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ANALYSIS OF THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992

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Introduction

In an era of increasing economic interdependence and globalisation, foreign trade has become one of the most significant drivers of economic growth and international cooperation. According to the Economic Survey 2025–26, India's external sector has demonstrated remarkable resilience despite global economic uncertainties. India's share in global merchandise exports has nearly doubled from around 1% in 2005 to approximately 1.8% in 2024, reflecting the country's growing integration into international trade. As far as foreign trade is concerned, imports and exports are considered its two most important components. In India, these activities are primarily governed by the Foreign Trade(Development and Regulation) Act, 1992 (FTDR Act), an Act to provide for the development and regulation of foreign trade by facilitating imports into, and augmenting exports from, India and for matters connected therewith or incidental thereto.

Foreign trade involves the export and import of capital, goods, and services across countries or territories, and is regarded to be one of the two most essential components of international trade. It plays a critical role in a country's economic growth and development in terms of increased output, employment, and income, as well as the influx of foreign exchange at the domestic level and the strengthening of bilateral and multilateral economic links at the global level.

The FTDR Act, 1992 replaced the earlier *Imports and Exports (Control) Act, 1947*, marking a significant shift in India's approach towards regulating foreign trade in the post-liberalisation era. Unlike its predecessor, which primarily focused on governmental control over imports and exports, the FTDR Act was enacted with a broader objective of promoting and facilitating foreign trade. The Statement of Objects and the long title of the Act itself reflect this legislative shift by emphasising both the development and regulation of foreign trade rather than merely its control.

Against this backdrop, this article analyses the Foreign Trade (Development and Regulation) Act, 1992, its legal framework, significance, and the contemporary challenges associated with regulating India's foreign trade regime.

From Control to Liberalisation: The Evolution of India's Foreign Trade Law

The Imports and Exports (Control) Act, 1947, enacted on March 25, 1947, was one of the earliest legislations governing India’s foreign trade. It empowered the Central Government to prohibit, restrict, or control the movement of goods. At the time India was transitioning from colonial rule and faced significant economic uncertainties, making government control over foreign trade an essential tool for protecting domestic industries, managing scarce foreign exchange, and ensuring the availability of essential commodities. During the decades following Independence, India adopted an import-substitution strategy characterised by high tariff barriers, quantitative restrictions, and an extensive licensing regime. These measures were intended to protect domestic industries and conserve scarce foreign exchange reserves, but over time they also reduced competitiveness and limited India's integration with global markets.

While the Act served the country’s economic priorities during the early decades after independence, its highly control-oriented framework became increasingly restrictive as India’s economy expanded. By the early 1990s, India was facing a severe balance of payment crisis, prompting comprehensive economic reforms that called for a more liberal and facilitative legal framework for foreign trade. This shift ultimately led to the enactment of the Foreign Trade (Development and Regulation) Act, 1992, replacing the 1947 legislation and marking a transition from trade control to trade promotion. The balance of payments crisis of 1991 resulted in India's foreign exchange reserves falling to levels sufficient to finance only a few weeks of imports, compelling the Government to introduce comprehensive economic reforms that fundamentally altered the country's trade and industrial policies.

The enactment of the FTDR Act also reflected India's broader transition towards a market-oriented economy, where the role of the State evolved from exercising extensive control over trade to facilitating exports while retaining regulatory oversight in matters involving public interest, national security, and international obligations. The Act therefore represents

Parliament's attempt to strike a balance between trade liberalisation and the State's continuing responsibility to regulate imports and exports in the larger public interest.

The Legal Framework of the FTDR Act, 1992

The Foreign Trade (Development and Regulation) Act, 1992 establishes a comprehensive legal framework for regulating India's foreign trade while promoting exports and facilitating legitimate international commerce. The Act confers extensive powers upon the Central Government to regulate imports and exports, while entrusting the Directorate General of Foreign Trade (DGFT) with the responsibility of implementing the Act and administering the Foreign Trade Policy. Together, these provisions seek to balance trade facilitation with regulatory oversight in the larger public interest.

The legislative foundation of the Act is primarily contained in Sections 3, 5 and 6, which collectively define the powers of the Central Government, the formulation of the Foreign Trade Policy and the institutional role of the Directorate General of Foreign Trade. One of the most significant features of the Act is the wide power given to the Central Government under Section 3 to regulate imports and exports. Section 3(1) expressly provides that *"The Central Government may by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports."* The language adopted by Parliament is deliberately broad, allowing the Government sufficient flexibility to regulate trade according to changing domestic and international circumstances rather than limiting its powers through rigid statutory procedures.Depending on the prevailing economic conditions and public interest, the Government may prohibit, restrict or otherwise regulate the import or export of goods, services and technology. Such flexibility allows the Government to respond to changing global trade conditions, national security concerns and India's international obligations without requiring a new legislation every time a policy change becomes necessary.The breadth of these powers has also been recognised by the judiciary. In *Atul Commodities Pvt. Ltd. v. Commissioner of Customs, (2009) 5 SCC 46*, the Supreme Court observed that the FTDR Act provides the statutory framework through which the Central Government exercises its authority over foreign trade, while the Foreign Trade Policy operationalises those powers. The decision reaffirmed that trade regulation under the Act is intended to remain flexible so that the

Government can respond effectively to changing economic and policy considerations.The judgment reinforces the principle that while trade liberalisation remains an important objective, the statutory framework intentionally preserves sufficient executive discretion to safeguard broader economic and national interests whenever necessary. The constitutional authority of Parliament to legislate on matters relating to foreign trade flows from Entry 41 of List I (Union List) of the Seventh Schedule to the Constitution, which deals with trade and commerce with foreign countries, import and export across customs frontiers, and customs frontiers.

The Act also provides the legal basis for the formulation of the Foreign Trade Policy (FTP) under Section 5. Instead of prescribing detailed trade procedures within the Act itself, Parliament has authorised the Central Government to formulate and amend the Foreign Trade Policy from time to time. This ensures that India's trade framework remains dynamic and capable of adapting to changing market conditions, technological developments and international trade commitments.This flexibility has become particularly significant in recent years, as global trade has been shaped by rapid technological change, geopolitical tensions, supply chain disruptions and the growing importance of digital commerce. However, statutory powers and policy objectives can only be effective if supported by a competent institutional mechanism for implementation. This responsibility is entrusted to the Directorate General of Foreign Trade.

Another important aspect of the legal framework is the role of the Directorate General of Foreign Trade (DGFT) under Section 6. The DGFT functions as the principal authority responsible for implementing the provisions of the Act and the Foreign Trade Policy. It issues authorisations, administers export promotion schemes and oversees the registration of importers and exporters. Every person intending to engage in import or export activities is generally required to obtain an Importer-Exporter Code (IEC) under Section 7, which serves as a unique identification number and promotes transparency and accountability in cross-border trade.The relationship between the FTDR Act and the Foreign Trade Policy has also been examined by the courts. In *Director General of Foreign Trade v. Kanak Exports, (2015) 13 SCC 226,* the Supreme Court held that while exporters may claim benefits available under the Foreign Trade Policy, such benefits remain subject to the statutory framework of the FTDR Act and may be modified or withdrawn in accordance with law. The judgment highlights that trade incentives are policy measures rather than absolute legal rights. According to the Directorate General of Foreign Trade, India has issued millions of Importer-Exporter Codes (IECs), reflecting the growing participation of businesses in international trade.

Judicial decisions have also emphasised that although the Government possesses extensive regulatory powers under the FTDR Act, those powers must be exercised in accordance with the principles of natural justice. Administrative actions imposing penalties or suspending trade authorisations are expected to follow a fair procedure and provide affected parties with an opportunity to be heard before adverse decisions are taken. Viewed holistically, the legal framework established under the FTDR Act reflects a conscious legislative design that balances flexibility with accountability. While the Act grants the executive considerable discretion to respond to changing economic and geopolitical circumstances, it simultaneously creates institutional and procedural safeguards through the DGFT, the Foreign Trade Policy and the appellate mechanism. Consequently, the Act functions not merely as a regulatory statute but as the legal foundation of India's contemporary foreign trade governance.

Significance of the FTDR Act in India's Contemporary Trade Regime

More than 3 decades after its enactment, the FTDR Act continues to serve as the backbone of India's foreign trade governance. Although enacted in the wake of the 1991 economic reforms, its relevance has only grown with India's expanding role in global commerce. The Act not only regulates imports and exports but also provides the legal foundation for policies aimed at improving export competitiveness, facilitating trade and integrating Indian businesses into global value chains. One of the most significant contributions of the Act has been its role in creating a stable and predictable regulatory environment for international trade. Through the statutory backing provided to the Foreign Trade Policy, businesses are able to plan their import and export activities within a transparent legal framework. This predictability is particularly important for exporters making long-term investments and entering international commercial contracts.

The Act has also played a crucial role in supporting India's export-led growth strategy. Government initiatives such as the Foreign Trade Policy 2023, the Districts as Export Hubs initiative, digitalisation of trade procedures and export promotion schemes derive their legal foundation from the FTDR Act. These initiatives seek to reduce procedural barriers, improve ease of doing business and encourage greater participation of Micro, Small and Medium

Enterprises (MSMEs) in international trade. According to the Ministry of Commerce and Industry, India aims to achieve USD 2 trillion in exports by 2030, with the FTDR framework serving as one of the principal legal instruments supporting this objective. Another important aspect of the Act is its ability to balance economic liberalisation with national interests. While the legislation promotes trade facilitation, it simultaneously enables the Government to impose restrictions on imports or exports whenever required in the interest of national security, public health, environmental protection or compliance with international obligations. Recent global developments, including supply chain disruptions, geopolitical conflicts and increasing concerns regarding strategic technologies, have demonstrated why such regulatory flexibility remains essential even in a liberalised economy.

Furthermore, the increasing digitalisation of international trade has enhanced the significance of the Act. The integration of online authorisation systems, electronic documentation and digital governance through the Directorate General of Foreign Trade has considerably reduced administrative delays and improved transparency. These reforms align with India's broader objective of creating a modern, technology-driven trade ecosystem capable of competing in an increasingly digital global economy. Ultimately, the significance of the FTDR Act lies not merely in regulating cross-border trade but in enabling India to pursue economic growth while safeguarding public interest. Its flexible legal framework has allowed successive governments to adapt trade policies to changing domestic priorities and international developments, making it one of the most enduring pillars of India's economic governance.

Conclusion

The Foreign Trade (Development and Regulation) Act, 1992 marked a turning point in India's approach towards foreign trade by replacing a control-oriented regime with a framework that promotes trade while retaining essential regulatory safeguards. Over the past three decades, the Act has enabled the Government to formulate dynamic trade policies, strengthen export competitiveness and respond effectively to changing economic and geopolitical circumstances. However, the rapidly evolving nature of international trade presents new legal and policy challenges. Digital commerce, emerging technologies, global supply chain realignments and increasing strategic competition require a regulatory framework that remains both flexible and predictable. While the FTDR Act has demonstrated remarkable adaptability, its continued effectiveness will depend on maintaining an appropriate balance between trade facilitation, regulatory certainty and the protection of national interests. As India seeks to expand its role in global trade and achieve ambitious export targets, the FTDR Act will continue to play a pivotal role in shaping the country's trade governance. Its true significance lies not merely in regulating imports and exports but in providing the legal foundation through which India engages with an increasingly interconnected global economy.

In an era where economic diplomacy has become an essential component of foreign policy, the FTDR Act is no longer merely a trade statute—it is an important legal instrument through which India advances its economic interests while strengthening its engagement with the global community.

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