The complete guide to Foreign Trade (Development and Regulation) [FTDR]Act 1992

Foreign trade is something we've all heard about. It is one of the major contributors to a nation's economy and without it, the global markets wouldn't have been what they are today.
Let's get a picture of foreign trade and learn about the Foreign Trade (Development and Regulation) Act 1992, and we will have an idea about the core Foreign Trade Policy that was formulated and put into the same.

What is Foreign Trade ?

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. Foreign trade is critical to an economy's 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 term "foreign trade" can also refer to "international trade" or "external trade".

International trade is simply defined by Wasserman and Hultman as ***"transactions involving residents of different countries."***

Now, foreign trade can be divided into **3** distinct categories:

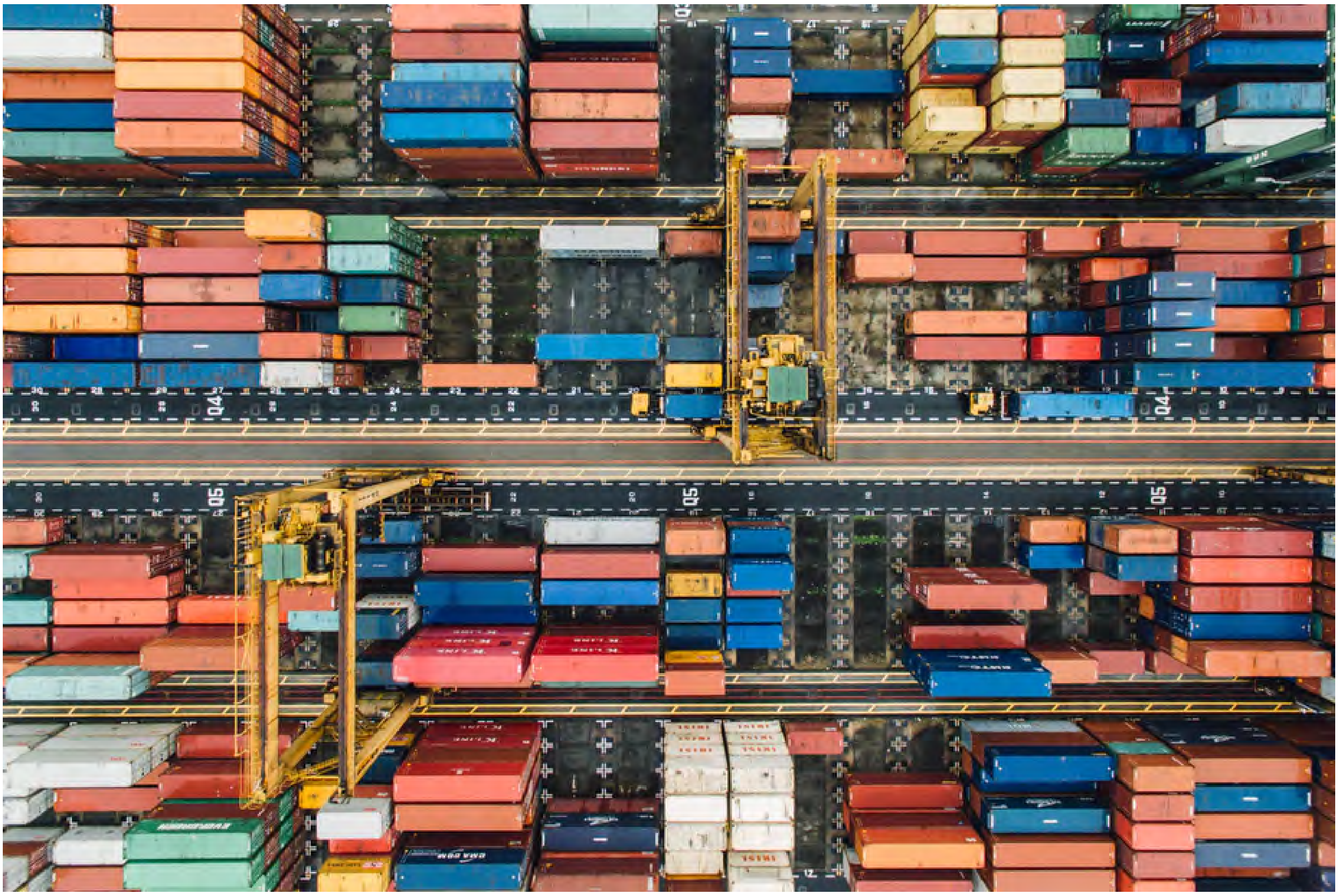
- **Import:** Buying goods or services created in another country is known as importing. India, for example, imports a lot of food oil, and seeds. Oil is primarily imported from the United States of America and Canada. India imports the highest amount of crude oil from Iraq (amounting to $19.3 Billion as per recent estimates)

- **Export:** Exporting is the act of exporting commodities created in one country to another. Hameem Garments, for example, exports Readymade Garments (RMG) to Western countries. An exporter is a seller of such goods and services, while an importer is a buyer from another country. India also exports a large number of spices and tea leaves grown heavily in various parts of the country.

- **Re-export:** Re-exporting is also known as **entrepôt trading**. Re-export occurs when items are imported from a foreign country and re-exported to buyers in other foreign countries. Firm/ Readymade Garments, for example, imports raw materials (cotton) from Korea and manufactures Readymade Garments items using Thai cotton before exporting them to Canada.

FOREIGN TRADE DEVELOPMENT AND REGULATION (FTDR) ACT 1992:

This Act was adopted on the 7th of August 1992 to provide for the development and control of foreign commerce by facilitating imports into India and expanding exports from India, as well as matters connected with or incidental to it. It was passed by Parliament in the Republic of India's forty-third year.



The overall objective of this Act:

The primary goal of **FTDR, 1992** is to improve the law of overseas exchange through facilitating imports into the country, as nicely as, taking measures to grow exports from India and other associated matters.

The main objective of the FTDR Act:

The FTDR Act did not appear as a separate foreign policy law but as a substitute for the Import and Export (Control) Act of 1947. Today, India's entire import and export situation is governed by the **1992 Foreign Trade (Development and Regulation) Act,** which eliminates all existing nuances in the previously promulgated laws and gives the Indian government some of the strongest supervisors with power.

This law is considered to be the supreme law in the field of foreign trade enforcement in the country. The main purpose for introducing this law was to provide an appropriate framework for the development and standardization of foreign trade by promoting the country's imports and exports and strengthening all other related issues.

According to the provisions of the law, the central government has full power to make regulations on foreign trade to achieve the objectives of this Act.

The law also authorizes the government to formulate all language-related regulations for import and export policies that are regulated nationwide. The law also stipulates that the central government can appoint the **Director-General** by publishing the appointment in the official gazette. Implement the entire foreign trade policy under established regulations.

The Foreign Trade (Development and Regulation) Act of 1992 is seen as a watershed moment in the country's economic development, particularly in today's world of globalization and industrialization. The entire statute has been written in such a way that it will operate under existing international trade policies. Overall, this Act contains everything that strengthens the country's economy when overseas commerce is considered.

Departments/Ministries in India dealing with International/ Foreign Trade:

The main government departments dealing with foreign trade in India are:

- Ministry of Industry and Commerce,
- State Administration of Foreign Trade,
- Ministry of Finance, the Office of Reconstruction, and
- Export Inspection Bureau.

Restrictions specified:

1. Section 3(4) of the FTDR Act states that all import and export restrictions must be clearly defined, and the import and export of goods do not require a permit or license, except as provided by the Act.
Unless there are restrictions on the import and export of the product under the FTDR Act and its additional provisions, the import and export of the product **are considered free.**

2. In a highly controlled economy, nothing is permitted unless specifically allowed. This perspective **Section,** stands basically as an assertion of the liberalized Indian economy that everything is permitted unless specifically restricted.

- However, **Section 18A** of the Act inserted in **2010** is apparently in contradiction of **Section 3(4)** of the Act as it says that the provisions of FTDR Act, 1992 are in addition to and not in derogation to provisions of other laws.

#**But in my opinion**, a harmonious construction of the inserted segment suggests that by FTDR Act 1992, additional restrictions can be placed concerning the import and export of goods and services, which is not entirely a bad thing.

However, the other laws which can create restrictions concerning productions and sale of those goods in India or provision of the services in India or their consumption in India, cannot place any specific restriction on import and export of those goods and services unless those restrictions are specifically included under FTDR Act, 1992 and its subordinate legislation.

- Further, the definition of prohibited goods under **Section 2(33**) of the Customs Act, 1962 effectively overrules the provisions contained under **Section 3(4)** of FTDR Act 1992.

Section 2(33) of the Customs Act defines 'prohibited goods' to mean:

Any goods the import or export of which is subject to any prohibition or subject to conditions under Customs Act as well as under any other law unless those conditions have been complied with.

Since every import and export of goods has to comply with **Customs Act** and needs to be cleared by officers of Customs under the procedure established under Customs Law. This is even when independent restrictions under other laws are not treated as restrictions under the FTDR Act, they become restrictions under Customs Act and **need to be complied with.**

- As a prudent measure, most of the restrictions concerning import and export placed under other laws are invariably incorporated into the **Foreign Trade Policy** itself which is legislated under FTDR Act, 1992.

The IEC CODE:

- **Section 7** of the **FTDR Act** mandates the presence of the **Importer-Exporter Code (IEC)** number for the import and export of goods. Concerning import and export of services, the **IEC number** is mandatory only when the exporter of services is claiming certain export benefits under the Foreign Trade Policy or is dealing with certain specified services or specified technology. Here's a complete resource for **IEC number related queries.**

- **Section 8** deals with procedural aspects of suspension and cancellation of the IEC Code.

- **Section 9** deals with procedural aspects of suspension and cancellation of licenses issued under Foreign Trade Policy in case of violation of the FTDR Act and its sub-ordinate legislations.

Safeguard Measures in case of increased imports:

Section 9A was inserted on **27th August 2010** giving powers to the Central Government to impose product-specific quantitative restrictions on imports on the ground of increased imports causing or threatening to cause serious injury to Indian manufacturers of like goods.

The measures included in **Section 9A** in FTDR Act, 1992 are basically safeguarded measures permissible under **Article XIX** of the **GATT** (General Agreement on Tariffs and Trade), which permits product-specific quantitative restrictions as well as the imposition of duties on their imports.

Safeguard measures by way of imposition of duties are covered under **Section 8B** of Custom Tariff Act, 1975 and quantitative Safeguards measures are covered under **Section 9A** of FTDR Act, 1992.

Both types of safeguard measures need to be imposed only after a proper legal inquiry following principles of Transparency and Natural justice allowing all the interested parties including Indian importers, Foreign exporting countries, Foreign exporters, and of course Domestic industry of India manufacturing like goods, who are normally petitioners seeking imposition of these restrictions.

Export of Specified Goods, Services and Technology used for Weapons of Mass Destruction:

Section 14A to **14E** inserted in **2010** deal with control on the export of ***SCOMET*** (Special Chemicals, Organisms, Materials, Equipment & Technologies) items which are primarily relatable to weapons of mass destruction.

Litigation under FTDR Act:

- **Section 10** deals with power relating to search and seizure in cases of the suspected violation.
- **Section 11** prescribes penalties in case of violation of the FTDR Act and its sub-ordinate legislations.
- **Section 13** and **Section 17** deal with adjudicating authorities under the Act and
- **Section 14** deals with procedural aspects of adjudication.
- **Section 15** deals with appeal provisions concerning orders passed by adjudicating Authorities; and
- **Section 16** deals with review provisions of orders passed by adjudicating authorities and appellate authorities.

Settlement under Customs is Settlement under FTDR Act:

Section 12 of the act makes it clear that financial liabilities created under FTDR Act 1992 concerning import and export are in addition to the liabilities which are fastened under **Customs Act, 1962.**

However, **Section 11 B** of the act declares that settlement of Custom Duty and interest for Import and Export by settlement commission under the Customs Act shall be deemed to be a ***settlement of liabilities under the FTDR Act also.***

Salient Features Of Foreign Trade Development And Regulation (FTDR) Act 1992 :

This Act supersedes the previous Act, formerly known as the Import and Export (Control) Act of 1947. Some of the key features of this Act are as follows:

- The law authorizes the central government to take all measures to achieve these goals.

- Based on these powers contained in the 1992 FTDR Act, the government has established regulations to achieve goals by formulating import and export policies.

- This policy used to be called the import and export policy, or **EXIM policy**, but recently this policy has been called the country's foreign trade policy (FTP) because it covers areas related to the country's imports and exports. According to the law, it is formulated by the **Office of the Directorate General of Foreign Trade (DGFT)** under the Ministry of Commerce and Industry of the Government of India.

- The law stipulates that no one can carry out import and export business in India unless the DGFT office issues them an importer-exporter code number **(IEC number).**

- If any exporter or importer in the country violates any provision of the Foreign Trade Policy, or for that matter any other law in force, such as Central Excise, Customs, or Foreign Exchange, his IEC number can be canceled by the DGFT office, and he or she will be unable to conduct any export or import business.

- The Act also provides for the provision of permission known as **license or authorization** for import or export, where it's needed in terms of the policy. Similarly, powers to suspend and cancel the license for import or export are provided for within the Act.

- The law also provides for the power to search and seize facilities that have occurred or are expected to violate import and export directives.

- Content that constitutes a violation of the provisions of this law is also included in the law. Violations apply to cases where unauthorized persons without legal import and export rights conduct import and export or conduct or permit import and export in violation of basic import and export guidelines.

- The law also describes the sanctions that the competent authority can impose in case of violation or violation of foreign trade policies.

- Like any state law, to comply with the basic judgments of **natural justice**, the law also makes detailed provisions for the appeal and **review of orders**. Any decision made by the authorities in accordance with the law can be appealed to higher authorities to change and amend orders issued by lower authorities.

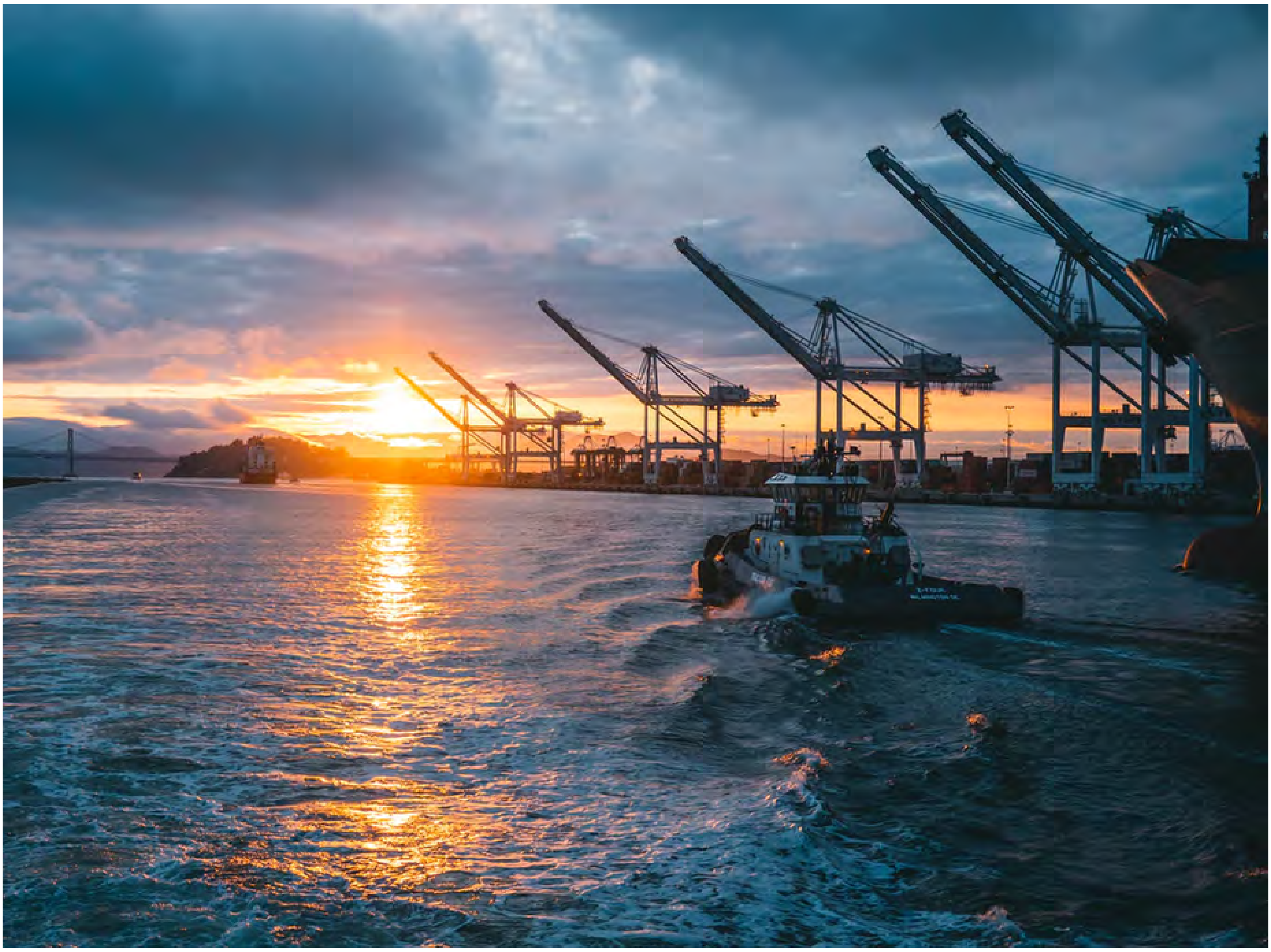
- In terms of law, a regulation was also promulgated, listing the categories not covered by foreign trade policy regulations. The regulation is called the **"** Foreign Trade Regulations" (Exemption from Application of Rules in Certain Cases), 1993**.** In this regulation, import and export institutions and organizations are listed separately, and the rules of the 1992 FTDR Act do not apply to these institutions and organizations.

- To make the provisions of law applicable, rules are required. For the FTDR Act, the rules drawn up and issued by the government are called the Foreign Trade Rules (Ordinance) of 1993, which set out the various operational provisions such as tariff requirements and the issuing of licenses. , License terms, denial, suspension and cancellation of licenses, etc.

- The Foreign Trade Policy (FTP) is a major policy document related to a country's import and export issued under the provisions of the 1992 FTDR Act.

FOREIGN TRADE POLICY (FTP):

The statutory powers of **FTP** are set out in **Section 5** of the **1992 FTDR Act**, which gives the central government the power to formulate and report on national import and export policies. The foreign trade policy authorizes the **DGFT office** to determine the procedures that exporters or importers must follow to conduct commercial import and export transactions.



Over the past 74 years, India's foreign trade has undergone structural changes in its **volume, composition, and direction.** This is the result of different goals, strategies, and measures supported by foreign trade policies formulated in different periods. It depends on the economic situation. The position of the country for analyzing India's economic situation regarding foreign trade policies and foreign trade performance, the entire post-independence period is divided into five different phases such as,

- **Phase I**- 1951-52 to 1975-76
- **Phase II** - 1976-77 to 1990-91
- **Phase III** - 1991-92 to 2001-02
- **Phase IV** - 2002-03 to 2014-15
- **Phase V** - 2014-2015 to till date (2015-2020)

to reflect an apparent shift in India's approach towards foreign trade.

Foreign Trade Policy is a system of regulations and processes for facilitating imports into India, increasing exports from India, and improving the country's balance of payments. Under the Foreign Trade Development and Regulation Act of 1992, the **Department of Commerce** and the **Ministry of Commerce and Industry**, is responsible for creating, executing, and monitoring the Foreign Trade Policy.

Therefore in Foreign Trade Policy (FTP);

The last notified policy under **Section 5 of FTDR Act 1992** is Foreign Trade Policy (FTP), **2015-2020,** and is divided into **9** Chapters:

- **Chapter 9** of the FTP gives a definition of various terms used in the policy.

- **Chapter 1** and **Chapter 2** of the FTP cover a generalized policy concerning imports and exports of Goods and Services.

- **Chapter 3** & **Chapter 4** of the FTP deal with export incentive schemes for the export of Goods and Services.

- **Chapter 5** deals with the import of capital goods without payment of duty for export promotion.

- **Chapter 6** deals with facilitation measures for export-oriented units.

- **Chapter 7** deals with deemed exports i.e. supplies that are not recognized as exports under customs law because they physically do not leave out of India, however for many of the export incentive schemes under FTP they are treated at par with physical exports.

- **Chapter 8** of FTP deals with the mechanism for handling complaints received from Foreign Buyers as well as Indian importers in respect of poor qualities of supplies and complaints of unethical commercial dealings between Indian Parties and Overseas Parties.

This chapter does not deal with complaints against government servants rather prescribe a mechanism for dealing with complaints between Indian and Overseas parties concerning Import and Export.

Though, certain punitive measures may be taken against Indian Parties in case of unethical practices practiced by them; the proceedings under **Chapter 8** vis-à-vis both the parties, by and large, remains conciliatory in nature and both the aggrieved parties are free to make available legal recourse in the appropriate court of law.

#Note- As per Para 2.01 of the Foreign Trade policy, exports and imports are 'FREE' unless they are regulated. The product-specific restrictions are given in **ITC (HS)**. Further in terms of **Para 2.01/2.03** of FTP, the items which are 'free' for import/export under FTP, need to comply with conditions if any stipulated in other domestic laws.

The Basic objectives of FTP are:

This country's policy is called the **2004-2009** Foreign Trade Policy, which was a five-year policy covering 2004-2009. The policy was last updated on April 19th, 2007. FTP 2004-2009 contained its main goal, that is, **trade is not an end in itself, but a means to achieve economic growth and national development.** Therefore, the main purpose of trade is not to obtain more currency, but to increase economic activities to achieve the overall development of the country.

Based on this belief, FTP 2015-2020 set two main goals, namely:

(i) Double India's share of world trade in goods within the next five years.

(ii) Become an effective tool for economic growth by promoting job creation. The areas currently promoted by FTP include agriculture, handicrafts, gems and jewelry, handloom, leather, and maritime sectors.

Strategy to Achieve Objectives of FTP:

After defining the main goals of FTP, it is definitely necessary to formulate a strategy to achieve these goals. Some of the means prescribed in this regard can be mentioned below:

- It is necessary to unleash various control measures in trade to create a trustworthy and transparent environment so that our manufacturers, industrialists, and traders in the export and import business feel encouraged with new strength for the general development of the country's economy.

- It is necessary to further simplify various import and export procedures to reduce transaction costs for exporters. By simplifying the procedures, the competitiveness of their export products will definitely increase.

- All taxes and duties on inputs used for export products must be neutralized, as the basic principle of export is that no export of duties and taxes are allowed.

- Take steps to enable India to develop as a global hub for the manufacturing, trade, and services.

- The strategy additionally includes specializing in priority areas, up to our infrastructure network, and activating the country's trade committee and embassy so of these major players will act along to extend the country's exports.

CONCLUSION:

Foreign trade is one of the most important factors in the overall economic development of a country; for ordinary people, this can be a very complex field, that includes many policies and procedures formulated by various government agencies responsible for this activity. India's import situation is governed and regulated by the **1992 Foreign Trade (Development and Regulation) Act**, which eliminates all existing nuances in previously promulgated laws and gives the Indian government some of the broadest control rights.

The supreme law on compliance with foreign trade implemented in the country, the biggest purpose of the law is to create an appropriate foundation for the development and standardization of foreign trade and to promote imports and promote exports to the country and any other relevant sectors.

Finally, a country can achieve price parity through progressive foreign trade policies to ensure stable economic supply and demand. The foreign trade policy also allows a country to import certain goods when a shortage occurs. When the demand is high, the best quality and quantity of the goods are deployed in the market. It also helps to improve living standards and reduce the cost of goods. Thus, India's foreign trade policy is a comprehensive policy aimed at improving India's position in the international market and benefiting everyone.

Here's a pdf version of the FTDR bare act you can download.

Hope you found this comprehensive guide to FTDR 1992 to be helpful. Feel free to recommend suggestions/additions to this article and we shall oblige.

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