CUSTOMS LAW AND FOREIGN TRADE REGULATION IN INDIA: PROHIBITIONS, RESTRICTIONS AND PENALTIES

Happymol C A, Bharata Mata School of Legal Studies, Aluva

ABSTRACT

The Customs Act, 1962, which regulates the movement of goods across the customs border and imposes duties, and the Foreign Trade (Development and Regulation) Act, 1992, which gives the Directorate General of Foreign Trade the authority to create a licensing and policy regime for imports and exports, are the two regulatory frameworks that govern international trade in India. When taken as a whole, these laws transform the general constitutional right to trade into a conditional privilege that is subject to restrictions, prohibitions, and system of civil and criminal liabilities. The Customs Act's Sections 11, 111 to 114, and 123 as well as the FTDR Act's Sections 3, 5, and 11 are the main statutory sources of prohibition and restriction that are examined in this article. This article examines the statutory relationship between customs and foreign trade regulation, analyses the legal consequences of violations, and evaluates whether the present framework achieves an appropriate balance between trade facilitation and regulatory enforcement.

Keywords: Customs Act, 1962, Foreign Trade (Development and Regulation) Act, 1992, prohibited goods, restricted goods, confiscation.

1.INTRODUCTION

There has never been an unrestricted right to trade across a sovereign border. India is not an exception to the rule that every state retains the authority to determine what may enter its borders, under what conditions, and at what cost. Since foreign trade affects revenue, security, public health, and foreign exchange all at once, it has drawn an exceptionally thick layer of statutory control. The freedom to conduct business under Article 19(1)(g) of the Constitution has always been understood to be subject to reasonable restrictions in the interest of the general public. The Customs Act, 1962, which unifies the laws pertaining to the imposition and collection of customs duties and grants the customs officials extensive authority, is the main tool of that control at the border.[1] Operating alongside it the Foreign Trade (Development and Regulation) Act, 1992 ("FTDR Act") provides the statutory basis for the development and regulation of foreign trade and empowers the Central Government to prohibit, restrict or otherwise regulate imports and exports.[2]

The interaction between these two statutes is not always intuitive. A good may be completely free of customs duties and yet completely restricted from being imported; on the other hand, a dutiable good may be freely importable subject only to a license condition that, non-compliance with which converts it, for confiscation purposes, into a prohibited good. This article aims to map the overlapping and sometimes confusing terrain of "prohibition," "restriction," and "regulation," which has led to significant litigation, as well as the associated penalties.

2.OBJECTIVES OF THE STUDY

1. Examine the statutory framework governing prohibitions and restrictions on imports and exports.
2. Analyse the relationship between the Customs Act, 1962 and the FTDR Act, 1992.
3. Examine whether the existing penalty system including confiscation, monetary fines, and criminal prosecution provides a fair, consistent, and predictable deterrent against violations.

[1] The Customs Act, No. 52 of 1962 (India).
[2] The Foreign Trade (Development and Regulation) Act, No. 22 of 1992, §§ 3, 5 (India).

4. Analyse how courts and tribunals have construed the term "prohibition" for the purposes of confiscation and penalty, particularly where a restriction rather than an absolute ban is at issue.

3.RESEARCH QUESTIONS

1. What is the legal distinction, if any, between "prohibited" and "restricted" goods under Indian customs and foreign trade law?

2. How do the Customs Act, 1962 and the FTDR Act, 1992 interact in regulating and enforcing prohibitions and restrictions on imports and exports?

3. How has judicial interpretation shaped the scope and application of sections 111 and 113 of the Customs Act, 1962, particularly in determining when goods become liable to confiscation?

4. Does the existing penalty system comprising confiscation, monetary fines, and criminal prosecution operate as a fair, consistent, and predictable deterrent against violations of customs and foreign trade regulations, or does it produce disproportionate or unpredictable outcomes

5. What legal and regulatory reforms, if any, could improve certainty, proportionality and consistency in the enforcement and penalty regime governing prohibited and restricted goods?

4.LEGAL FRAMEWORK

4.1 CUSTOMS ACT, 1962

The Customs Act, 1962 is the principal legislation governing customs administration in India. It contains specific provisions relating to prohibition, examination, seizure, confiscation, penalties and prosecution. The Act expressly contains a separate chapter concerning prohibitions on importation and exportation of goods.[3]

[3] The Customs Act, No. 52 of 1962, ch. IV, India Code (1962).

Section 11 - Power to prohibit importation or exportation of goods.

The Customs Act, 1962. Chapter IV of the Customs Act, headed "Prohibitions on Importation and Exportation of Goods," vests in the Central Government, by notification under Section 11, the power to prohibit the import or export of any specified goods, either absolutely or subject to conditions. Section 11(3) also provides for the enforcement of prohibitions or restrictions arising under other laws through the Customs Act when duly notified. [4]

Section 111 -Confiscation of improperly imported goods, etc.

Section 111 specifies when imported goods are liable to confiscation. Section 111(d) specifically covers goods imported or attempted to be imported in violation of a prohibition under the Customs Act or any other law, allowing confiscation for breaches of both customs and other applicable import restrictions.[5]

Section 112. Penalty for improper importation of goods, etc

It imposes a penalty on any person who imports goods improperly, causes an act or omission making goods liable to confiscation under Section 111, or knowingly deals with such goods.

The penalty varies depending on the type of violation: for goods that are prohibited, it can be up to the value of the goods or ₹5,000, whichever is higher; for dutiable goods, it can be up to 10% of the duty evaded or ₹5,000, whichever is higher; and for overvaluation, it can be up to the difference between the declared and actual value or ₹5,000, whichever is higher.[6]

Sections 113, 114 and 114AA – Export Penalties and Confiscation.

Section 113 provides for the confiscation of goods in respect of which any attempt has been made to export them in contravention of any prohibition under the Customs Act or any other law. Under Section 114, a penalty is imposed on the person who commits or abets the commission of any act rendering goods liable to confiscation under Section 113. Section 114AA further provides for a penalty for knowingly or intentionally using false or incorrect declarations, statements, or documents in any business connected with the customs, which may

[4] *Id.* § 11.
[5] *Id.* § 111.
[6] *Id.* § 112

extend to five times the value of the goods. Thus, the provisions provide for confiscation and personal penalties for improper exports, including those relating to prohibited or restricted goods.[7]

Section 125 – Option to pay fine in lieu of confiscation.

Section 125 allows the adjudicating authority to provide the owner the option to pay a fee in place of confiscation when goods are subject to confiscation under certain conditions. Because confiscation is not always the same as complete forfeiture, this clause is crucial.The availability of redemption depends upon the statutory and factual circumstances of the case.[8]

Section 135 – Evasion of Duty or Prohibitions.

Beyond civil consequences, Section 135 criminalises fraudulent evasion of duty and dealing in goods liable to confiscation, with imprisonment increasing with the value involved. For serious offences involving goods valued above ₹1 crore, duty evasion above ₹50 lakh, specified prohibited goods, or fraudulent drawback/exemption above ₹50 lakh, punishment may extend to 7 years' imprisonment and fine, generally with a minimum of one year. Other offences may attract up to 3 years' imprisonment, fine, or both.[9]

4.2 FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992

The FTDR Act provides the principal legislative framework for India's foreign trade policy. Its main objective is to promote exports and facilitate international trade. It operates upstream, at the level of policy and licensing.[10]

Section 3 – Regulation of imports and exports

Section 3(1) empowers the Central Government to make provisions for the development and regulation of foreign trade by facilitating imports and increasing exports. Section 3(2) also gives the Central Government the power to make provision for the prohibition, restriction, regulation of, import or export of goods, services. Section 3 (3) is significant in that it provides that goods covered by an order under section 3(2) shall be deemed to be goods whose import

---

[7] The Customs Act, No. 52 of 1962, §§ 113, 114, 114AA (India).
[8] *Id.* § 125.
[9] *Id.* § 135.
[10] Foreign Trade (Development and Regulation) Act, 1992, No. 22 of 1992, long title.

or export has been prohibited under section 11 of the Customs Act. Act.[11]

Section 5 – Foreign Trade Policy

The Foreign Trade Policy shall be formulated and amended by the Central Government.

The present FTP 2023 operates within this statutory framework.[12]

Section 7 – Importer-Exporter Code

Section 7 establishes the Importer-Exporter Code framework. The IEC serves as the basic registration required to carry international trade in India.[13]

Section 8 – Suspension or cancellation of IEC

The DGFT may suspend or cancel an IEC for reasons specified by law. This is a major administrative enforcement tool, separate from customs confiscation.[14]

Section 9 – Licences

Licences or authorizations may be issued, suspended or cancelled in accordance with section 9. Restrictions under foreign trade policy can thus be imposed by an authorization system.[15]

Section 11 – Contravention and penalty

Section 11 addresses contravention of the FTDR Act, rules, orders and foreign trade policy. It constitutes one of the principal enforcement provisions under the Act.[16]

Sections 13–16 – Adjudication and appeals

The FTDR Act provides for adjudication, hearing, appeal and review. This is relevant from the perspective of procedural fairness where enforcement must take place by established

[11] *id.* § 3.
[12] *Id.* § 5; Ministry of Commerce & Industry, *Foreign Trade Policy 2023* (2023).
[13] *id.* § 7.
[14] *id.* § 8.
[15] *id.* § 9.
[16] *id.* § 11.

adjudicatory mechanisms.[17]

5.ANALYSIS OF THE TOPIC

5.1 PROHIBITION AND RESTRICTION OF GOODS

A prohibition represents the strongest form of regulatory intervention. Where an item is categorised as prohibited, its import or export is ordinarily not permitted. Section 2(33) of the Customs Act defines "prohibited goods" "Prohibited goods" means goods whose import or export is prohibited under the Customs Act or any other law in force. However, goods are not treated as prohibited if they are allowed to be imported or exported subject to certain conditions and those conditions have been properly fulfilled.

A restriction does not necessarily amount to an absolute prohibition. Instead, the transaction may proceed after compliance with specified conditions. Examples may include, obtaining an import or export authorisation, satisfying end-use conditions, complying with quantity limitations.[18]

5.1.1 DISTINCTION: PROHIBITED AND RESTRICTED GOODS

The distinction between "prohibited" and "restricted" goods is vital to the Indian foreign-trade regulations. Under the Foreign Trade Policy and ITC(HS) goods can be broadly classified as free, restricted or prohibited. Restricted goods may be imported or exported subject to an authorization and compliance with specified conditions. Prohibited goods are generally not permitted to be imported or exported. The General Notes to the Export Policy of the DGFT expressly provide that restricted goods can be exported against a restricted export authorization and prohibited goods are not ordinarily allowed to be exported.[19]

Under customs law the distinction between restricted and prohibited goods is not absolute as a prohibition may be subject to conditions. At the policy level, restricted goods are generally allowed with the necessary authorization, whereas prohibited goods are generally not allowed.

---

[17] *Id.* §§ 13–16.

[18] Mahimna Dave, *Difference Between Prohibited and Restricted Goods in Light of the Customs Act, 1962*, JUS CORPUS (last visited Aug. 12, 2026), https://www.juscorpus.com/difference-between-prohibited-and-restricted-goods/.

[19] Directorate General of Foreign Trade, Ministry of Commerce & Industry, Government of India, *Import, Export and SCOMET Policy*, (Aug. 12, 2026), https://www.dgft.gov.in/CP/?opt=itchs-import-export.

However, at the enforcement stage, the goods would be liable to confiscation and penalties if there was non-compliance with the conditions attached to a restriction, the same as prohibited goods. Thus, the legal effect will depend on the specific statutory conditions that apply to the goods.[20]

5.1.2 THE INTERACTION BETWEEN CUSTOMS LAW AND FOREIGN TRADE LAW

The Customs Act, 1962 and the Foreign Trade (Development and Regulation) Act, 1992 perform different but complementary functions. The FTDR Act establishes the broader policy and regulatory framework for foreign trade, while the Customs Act provides the principal mechanism for enforcement at the border.

Section 3(2) of the FTDR Act empowers the Central Government to make provisions for prohibiting, restricting or otherwise regulating the import or export of goods, services or technology.[21] Significantly, Section 3(3) provides that goods covered by an order under Section 3(2) are deemed to be goods whose import or export has been prohibited under Section 11 of the Customs Act, and the provisions of the Customs Act apply accordingly.[22] Thus, a restriction imposed under the FTDR framework can acquire direct customs enforcement consequences.

The Customs Act, 1962 provides the principal legal framework for controlling imports and exports at the border. Section 11 empowers the Central Government to prohibit the import or export of specified goods either absolutely or subject to specified conditions for purposes such as national security, prevention of smuggling, protection of domestic industry, public health and conservation of natural resources.[23]

The FTDR Act complements this customs framework by providing the Central Government with powers under Sections 3 and 5 to regulate foreign trade through orders and the Foreign Trade Policy.[24] Where goods are classified as restricted under the applicable ITC(HS) framework and require DGFT authorisation, failure to comply with the applicable requirement may result in customs enforcement, including confiscation under the relevant provisions of the

[20] The Customs Act, No. 52 of 1962, §§ 2(33), 11, 111(d), 113(d) (India); *Union of India v. Raj Grow Impex LLP*, (2021) 5 S.C.C. 469.
[21] The Foreign Trade (Development and Regulation) Act, No. 22 of 1992, § 3(2) (India).
[22] Id. § 3(3).
[23] Customs Act, No. 52 of 1962, § 11(1)–(2) (India).
[24] Foreign Trade (Development and Regulation) Act, No. 22 of 1992, §§ 3, 5.

Customs Act.[25]

The two statutes therefore function as a regulatory system, while the FTDR Act establishing the policy and regulatory framework for foreign trade, and the Customs Act providing the means for enforcing that framework.

5.2 CUSTOMS CONFISCATION

The Customs Act adopts a goods-based enforcement mechanism through Sections 111 and 113. Section 111 specifies circumstances in which improperly imported goods become liable to confiscation, while Section 113 deals with goods attempted to be improperly exported.[26]

Section 111(d) is particularly significant because it covers goods imported contrary to a prohibition imposed by or under the Customs Act or any other law for the time being in force.[27] Similarly, Section 113(d) addresses goods attempted to be exported contrary to a prohibition imposed by or under the Customs Act or any other law.[28]These provisions are therefore important bridges between customs law and external regulatory regimes.

The importance of Sections 111 and 113 is that the direction of confiscation is against the goods and not merely against the person contravening. Thus, even if the underlying regulatory violation relates to a foreign trade restriction, the goods themselves may be subject to customs confiscation.

5.3 PENALTY FRAMEWORK

5.3.1 UNDER THE CUSTOMS ACT, 1962.

The Customs Act follows a graduated enforcement system involving confiscation, monetary penalties, redemption fine and criminal prosecution. Sections 112 and 114 deal with improper import and export, while Section 114AA covers false or incorrect customs documents.[29]Section

---

[25] Dhruil Kanabar, *Prohibited vs Restricted Goods Under Customs Act: List & Penalties*, BHATT & JOSHI ASSOCS. (last visited Aug. 12, 2026), https://bhattandjoshiassociates.com/prohibited-and-restricted-goods/.
[26] Customs Act, 1962, No. 52 of 1962, §§ 111, 113 (India). The current India Code identifies § 111 as dealing with confiscation of improperly imported goods and § 113 with confiscation of goods attempted to be improperly exported.
[27] *Id.* § 111(d).
[28] *Id.* § 113(d).
[29] The Customs Act, No. 52 of 1962, §§ 112, 114, 114AA (India).

125 allows redemption of confiscated goods on payment of a fine, where legally permitted.[30] Serious offences may also attract criminal prosecution under Section 135.[31]

Section 114AA adds another dimension to the enforcement framework by imposing a penalty for the knowing or intentional use of false or incorrect declarations, statements or documents in customs business.[32] This provision is particularly relevant where an importer or exporter deliberately misrepresents the nature, value, classification or regulatory status of goods to circumvent an import or export restriction.

The fact that there is a range of sanctions is useful in responding to different levels of wrongdoing. Proportionality comes into play for cases involving restricted goods, particularly where the breach is one of lack of authorization without fraudulent intent. Enforcement should thus take account of the nature and seriousness of the breach and not apply penalties mechanically.

5.3.2 UNDER THE FTDR ACT, 1992.

Under the Foreign Trade (Development and Regulation) Act, 1992, Section 3 empowers the Central Government to prohibit, restrict or regulate imports and exports, and Section 3(3) links such restrictions with customs enforcement. Section 11 provides penalties for contravention of the Act, rules, orders or Foreign Trade Policy, ranging from ₹10,000 to five times the value of the goods, services or technology involved. It also provides for confiscation of goods, packaging and conveyances and allows suspension of the Importer-Exporter Code (IEC) for non-payment of penalty. Section 12 permits additional punishment under other laws, while Section 14 ensures procedural safeguards by requiring notice and an opportunity of hearing before penalty or confiscation.[33]

6. IMPORTANT CASE LAWS AND POLICY EXAMPLES

6.1 Shaik Mohd Omer v. Collector of Customs

The Calcutta High Court clarified the meaning of "prohibition" under Section 2(33) of the

[30] *id.* § 125.
[31] *Id.* § 135.
[32] *Id.* § 114AA. Section 114AA concerns knowingly or intentionally making, signing or using false or incorrect declarations, statements or documents in customs business.
[33] The Foreign Trade (Development and Regulation) Act, No. 22 of 1992, §§ 3(2)–(3), 11, 12, 14 (India).

Customs Act. The Court held that "any prohibition" includes restrictions, as a restriction is a form of prohibition when compliance with prescribed conditions is required. Thus, even where goods are not absolutely prohibited, failure to fulfil the conditions attached to their import or export can make them liable to confiscation under Section 111(d). The case therefore establishes that the distinction between prohibited and restricted goods is not absolute for customs enforcement.[34]

6.2 Om Prakash Bhatia v. Commissioner of Customs, Delhi

The Supreme Court dealt with over-invoicing of ladies' garments for export to claim an excessive drawback. The exporter contended that Section 113(d) of the Customs Act did not apply because the goods were not prohibited. The Court rejected this contention and held that "prohibited goods" in Section 2(33) is not confined to those goods prohibited utterly. Section 11 provides for the prohibition of export, either absolute or subject to fulfilling specific conditions. If those conditions are not fulfilled, the goods would be treated as prohibited, attracting confiscation under Section 113(d).[35]

6.3 Horizon Ferro Alloys Pvt. Ltd. v. Union of India

The Punjab and Haryana High Court distinguished prohibited goods from restricted goods under the Customs Act, 1962. It held that goods having inherently prohibited or tainted characteristics, such as counterfeit currency or pornographic material, fall within the scope of prohibited goods under Section 2(33). However, merely exceeding a quantitative limit applicable to restricted goods does not automatically make those goods prohibited. Since the cigarettes and R-22 gas involved in the case were not expressly prohibited, the Court held that the importer could be given an opportunity to redeem the goods under Section 125. [36]

6.4 POLICY EXAMPLE

The SCOMET (Special Chemicals, Organisms, Materials, Equipment and Technologies) regime provides a useful example of modern foreign trade regulation. SCOMET items are sensitive or dual-use goods, technologies and materials whose export is regulated because of

[34] Sheikh Mohd. Omer v. Collector of Customs, (1970) 2 S.C.C. 728 (India).
[35] Om Prakash Bhatia v. Commissioner of Customs, Delhi (2003) 6 S.C.C. 161 (India).
[36] Horizon Ferro Alloys Pvt. Ltd. v. Union of India (2016) 340 ELT 27 (P& H).

their potential implications for national security and international non-proliferation obligations.

The DGFT's current SCOMET framework provides that listed items generally require an export authorisation unless the relevant entry permits export without authorisation or otherwise provides an exception.[37]Foreign Trade Policy 2023 consolidated the SCOMET framework and linked it to India's commitments under international export-control arrangements.[38]

7. FINDINGS AND SUGGESTIONS

The study finds that the distinction between prohibited and restricted goods is not absolute, as restrictions may carry customs consequences when their conditions are violated. The FTDR Act of 1992 and the Customs Act of 1962 function as complementary frameworks, with the Customs Act imposing border regulations and the FTDR Act governing international trade. While Sections 112, 114, and 114AA impose personal penalties for specified violations, Sections 111 and 113 allow for confiscation. Strong enforcement procedures are provided under the current framework, but more clarity, consistency, and proportionality are needed, especially when it comes to differentiating between technical non-compliance and intentional or fraudulent violations.

On this basis, the study suggests that clearer classification of prohibited and restricted goods should be provided through regularly updated DGFT and Customs guidelines. To guaranty that foreign-trade restrictions are applied consistently, DGFT and Customs must work together more. Penalties should be applied proportionately, distinguishing deliberate fraud and evasion from genuine or technical violations. Consistency in adjudication would be enhanced by more precise rules regarding confiscation, redemption fines, and monetary penalties.

8. CONCLUSION

The combined operation of the Customs Act, 1962 and the FTDR Act, 1992 forms the foundation of the Indian framework regarding prohibited and restricted goods. Restrictions must be applied clearly and proportionately in order to safeguard national and public interests. While the current system offers strong powers of confiscation and penalties, more consistency, clarity, and proportionality are required, particularly when it comes to differentiating

[37] DGFT, supra note 19.

[38] Directorate General of Foreign Trade, Ministry of Commerce & Industry, Government of India, *Foreign Trade Policy 2023* (2023).

intentional violation from legitimate or technical non-compliance. It would be easier to formulate balance between effective trade control and lawful trade facilitation with improved cooperation between DGFT and Customs, clearer classification of commodities, and predictable fines.

9. BIBLIOGRAPHY

9.1 STATUTES

- The Customs Act, No. 52 of 1962 (India).
- The Foreign Trade (Development and Regulation) Act, No. 22 of 1992 (India).

9.2 GOVERNMENT AND INSTITUTIONAL MATERIALS

- Directorate General of Foreign Trade, Ministry of Commerce & Industry, Government of India, *Foreign Trade Policy 2023* (2023).
- Directorate General of Foreign Trade, Ministry of Commerce & Industry, Government of India, *Import, Export and SCOMET Policy*, https://www.dgft.gov.in/CP/?opt=itchs-import-export.

9.3 ARTICLES / BLOGS

- Dhruil Kanabar, *Prohibited vs Restricted Goods Under Customs Act: List & Penalties*, BHATT & JOSHI ASSOCS., https://bhattandjoshiassociates.com/prohibited-and-restricted-goods/.
- Mahimna Dave, *Difference Between Prohibited and Restricted Goods in Light of the Customs Act, 1962*, JUS CORPUS, https://www.juscorpus.com/difference-between-prohibited-and-restricted-goods/.

9.4 CASES

- Horizon Ferro Alloys Pvt. Ltd. v. Union of India, 2016 (340) E.L.T. 27 (P. & H.).
- Om Prakash Bhatia v. Commissioner of Customs, Delhi, (2003) 6 S.C.C. 161 (India).
- Sheikh Mohd. Omer v. Collector of Customs, (1970) 2 S.C.C. 728 (India).
- Union of India v. Raj Grow Impex LLP, (2021) 5 S.C.C. 469 (India).