, particularly Section 3. The power of the Central Government to impose quantitative restrictions under Section 9A is merely part of its broader authority under Section 3(2) to prohibit, restrict, or regulate the import or export of goods, services, or technology.

30. It is contended that DGFT's reliance on the judgment of the Supreme Court in Union of India v. Agricas LLP, (2021) 14 SCC 341, is misplaced, as the judgment holds that Section 9A is an escape provision allowing the Central Government to bypass the rigor of Article XII(1) of GATT. Given this, Section 9A cannot be used to circumvent the provisions of Sections 3 and 5 of the FTDR Act, nor can it be considered as establishing a separate regulatory regime.

31. It is submitted that Section 9A does not operate independently of the other provisions of the FTDR Act. Instead, it forms part of the broader powers of the Government to regulate free trade under Section 3(2) of the FTDR Act.

32. It is further submitted that since Para 1.05(b) of the FTP applies to restrictions imposed under Section 3 of the FTDR Act, there is no legal basis for the DGFT to contend that a particular portion of the FTP is inapplicable to cases under Section 9A, particularly when neither the statute nor the FTP draws such a distinction.

33. It is also emphasized that in Agricas LLP (supra), the Supreme Court was solely concerned with whether the Central Government can impose restrictions by exercising its powers under Section 3(2) of the FTDR Act without invoking Section 9A. It is submitted that this issue is distinct from the one under consideration in the present case. Therefore, the judgment in Agricas LLP (supra) is inapplicable to the DGFT's case.

34. It was further submitted that mere knowledge of the final findings dated 29.04.2024 of the DGTR, recommending the imposition of quantitative restrictions on the import of LAM Coke, cannot be construed as prohibiting the petitioners from entering into contracts based on the prevailing legal position before the publication of the notification dated 26.12.2024.

35. The petitioners refer to the relevant contracts for importing LAM Coke to refute the DGFT's contention that they are protected and/or can seek shelter under the force majeure provisions of their respective contracts.

36. Lastly, it is contended that significant prejudice will be caused to the petitioners if they are not permitted to import LAM Coke to the extent of quantities covered by the ICLCs. It is submitted that this would adversely impact their operations and substantially affect their production capacity.

37. An impleadment application has been filed on behalf of Indian Metallurgical Coke Manufacturer's Association (IMCOM). The applicant is an association representing the domestic metallurgical coke manufacturers of India. Considering that the present petitions have been filed challenging notification dated 26.11.2024 and that the same has been issued by the DGFT, it is for

the DGFT to defend the said notification. In the circumstances, while taking the written submission filed on behalf of applicant on record, the intervention application has been dismissed.

REASONING AND CONCLUSION

38. The fulcrum of the petitioner's argument revolves around Clause 1.05 of the Foreign Trade Policy, 2023 (FTP). The same contemplates that in case of change in policy from 'free' to 'restricted/prohibited/ state trading' or 'otherwise regulated', the same import/export restrictions shall apply prospectively; further import/export on or after the date of such regulations/restrictions, shall be allowed for importers/exporters who has a commitment through Irrevocable Commercial Letters of Credit (ICLC) before the date of imposition of such restrictions/regulations and shall be limited to the balance quantity, value and period available in the ICLC.

39. To avail benefit of transitional arrangements provided for in the said Clause 1.05 of the FTP, there is a requirement for "operational listing" of such ICLC "with a jurisdictional RA against computerised receipt within 15 days of imposition of any such restrictions/regulation".

40. The moot question, however, is whether the transitional provision/s incorporated in Clause 1.05 of the FTP will apply in the event of a measure/safeguards action under Section 9A of FTDR Act read with the Safeguard Measures (Quantifiable Restrictions) Rules, 2012 [the Safeguard Rules, 2012]. This Court is inclined to accept the contention on behalf of the respondents that the aforesaid transitional provision would not at all be applicable/attracted in the event of a measure/safeguard action taken under Section 9A of the FTDR Act read with the Safeguard Rules, 2012. The reasons are enumerated hereunder.

41. The FTP is notified by the Central Government in exercise of the powers conferred under Section 5 of the FTDR Act, 1992. It incorporates the provisions/policy relating to the export and import of goods. Clause 1.02 of the FTP clearly provides that the "Central Government in exercise of the powers conferred by Section 3 and Section 5 of the FTDR Act, 1992, reserves the right to make any amendment to the FTP by means of notification, in public interest".

42. Clause 2.07 of the FTP provides as under:-

> "2.07 Principles of Restrictions DGFT may, through a Notification, impose 'Prohibition' or 'Restriction':
>
> (a) on export of foodstuffs or other essential products for preventing or relieving critical shortages;
>
> (b) on imports and exports necessary for the application of standards or regulations for the classification, grading or marketing of commodities in international trade;
>
> (c) on imports of fisheries product, imported in any form, for enforcement of governmental measures to restrict production of the domestic product or for certain

other purposes;

(d) on import to safeguard country's external financial position and to ensure a level of reserves;

(e) on imports to promote establishment of a particular industry;

f) for preventing sudden increases in imports from causing serious injury to domestic producers or to relieve producers who have suffered such injury;

(g) for protection of public morals or to maintain public order;

(h) for protection of human, animal or plant life or health;

(i) relating to the importations or exportations of gold or silver;

(j) necessary to secure compliance with laws and regulations including those relating to the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;

(k) relating to the products of prison labour;

(l) for the protection of national treasures of artistic, historic or archaeological value;

(m) for the conservation of exhaustible natural resources;

(n) for ensuring essential quantities for the domestic processing industry;

(o) essential to the acquisition or distribution of products in general or local short supply;

(p) for the protection of country's essential security interests i. relating to fissionable materials or the materials from which they are derived;

ii. relating to the traffic in arms, ammunition and implements of war; iii. taken in time of war or other emergency in international relations; or

(q) in pursuance of country's obligations under the United Nations Charter for the maintenance of international peace and security"

43. The aforesaid Clause 2.07 sets out the circumstances which may entail/warrant issuance of notification under Section 3 of the FTDR Act, 1992 for the purpose of imposing prohibition/restrictions on import or export of goods or services or technology. The purport of Clause 1.05 of the FTP is that in the eventuality of any such prohibition/restriction/regulation, by

way of a notification under Section 3 of the FTDR Act, 1992, the same must be subject to a transitional arrangement, for which Clause 1.05 has been provided in the FTP. Section 3 is couched in broad terms, enabling immediate trade restrictions to be imposed by way of a notification under Section 3(2) of FTDR Act, 1992.

44. However, Section 9A2 of the FTDR Act, 1992 stands on a completely [9-A. Power of Central Government to impose quantitative restrictions.--(1) 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:

> Provided that no such quantitative restrictions shall be imposed on any goods originating from a developing country so long as the share of imports of such goods from that country does not exceed three per cent or where such goods originate from more than one developing country, then, so long as the aggregate of the imports from all such countries taken together does not exceed nine per cent of the total imports of such goods into India. (2) The quantitative restrictions imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such imposition:
>
> Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the quantitative restrictions should continue to be imposed to prevent such injury or threat and to facilitate the adjustments, it may extend the said period beyond four years: Provided further that in no case the quantitative restrictions shall continue to be imposed beyond a period of ten years from the date on which such restrictions were first imposed.
>
> different and independent footing. The same contemplates issuance of a notification imposing quantitative restrictions on the import of such goods where Central Government, "after conducting such inquiry as it deems fit" has arrived at the satisfaction that any goods are import into India of such increased quantities and under such conditions as to cause or threaten to cause injury to domestic industry. Thus, unlike in the case of a notification under Section 3, a notification under Section 9A (1) must be predicated on a satisfaction, arrived at pursuant to the conduct of an inquiry, that the goods are imported into India in such increased quantities and under such conditions so as to cause or threaten to cause, injury to domestic industry.

45. The issuance of a notification under Section 9A is also hedged by the limitation imposed under proviso to Section 9A(1) to the effect that no such quantitative restrictions shall be imposed on any goods originating from a developing country, "so long as the share of import of such goods from that country does not exceed 3%, or where such goods originate from more than one developing country,

then so long as the aggregate of imports from all such countries taken together does not exceed 9% of the total imports of such goods into India".

(3) The Central Government may, by rules provide for the manner in which goods, the import of which shall be subject to quantitative restrictions under this section, may be identified and the manner in which the causes of serious injury or causes of threat of serious injury in relation to such goods may be determined. (4) For the purposes of this section--

(a) "developing country" means a country notified by the Central Government in the Official Gazette, in this regard;

(b) "domestic industry" means the producers of goods (including producers of agricultural goods)--

(i) as a whole of the like goods or directly competitive goods in India; or

(ii) whose collective output of the like goods or directly competitive goods in India constitutes a major share of the total production of the said goods in India;

(c) "serious injury" means an injury causing significant overall impairment in the position of a domestic industry;

(d) "threat of serious injury" means a clear and imminent danger of serious injury.

46. Section 9A(3) provide that the Central Government may, by rules provide for the manner in which goods, the import of which shall be subject to quantitative restrictions under Section 9A, may be identified and the manner in which the causes of serious injury or causes of threat of serious injury, in relation to such goods, may be determined. In exercise of powers conferred by the said Section 9A(3) of the FTDR Act, 1992, the Central Government has framed the Safeguard Measures (Quantitative Restrictions) Rules, 2012 (QR rules). The same, inter alia, reads as under:-

> "2. Definitions.--(1) * * * ***
>
> (b) "authorised officer" means the authorised officer designated as such under sub-rule (1) of Rule 3;
>
> (c) "increased quantity" includes increase in import whether in absolute terms or relative to domestic production;
>
> (d) "interested party" includes--
>
> (i) an exporter or foreign producer or the importer of goods (which is subject to investigation for purposes of imposition of safeguard quantitative restrictions) or a trade or business association, majority of the members of which are producers, exporters or importers of such goods;

(ii) the Government of the exporting country; and

(iii) a producer of the like goods or directly competitive goods in India or a trade or business association, a majority of members of which produce or trade the like goods or directly competitive goods in India;

(e) "like goods" means goods which is identical or alike in all respects to the goods under investigation, or in the absence of such goods, other goods which has characteristics closely resembling those of the goods under investigation;

(f) "quantitative restrictions" means any specific limit on quantity of goods imposed as a safeguard measure under the Act;

(g) "specified country" means a country or territory which is a member of the World Trade Organisation and includes the country or territory with which the Government of India has an agreement for giving it the most favoured nation treatment;

3. Responsibility of authorised officer for making enquiry in respect to safeguard quantitative restrictions.--(1) The Central Government shall, by notification in the Official Gazette, designate an officer not below the rank of Additional Director General of Foreign Trade as an authorised officer for making investigation for the purpose of these Rules. (2) The authorised officer shall be responsible for conducting investigation, under sub-section (1) of Section 9-A, for the purpose of imposition of safeguard quantitative restrictions and making necessary recommendation therein to the Central Government. (3) The Directorate General of Foreign Trade shall provide secretarial support and the services of such other persons and such other facilities as it deems fit.

4. Duties of authorised officer.--It shall be the duty of the authorised officer--

(a) to investigate the existence of serious injury or threat of serious injury to domestic industry as a consequence of increased import of a goods into India;

(b) to identify the goods liable for quantitative restrictions as a safeguard measure;

(c) to submit its findings, to the Central Government as to the serious injury or threat of serious injury to domestic industry consequent upon increased import of goods into India from the specified country;

(d) to recommend--

(i) the nature and extent of quantitative restrictions which, if imposed, shall be adequate to remove the serious injury or threat of serious injury to the domestic industry; and

(ii) the duration of imposition of safeguard quantitative restrictions and where the period so recommended is more than one year, to recommend progressive liberalisation adequate to facilitate positive adjustment; and

(e) to review the need for continuance of the safeguard quantitative restrictions.

5. Initiation of investigation.--(1) The authorised officer shall, on receipt of a written application by or on behalf of the domestic producer of like goods or directly competitive goods, initiate an investigation to determine the existence of serious injury or threat of serious injury to the domestic industry, caused by the import of a goods in such increased quantities, absolute or relative to domestic production. (2) The application referred to in sub-rule (1) shall be made in Form appended to these rules and be supported with--

(a) the evidence of--

(i) increased imports as a result of unforeseen development;

(ii) serious injury or threat of serious injury to the domestic industry; and

(iii) a causal link between imports and the alleged serious injury or threat of serious injury;

(b) a statement on the efforts being taken, or planned to be taken, or both, to make a positive adjustment to increase in competition due to imports; and

(c) a statement mentioning whether an application for the initiation of a safeguard action on the goods under investigation has also been submitted to the Director General of Safeguards, Department of Revenue.

(3) The authorised officer shall not initiate an investigation pursuant to an application made under sub-rule (1), unless, it examines the accuracy and adequacy of the evidence provided in the application and satisfies himself that there is sufficient evidence regarding--

(a) increased imports;

(b) serious injury or threat of serious injury; and

(c) a causal link between increased imports and alleged serious injury or threat of serious injury.

(4) Notwithstanding anything contained in sub-rule (1), the authorised officer may initiate an investigation suo moto, if, it is satisfied with the information received from

any source that sufficient evidence exists as referred to in clause (a), clause (b) or clause (c) of sub-rule (3).

6. Principles governing investigations.--(1) The authorised officer shall, after it has decided to initiate investigation to determine serious injury or threat of serious injury to domestic industry, consequent upon the increased import of a goods into India, issue a public notice notifying its decision which, inter alia, contain information on the following, namely--

(a) the name of the exporting countries, the goods involved and the volume of import;

(b) the date of initiation of the investigation;

(c) a summary statement of the facts on which the allegation of serious injury or threat of serious injury is based;

(d) reasons for initiation of the investigation;

(e) the address to which representations by interested parties should be directed; and

(f) the time-limits allowed to interested parties for making their views known.

(2) The authorised officer shall forward a copy of the public notice to the Central Government in the Ministry of Commerce and Industry and other Ministries concerned, known exporters of the goods, the Governments of the exporting countries concerned and other interested parties. (3) The authorised officer shall also provide a copy of the application referred to in sub-rule (1) of Rule 5, to--

(a) the known exporters, or the concerned trade association;

(b) the Governments of the exporting countries; and

(c) the Central Government in the Ministry of Commerce and Industry:

Provided that the authorised officer shall also make available a copy of the application, upon request in writing, to any other interested person. (4) The authorised officer may issue a notice calling for any information in such form as may be specified in the notice from the exporters, foreign producers and governments of exporting countries and such information shall be furnished by such persons and governments in writing within thirty days from the date of receipt of the notice or within such extended period as the authorised officer may allow on sufficient cause being shown.

Explanation.--For the purpose of this Rule, the public notice and other documents shall be deemed to have been received one week after the date on which these documents were put in the course of transmission to the interested parties by the authorised officer.

(5) The authorised officer shall provide opportunity to the industrial user of the goods under investigation and to representative consumer organisations in cases where the goods is commonly sold at retail level to furnish information which is relevant to the investigation including inter alia, their views if imposition of safeguard quantitative restrictions is in public interest or not.

(6) The authorised officer may allow an interested party or its representative to present the information relevant to investigation orally but such oral information shall be taken into consideration by the authorised officer only when it is subsequently submitted in writing. (7) The authorised officer shall make available the evidence presented to it by one interested party to all other interested parties, participating in the investigation.

(8) In case where an interested party refuses access to or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, the authorised officer may record its findings on the basis of the facts available and make such recommendations to the Central Government as it deems fit under such circumstances.

***

8. Determination of serious injury or threat of serious injury.--The authorised officer shall determine serious injury or threat of serious injury to the domestic industry taking into account, inter alia, the following principles, namely--

(a) in the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry, the authorised officer shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the goods concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment; and

(b) the determination referred to in clause (a) shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the goods concerned and serious injury or threat thereof:

> Provided that when factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports and in such cases, the authorised officer may refer the complaint to the authority for anti-dumping or countervailing duty investigations, as appropriate.

9. Final findings.--(1) The authorised officer shall, within eight months from the date of initiation of the investigation or within such extended period as the Central Government may allow, determine

whether, as a result of unforeseen developments the increased imports of the goods under investigation has caused or threatened to cause serious injury to the domestic industry, and a casual link exists between the increased imports and serious injury or threat of serious injury and recommend--

(i) the extent and nature of quantitative restrictions which, if imposed, would be adequate to prevent or remedy "serious injury" and to facilitate positive adjustment, as the case may be;

(ii) the extent of quantitative restrictions so that the quantity of imports is not reduced to the quantity of imports below the level of a recent period which shall be the average of import in the last three representative years for which statistics are available and justification if a different level is necessary to prevent or remedy serious injury;

(iii) the quota to be allocated among the supplying countries, and the allocation of shares in the quota for such specified countries which have a substantial interest in supplying the goods;

(iv) the duration of imposition of quantitative restrictions and where the duration of imposition of quantitative restrictions is more than one year, the progressive liberalisation adequate to facilitate positive adjustment. (2) The final findings if affirmative shall contain all information on the matter of facts and law and reasons which have led to the conclusion. (3) The authorised officer shall issue a public notice recording his final findings.

(4) The authorised officer shall send a copy of the public notice regarding his final findings to the Central Government in the Ministry of Commerce and Industry and a copy thereof to the interested parties.

10. Imposition of safeguard quantitative restrictions.--The Central Government may based on the recommendation of the authorised officer, by a notification in the Official Gazette, under sub-section (I) of Section 9-A of the Act, impose upon importation into India of the goods covered under the final determination, a safeguard quantitative restrictions not exceeding the amount or quantity which has been found adequate to prevent or remedy serious injury and to facilitate adjustment.

11. Imposition of safeguard quantitative restrictions on non- discriminatory basis.--Any safeguard quantitative restrictions imposed on goods under these Rules shall be applied on a non-discriminatory basis to all imports of the goods irrespective of its source.

12. Date of commencement of safeguard quantitative restrictions.--The safeguard quantitative restrictions levied under these Rules shall take effect from the date of publication of the notification in the Official Gazette, imposing such quantitative restrictions.

13. Duration.--(1) The safeguard quantitative restrictions imposed under Rule 10 shall be for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. (2) Notwithstanding anything contained in sub-rule (1), safeguard quantitative restrictions imposed

under Rule 10 shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of its imposition:

> Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such serious injury or threat thereof and it is necessary that the safeguard quantitative restrictions should continue to be imposed, to prevent such serious injury or threat and to facilitate adjustments, it may extend the period beyond four years:
>
> Provided further that in no case the safeguard quantitative restrictions shall continue to be imposed beyond a period of ten years from the date on which such restrictions were first imposed.

14. Liberalisation of safeguard quantitative restrictions.-- If the duration of the safeguard quantitative restrictions imposed under Rule 10 exceeds one year, the restriction shall be progressively liberalised at regular intervals during the period of its imposition."

47. Thus, unlike in the case of an action under Section 3(2), an action under Section 9A is preceded by an elaborate investigation to determine the extent of injury or threat of injury to the domestic industry consequent upon increased import of goods into India.

48. The existence of any serious injury or threat of serious injury is determined based on evaluation of relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, including, the rate and amount of increased in imports of the concerned goods in absolute and relative terms; the share of the domestic market taken by the increased imports; changes in the levels of sales, production, productivity, capacity utilisation, profits and losses and employment. Further, the Rules mandate that there must be a causal link between the import of the concerned goods and the serious injury on account thereof.

49. It is only after final findings rendered in that regard, is it permissible for the Central Government to issue a notification under Section 9A(1) of the FTDR Act, 1992, imposing upon importation into India of the goods covered under the final determination, "safeguard quantitative restrictions", not exceeding the amount or quantity which has been found adequate to prevent or remedy serious injury and to facilitate adjustment.

50. As such, the notification under Section 9A(1) is a product of an elaborate quasi judicial exercise. This is in sharp contrast to a measure taken/notification issued under Section 3 of the FTDR Act read with Clause 2.07 of the FTP.

51. Two aspects are crucial as regards conduct of investigation under the Safeguard Rules, 2012. Firstly, for the purpose of conduct of investigation, it is clearly provided that the concerned "authorised officer" shall duly notify the non-exporters; the concerned trade association; the Government of the exporting country. Further, Rule 6(5) clearly provides that the authorised officer shall provide opportunity to the industrial use of goods under investigation and to representative

consumer organisations in case where the goods are commonly sold at retail level, to furnish information which is relevant to the investigation. Thus, there is adequate notice to all concerned as regards the initiation of investigation.

52. Secondly, and importantly, Rule 12 of the Safeguard Rules,2012 clearly provides as under:-

> "12. Date of commencement of safeguard quantitative restrictions.-- The safeguard quantitative restrictions levied under these rules shall take effect from the date of publication of the notification in the Official Gazette, imposing such quantitative restrictions."

53. Thus, once the final determination is made after following the elaborate procedure in the Safeguard Rules, 2012, with the participation of all the concerned stakeholders, and upon a notification being issued under Rule 10 [thereby imposing quantitative restrictions], the same shall be taken into effect from the date of publication of said notification. There is no provision for any further transitional arrangement. As noticed, this is unlike in the case of an action/notification issued under Section 3(2) of the FTDR Act.

THE AGRICAS CASE:

54. The judgment of the Supreme Court in Agricas (Supra), which has closely analysed the scope of operation of Section 3 and 9A of the FTDR Act, 1992, also conclusively establishes that the action/notification under Section 9A of the FTDR Act, 1992 stands on a completely independent and separate footing, vis-a-vis any restriction/s imposed under Section 3 of the FTDR Act, 1992. Whereas an action under Section 9A must confirm to the substantive and procedural requirements set out in the Safeguard Rules, 2012, any based on the power/s conferred under Section 3 of the FTDR Act would be subject to the traditional provisions (Clause 1.05) in the FTP.

55. In Agricas (Supra), the notification impugned before the Supreme Court had been issued by the Directorate General of Foreign Trade (DGFT) which had the affect of modifying or amending the EXIM Policy as specified items were withdrawn from the free category and moved to the restricted category. One of the contentions raised by the importers was that the impugned notifications were in the nature of "quantitative restrictions"

> under Section 9A of the FTDR Act, 1992, which could be only imposed by the Central Government after conducting such inquiry as it deem fit and/or being satisfied that "the goods are imported into India and under such conditions as to cause or threaten to cause serious injuries to domestic industry".

56. It was specifically urged that contentions was that the impugned notification/s in that case could not have been issued by taking recourse to Section 3 of the FTDR Act without first conducting an inquiry as contemplated under Section 9A of the FTDR Act. While rejecting this argument, the Supreme Court held that:-

> (i) Section 9A of the FTDR Act, 1992 is a product of an "act of transformation" inserted under Indian law with a view to give effect to treaty obligation under Article (XIX) of the GATT, 1994 3. It was specifically Article XIX Emergency Action on Imports of Particular Products
>
> 1.(a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

(b) If any product, which is the subject of a concession with respect to a preference, is being imported into the territory of a contracting party in the circumstances set forth in sub-paragraph (a) of this paragraph, so as to observed by the Supreme Court as under:-

> 68. Reference to this position is necessary and required when we interpret Section 9A of the FTDR Act which we would accept incorporates into the domestic law Article XIX of GATT-1994, but neither Article XI and nor all the exceptions by implications.
>
> XXX XXX XXX XXX
>
> 70. Section 9-A substantially incorporates, with some modifications, provisions of Article XIX of GATT-1994."

(ii) It was noticed that Section 5 of the FTDR Act, 1992 empowers and authorises Central Government to frame policy, rules and regulation for import and export of goods. Unlike in the case of Section 9A, the applicability of Section 3 and Section 5 of the FTDR Act, is not pursuant to or referable to any treaty obligation. The court rejected the contention that Section 3 and/or Section 5 of the FTDR Act, 1992 be construed in light of cause or threaten serious injury to domestic producers of like or directly competitive products in the territory of a contracting party which receives or received such preference, the importing contracting party shall be free, if that other contracting party so requests, to suspend the relevant obligation in whole or in part or to withdraw or modify the concession in respect of the product, to the extent and for such time as may be necessary to prevent or remedy such injury.

2. Before any contracting party shall take action pursuant to the provisions of Para 1 of this Article, it shall give notice in writing to the CONTRACTING PARTIES as far in advance as may be practicable and shall afford the CONTRACTING PARTIES and those contracting parties having a substantial interest as exporters of the product concerned an opportunity to consult with it in respect of the proposed action. When such notice is given in relation to a concession with respect to a preference, the notice shall name the contracting party which has requested the action. In critical

circumstances, where delay would cause damage which it would be difficult to repair, action under Para 1 of this Article may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking such action.

3. (a) If agreement among the interested contracting parties with respect to the action is not reached, the contracting party which proposes to take or continue the action shall, nevertheless, be free to do so, and if such action is taken or continued, the affected contracting parties shall then be free, not later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the contracting parties, the application to the trade of the contracting party taking such action, or, in the case envisaged in Para 1(b) of this Article, to the trade of the contracting party requesting such action, of such substantially equivalent concessions or other obligations under this Agreement the suspension of which the contracting parties do not disapprove.

(b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, where action is taken under Para 2 of this Article without prior consultation and causes or threatens serious injury in the territory of a contracting party to the domestic producers of products affected by the action, that contracting party shall, where delay would cause damage difficult to repair, be free to suspend, upon the taking of the action and throughout the period of consultation, such concessions or other obligations as may be necessary to prevent or remedy the injury."

the treaty obligation under Article XI of GATT, 1994 4.

(iii) Paragraph 65 and 66 of Agricas (supra) specifically holds that:-

> "65. We have already reproduced and quoted Article XI [Para 53, above.] of the GATT-1994 and have to say that the same has not been statutorily made a subject of "act of transformation" and incorporated in the domestic legislation i.e. the FTDR Act. The FTDR Act does not legislate and transform Article XI of the GATT-1994.....
>
> 66. Thus, the Central Government i.e. the Union of India has been given the necessary discretion and election with regard to framing of policies for import and export of goods, services and technology. Therefore, implementation of GATT-1994, including Article XI, is left to the Central Government by means of delegated legislation."

It was specifically held that:

> "Section 9-A of the FTDR Act, is to be understood an enabling provision empowering imposition of "quantitative restrictions" after following the "Article XI General Elimination of Quantitative Restrictions
>
> 1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be

instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

2. The provisions of Para 1 of this Article shall not extend to the following:

(a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;

(b) Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade;

(c) Import restrictions on any agricultural or fisheries product, imported in any form, necessary to the enforcement of governmental measures which operate:

(i) to restrict the quantities of the like domestic product permitted to be marketed or produced, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted; or

(ii) to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted, by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level; or

(iii) to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity, if the domestic production of that commodity is relatively negligible.

Any contracting party applying restrictions on the importation of any product pursuant to sub-paragraph (c) of this paragraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value. Moreover, any restrictions applied under (i) above shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of restrictions. In determining this proportion, the contracting party shall pay due regard to the proportion prevailing during a previous representative period and to any special factors* which may have affected or may be affecting the trade in the product concerned.

procedure in the situations referred to therein. However, it does not limit and restrict the expanse and power of the Central Government to prohibit, regulate or restrict imports of goods in terms of Section 3(2) of the FTDR Act"

> Thus, imposition of quantitative restrictions under Section 9A after following an elaborate procedure as set out in the Rules framed thereunder, stands on a completely independent footing and cannot be equated with an action/notification issued under Section 3 of the Act.
>
> (iv) It was specifically held by the Supreme Court that "Principle of lex specialis derogat legi generali, therefore, is not applicable to the case in hand".

The implication of the same is that Section 3 and Section 9A, although may cover overlapping subject matter, operate concurrently and independently. Any action taken under Section 9A is not controlled by rigours of Section 3 and/or Clause 1.05 of the FTP framed under Section 5 of the FTDR Act, 1992. Any action under Section 9A is controlled by and must be in consonance with the rules specifically framed thereunder i.e. the Safeguard Rules, 2012. As noticed above, the same clearly contemplates as follows as regards the commencement of the restrictions sought to be imposed:

> "12. Date of commencement of safeguard quantitative restrictions.--The safeguard quantitative restrictions levied under these rules shall take effect from the date of publication of the notification in the Official Gazette, imposing such quantitative restrictions."

57. In the present case, the country-wise quantitative restrictions have been imposed based on an elaborate safeguards investigation carried out by DGFT under the Safeguard Rules, 2012, and pursuant to final findings notified vide notification number 22/4/2023-DGTR dated 29.04.2024 r/w notification dated 28.05.2024. It has been specifically held by the Supreme Court in Agricas (Supra)5 that the Safeguard Rules, 2012 are also in conformity with the provisions of WTO agreement on safeguards made in terms of Article XIX of GATT-1994. There is no rationale for subjecting safeguard measures to any 'transitional provision' which is not incorporated in the said Rules.

58. Further, it has been pointed out that the major exporting countries, the concerned importers/exporters; other stakeholders including Indonesia exporters and petitioners were privy to the investigation and the final findings/recommendation dated 29.04.2024 of the DGTR.

59. In fact, the impugned notification dated 26.12.2024 specifically refers to the final findings of DGFT dated 29.04.2024 read with notification dated 28.05.2024; the relevant portion of the said notification is as under:-

> "S.O. (E): Whereas, the Authorized Officer i.e. DGTR in its final findings, vide Notification No. 22/4/2023-DGTR dated 29.04.2024 read with Notification dated 28.05.2024, published in the Gazette of India, Extraordinary, Part I, Section 1, following a safeguard investigation under the Safeguard Measures (Quantitative Restrictions) Rules, 2012, had recommended in terms of Section 9A(1) of the Foreign Trade (Development and Regulation) Act, 1992, to impose country-wise quantitative restrictions on import of the following product,, under the FTDR Act:

> 70.....Rules made in 2012 are also in conformity with the provisions of the WTO agreement on safeguards made in terms of Article XIX of GATT-1994. Sub-rule (3) to Rule 5 of the Safeguard Measures (Quantitative Restrictions) Rules, 2012 states and sets out the conditions for applicability of Section 9-A, which are : (i) increased imports; (ii) serious injury or threat of serious injury; and (iii) a causal link between increased imports and alleged serious injury or threat of serious injury. The expression "increased imports" has been defined in terms of increased quantity to mean increase in imports in absolute terms or relative to domestic production. The expressions "serious injury" and "threat of serious injury" have been defined in clauses (c) and (d) of sub-clause (4) of Section 9-A to mean injury causing significant overall impairment in the position of a domestic industry and a clear and imminent danger of serious injury respectively. The expression "domestic industry" has also been defined in clause (b) of sub-section (4) of Section 9-A. Similarly, the expression "interested party" has been defined in sub-rule (d) of Rule 2 of the Safeguard Measures (Quantitative Restriction) Rules, 2012 and includes exporter or foreign producer or the importer of goods for the purposes of imposition of safeguard quantitative restrictions on trade or business association. It also includes the Government of the exporting country or producer of goods or directly competitive goods in India or a trade or business association.
>
> "Low Ash Metallurgical Coke, that is, Metallurgical Coke having ash content below 18% under the HS Code 2704 excluding coke fines / coke breeze and ultra-low phosphorous metallurgical coke with phosphorous content up to 0.030% with size upto 30 mm with 5% size tolerance for use in ferroalloy manufacturing....."

60. Thus, the impugned notification is clearly predicated on the investigation carried out under Section 9A of the FTDR Act, 1992 read with the Safeguard Rules, 2012. The reference to Section 3 and Section 5 of the FTDR Act, 1992 in the notification dated 26.12.2024 is clearly surplusage inasmuch as there is no manner of doubt that the said notification is entirely based on the final findings rendered pursuant to the investigation conducted under QR Rules, 2012.

61. The concluding part of the notification dated 26.12.2024 also explicitly sets out as under:-

> "Effect of the Notification:
>
> Based on the recommendations contained in the final findings of DGTR, vide Notification No. 22/4/2023-DGTR dated 29.04.2024 read with Notification dated 28.05.2024, import of low ash metallurgical coke have been placed under "Restriction" as per the country-wise Quantitative Restrictions(QR) for a period of six months, effective from 01.01.2025 upto 30.06.2025."

62. In the present case, after the notification dated 26.12.2024 came to be issued, the petitioners submitted applications for operational listing of their ICLCs, in terms of Clause 1.05 of the FTP.

However, the said exercise was moot, in view of the position that the impugned notification is premised on Section 9A of the FTDR Act, and the inquiry conducted as per the Safeguard Rules, 2012 which stands on an independent footing and is not subject to any transitional provision/s as set out in Clause 1.05 of the FTP.

63. Accepting the plea of the petitioners that a safeguards action must also be subject to a 'transition provision', would defeat the very purpose of the same. As held in Agricas (supra) Section 9A of the FTDRA Act substantially incorporates the provisions of Article XIX of the GATT, 1994. The same clearly recognises the right and power of contracting states to take emergency action to protect its domestic industry in a situation where any goods are being imported in the territory of contracting party in such increased quantities and under such conditions so as to cause serious injury to the domestic producers.

64. It has been pointed out by Ms. Nidhi Raman, learned standing counsel for the Union of India that the imports which are subject matter of the ICLCs relied upon by the petitioners, are to the tune of 6,10,121 MT from Indonesia, as against the quota of 66,364 MT allocated to Indonesia during the period of January-June, 2025. If imports on such a large scale are allowed, the same would set at nought the safeguard measures taken to protect the domestic industry.

65. It is also pointed out by the learned standing counsel that the petitioners have already imported 2,70,121 MT of LAM Coke from Indonesia uptill 31st December, 2024, i.e. in the current financial year (2024-

25). The quantity already imported by Petitioners in the current financial year is more than the aggregate of the total imports from Indonesia in the last three financial years (2021-22, 2022-23 & 2023-24).

66. It cannot be lost sight of, particularly in the contemporary global trade context, that the leeway afforded to contracting states under Article IX of GATT, 1994 to take action to protect their domestic industry, cannot be whittled down by holding that safeguard measures be subject to 'transition provision/s'. The same is not mandated or contemplated under Article IX of GATT, 1994 nor under Section 9A of the FTDR, which, as held in Agricas (supra), is a product of an "act of transformation" to implement Article IX of GATT, 1994.

67. For the above reasons, this Court finds not merit in the present petitions; the same are consequently dismissed.

SACHIN DATTA, J MARCH 28, 2025/uk/at