Trade & Customs - India

Proposed amendments to foreign trade legislation

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A bill to amend the Foreign Trade (Development and Regulation) Act 1992, which empowers the government to regulate and incentivise foreign trade, was passed by both houses of Parliament in August 2010 and will come into force on a date to be notified. Putting the bill before Parliament, the minister for commerce announced that it will enable the imposition of quantitative restrictions and introduce tighter export/trade controls for dual-use of goods and related technologies in order to control weapons of mass destruction and delivery systems.

Background

The Foreign Trade (Development and Regulation) Act provides for the regulation of foreign trade and incidental matters. Under the act, the central government (through the Ministry of Commerce) has promulgated the following policy measures to regulate trade and promote exports:

- the foreign trade policy, which contains various export promotion schemes and sets down export prohibitions and restrictions in relation to both products and countries; and
- the Indian Tariff Classification (Harmonised System) of Export and Import items, which sets down product-related import and export prohibitions and restrictions.

The Directorate General of Foreign Trade is the department of the Ministry of Commerce responsible for implementing and administering the provisions of the act and the above policy measures.

Tighter controls for dual-use goods

The bill amends the act to impose stricter controls in relation to dual-use goods and related technologies which can be used for weapons of mass destruction or their delivery systems. To this end, the bill proposes to bring the act into line with the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act 2005, which was enacted to fulfil the obligations prescribed by UN Security Council Regulation 1540 (which calls on states to refrain from supporting non-state actors in their quest for weapons of mass destruction and their delivery systems). This amendment is considered essential to implement the provisions in relation to export controls for such goods and technologies, as the Directorate General of Foreign Trade is the implementing agency for such restrictions. Under the bill, the government can make rules in connection with the imposition of controls (eg, prohibitions, restrictions subject to conditions) in relation to export of goods, technologies or services that may be specified for this purpose.

At present, in Schedule II to the Indian Tariff Classification (Harmonised System) of Export and Import items the directorate general has specified a list of special chemicals, organisms, materials, equipment and technologies which contains dual-use items and technologies, which export is either prohibited or permitted only under a licence from a prescribed regulatory authority. In light of this, the proposed amendment is a further step in strengthening the export controls legislation in relation to such dual-use goods and technologies.

This is also an important move as an increasing number of Indian companies are getting involved in the manufacture of and trade in dual-use items. However, in addition to strengthening the relevant legislation, the government must intensify its industry outreach programmes and ensure the comprehensive training of enforcement officials so that they can recognise controlled dual-use items.

Quantitative restrictions

Another key feature of the bill is that it will allow the government to impose quantitative restrictions on imports in order to protect the interests of domestic industry against imports as a safeguard measure and in accordance with India's commitment under the World Trade Organisation agreement and Article XIX of the General Agreement on Tariffs and Trade. Such amendment was needed as although the present legislative scheme does set out the inherent powers to take such measures, there are no specific statutory provisions on the imposition of quantitative restrictions.

Such restrictions can be imposed on imports which cause or threaten to cause serious injury to domestic industry. Further, the government will be entitled to impose such quantitative restrictions in respect of the import of goods from a developing country only where:

- the imports from that country exceed 3% of the total imports of such goods into India; or
- such goods are imported from more than one country, provided that the share of imports from all such countries taken together exceeds 9% of the total imports of such goods into India.

The amendment will enable the government to make rules regarding the identification of the goods and determination of the cause of serious injury or threat of serious injury in relation to such goods.

Other key amendments

The bill will also broaden the scope of the act to cover trade in services and technology, in addition to goods, where the service or technology provider enjoys benefits under the foreign trade policy or is dealing with certain specified services or technologies, as defined in the bill.

The bill also states that all licences for import or export shall be regulated only under this law. However, in this regard there is uncertainty regarding the jurisdiction of other ministries and regulators to impose licensing regulations in relation to imports or exports in the relevant sectors.

Comment

The bill is a constructive attempt to realign India's trade policy and regulations in light of changing circumstances in India and international commitments.

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