ROLE AND POWERS OF THE DIRECTOR GENERAL OF FOREIGN TRADE UNDER THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992

Adv. Akhil Lalichan, Bharata Mata School of Law, Aluva Ernakulam Kerala

ABSTRACT

The Director General of Foreign Trade (DGFT) occupies a pivotal position in India's foreign-trade administration. The Foreign Trade (Development and Regulation) Act, 1992 ("FTDR Act") establishes the statutory framework within which imports and exports are regulated, while the DGFT functions as the principal administrative authority responsible for implementing the foreign trade policy formulated by the Central Government. The statutory position of the DGFT is, however, frequently misunderstood. The DGFT is not an independent policy-making authority possessing unlimited legislative power. Section 6 of the FTDR Act creates a carefully structured relationship between the Central Government and the DGFT: the DGFT advises the Government on foreign trade policy, implements that policy, and exercises such powers as are lawfully delegated to it. Significantly, Section 6(3) excludes the powers under Sections 3, 5, 15, 16 and 19 from delegation. Thus, the DGFT's authority is substantial but legally circumscribed.

This article examines the statutory role, administrative responsibilities, regulatory powers and limitations of the DGFT under the FTDR Act, with particular emphasis on Sections 6, 7, 8, 9, 10, 11, 13, 15 and 16. It further analyses the relationship between the FTDR Act, Foreign Trade Policy 2023, Handbook of Procedures 2023 and the Foreign Trade (Regulation) Rules, 1993. Judicial decisions demonstrate that courts have consistently attempted to preserve the distinction between policy-making, which principally belongs to the Central Government, and policy implementation, which is entrusted substantially to the DGFT. The Supreme Court's decision in *Director General of Foreign Trade v. Kanak Exports* is especially important because it makes clear that the DGFT cannot amend the Foreign Trade Policy merely through a public notice when the statute reserves that power to the Central Government.

The article argues that the DGFT should be understood as a specialised statutory implementation authority situated at the intersection of trade facilitation, licensing, export promotion, compliance enforcement and administrative adjudication. Its effectiveness depends upon balancing commercial facilitation with national security, international obligations, procedural fairness and the rule of law. The article concludes by identifying areas where greater transparency, clearer delegation, improved grievance mechanisms and stronger procedural safeguards can enhance the legitimacy and efficiency of the DGFT.

Keywords: Director General of Foreign Trade, DGFT, FTDR Act 1992, Foreign Trade Policy, Importer-Exporter Code, export promotion, import regulation, licensing authority, delegated powers, foreign trade law.

LIST OF ABBREVIATIONS

Abbreviation	Meaning
DGFT	Directorate General of Foreign Trade / Director General of Foreign Trade
FTDR Act	Foreign Trade (Development and Regulation) Act, 1992
FTP	Foreign Trade Policy
HBP	Handbook of Procedures
IEC	Importer-Exporter Code
ITC (HS)	Indian Trade Classification (Harmonised System)
WTO	World Trade Organization
GATT	General Agreement on Tariffs and Trade
SEZ	Special Economic Zone
MSME	Micro, Small and Medium Enterprise
SCC	Supreme Court Cases
SCC OnLine	Supreme Court Cases Online
AIR	All India Reporter
UOI	Union of India
CG	Central Government
RA	Regional Authority
WMD	Weapons of Mass Destruction

1. INTRODUCTION

Foreign trade is not merely an economic activity; it is also an instrument of national economic policy, diplomacy, national security and international cooperation. The ability of the State to regulate imports and exports therefore has implications extending beyond the commercial relationship between an importer, exporter and foreign counterparty. India's contemporary foreign-trade framework is principally administered through the Foreign Trade (Development and Regulation) Act, 1992, the Foreign Trade Policy and subordinate rules, notifications, public notices and procedures.

The FTDR Act was enacted against the background of India's economic liberalisation and the transformation of the earlier import-control regime. Its long title reflects a dual objective: facilitating imports and augmenting exports while providing for the development and regulation of foreign trade. The statute consequently does not adopt a purely restrictive model. Instead, it creates an administrative structure intended to facilitate legitimate trade while permitting the Government to restrict or prohibit trade where economic, strategic, security or international considerations justify such intervention.

Within this structure, the Directorate General of Foreign Trade and the office of the Director General of Foreign Trade occupy a central position. The Ministry of Commerce and Industry describes DGFT as an attached office of the Ministry, headed by the Director General of Foreign Trade. The DGFT therefore functions as an important administrative arm of the Union Government in implementing India's foreign-trade framework.

Section 6 is the central statutory provision concerning the DGFT. It authorises the Central Government to appoint the Director General and provides that the DGFT shall advise the Government in formulating foreign trade policy and shall be responsible for carrying out that policy. The provision further permits delegation of specified governmental powers, but expressly excludes Sections 3, 5, 15, 16 and 19. This limitation is fundamental because it prevents the DGFT from assuming powers which Parliament has reserved to the Central Government or allocated differently under the statutory scheme.

The practical importance of the DGFT is considerably broader than the wording of Section 6 alone might suggest. The DGFT administers the Importer-Exporter Code system, licensing mechanisms, export authorisations, certificates and fiscal instruments, compliance measures, policy interpretation and several trade-facilitation mechanisms. Under the present Foreign Trade Policy 2023, the DGFT also has an important role in interpreting policy, granting relaxation in appropriate cases and operating institutional mechanisms such as the Policy Relaxation Committee.

The judicial interpretation of these powers has been equally significant. Courts have repeatedly emphasised that administrative convenience cannot enlarge statutory authority. In *Director*

General of Foreign Trade v. Kanak Exports, the Supreme Court held that the DGFT could not use a public notice to effectively amend the Export-Import Policy because the statutory authority to formulate and amend the policy remained with the Central Government. The decision establishes an important principle: implementation cannot become legislation.

Accordingly, an examination of the DGFT requires a distinction between **policy formulation**, **policy implementation**, **administrative regulation**, **licensing**, **enforcement**, **adjudication** and **delegated authority**. The present article analyses these dimensions and evaluates whether the existing legal framework sufficiently balances executive flexibility with legal accountability.

2. OBJECTIVES OF THE STUDY

The principal objectives of this article are:

1) To examine the statutory position of the Director General of Foreign Trade under the FTDR Act, 1992.

2) To analyse the functions and powers assigned to the DGFT under Sections 6, 7, 8, 9, 10 and 11 and other connected provisions.

3) To distinguish between the powers of the Central Government and those which may lawfully be exercised by the DGFT.

4) To examine the role of the DGFT under the Foreign Trade Policy 2023 and Handbook of Procedures 2023.

5) To analyse important judicial decisions defining the limits of DGFT's authority.

6) To examine the relationship between trade facilitation and regulatory enforcement.

7) To identify procedural and institutional shortcomings in the existing framework.

8) To suggest reforms capable of improving transparency, efficiency, accountability and consistency in DGFT administration.

3. RESEARCH METHODOLOGY

The article adopts a doctrinal legal research methodology. Primary materials include the Foreign Trade (Development and Regulation) Act, 1992, the Foreign Trade (Regulation) Rules, 1993, Foreign Trade Policy 2023, Handbook of Procedures 2023, relevant government notifications and judicial decisions of the Supreme Court and High Courts. Secondary materials include textbooks, commentaries, academic writings and authoritative online legal resources.

The analysis is primarily statutory and case-law based. Particular attention is given to Section 6 because the nature and extent of the DGFT's authority largely depend upon the statutory distinction between powers retained by the Central Government and powers capable of delegation to the DGFT. The article also uses recent judicial developments to demonstrate how courts continue to apply this distinction in contemporary foreign-trade disputes.

4. LEGAL FRAMEWORK GOVERNING FOREIGN TRADE IN INDIA

4.1 Constitutional framework

The Union's power over foreign trade derives from the constitutional distribution of legislative and executive authority. Foreign affairs, international treaties, customs and several aspects of inter-State and international commerce fall within the Union's sphere. Article 73 of the Constitution extends the executive power of the Union to matters with respect to which Parliament has power to make laws, subject to constitutional limitations.[1]

The FTDR Act provides the specific statutory framework for regulating imports and exports. It is therefore not appropriate to view DGFT powers in isolation. The authority of the DGFT must be traced to the Act, the Foreign Trade Policy, valid rules and notifications, and lawful delegation. Where a particular power is reserved to the Central Government, an administrative authority cannot acquire that power merely because it is institutionally connected with the Ministry of Commerce.[2]

4.2 Foreign Trade (Development and Regulation) Act, 1992

The FTDR Act is the principal legislation governing India's import-export regulatory system.

[1] Constitution of India, arts. 73, 246 and relevant entries of the Union List.
[2] *Sanmarg Private Limited v. Union of India*, Calcutta High Court, 5 October 2018

Section 3 empowers the Central Government to make provisions relating to the development and regulation of foreign trade. Section 5 empowers the Central Government to formulate and announce the foreign trade policy. Section 6 then establishes the statutory position of the DGFT.[3]

The Act further provides for the Importer-Exporter Code under Section 7, suspension and cancellation of IEC under Section 8, licensing and cancellation under Section 9, search and seizure under Section 10, penalties and confiscation under Section 11, adjudication under Section 13, appeals under Section 15 and review under Section 16. These provisions collectively demonstrate that the DGFT is both an implementation authority and, where the statute or valid delegation permits, an enforcement authority.

4.3 Foreign Trade (Regulation) Rules, 1993

The Foreign Trade (Regulation) Rules, 1993 were made by the Central Government under Section 19 of the FTDR Act. They provide procedural details concerning licensing, special licences, fees, conditions and other matters contemplated by the parent statute. Because the rule-making power under Section 19 belongs to the Central Government, the DGFT cannot independently assume the legislative rule-making authority contained in that section.[4]

4.4 Foreign Trade Policy 2023

Foreign Trade Policy 2023 represents the current policy framework governing India's foreign trade. It is issued by the Central Government under Section 5 of the FTDR Act. The policy places significant emphasis on export promotion, ease of doing business, technology-driven procedures, district-level export promotion, trade facilitation and reduction of transaction costs.

The Policy also gives the DGFT substantial implementation responsibilities. Paragraph 2.58 provides that the decision of DGFT is final and binding on matters relating to interpretation of the Policy, Handbook of Procedures, Appendices, Aayat Niryat Forms and classification of items for import/export in ITC (HS), subject to the statutory framework. Paragraph 2.59 further permits DGFT to grant specified exemptions, relaxations or reliefs in cases of genuine hardship

[3] Foreign Trade (Development and Regulation) Act, 1992, §§ 3, 5 and 6.

[4] Foreign Trade (Regulation) Rules, 1993, G.S.R. 791(E), dated 30 December 1993

and adverse impact on trade, subject to the conditions prescribed therein.[5]

4.5 Handbook of Procedures 2023

The Handbook of Procedures operationalises the Foreign Trade Policy. It establishes procedures to be followed by exporters, importers, Regional Authorities and other implementing bodies. The Handbook of Procedures 2023 was notified by the DGFT through Public Notice No. 1/2023 dated 1 April 2023 pursuant to the authority contained in the Foreign Trade Policy.

This distinction between policy and procedure is legally significant. The Central Government formulates the policy, while the DGFT gives practical effect to it through procedures, forms, authorisations, administrative directions and implementation mechanisms. The DGFT's procedural role is consequently extensive but cannot lawfully be transformed into an independent power to rewrite the underlying policy.[6]

5. APPOINTMENT AND STATUTORY POSITION OF THE DGFT

Section 6(1) provides that the Central Government may appoint any person as the Director General of Foreign Trade for the purposes of the FTDR Act. The appointment is therefore statutory in character and the office derives its authority from legislation rather than merely from an internal administrative arrangement.

Section 6(2) identifies two fundamental responsibilities. First, the DGFT advises the Central Government in the formulation of foreign trade policy. Secondly, the DGFT is responsible for carrying out that policy. The wording reveals a deliberate division of functions: the DGFT contributes expertise to policy formulation but does not thereby become the ultimate policy-making authority. This distinction has been repeatedly recognised by the judiciary. In *M/s Deepak Enterprises v. Union of India*, the Delhi High Court observed that the DGFT is appointed for the purposes of the Act and is responsible for carrying out the export-import policy formulated by the Central Government. The judgment illustrates that the DGFT's role is

[5] Foreign Trade Policy 2023, paras. 2.58–2.60

[6] *Director General of Foreign Trade v. Kanak Exports*, (2016) 2 SCC 226.

primarily one of implementation within the statutory framework.[7]

6. ROLE OF THE DIRECTOR GENERAL OF FOREIGN TRADE

6.1 Policy advisory role

The first important function of the DGFT is to advise the Central Government in the formulation of foreign trade policy. The DGFT is institutionally positioned close to exporters, importers, licensing authorities and industry, and therefore possesses practical knowledge concerning trade barriers, compliance difficulties and international market conditions.

The advisory function is particularly important because foreign trade policy frequently requires technical knowledge concerning products, technology, export markets, supply chains, international agreements and strategic commodities. The DGFT's administrative experience enables the Government to formulate policies which are capable of practical implementation.[8]

6.2 Implementation of foreign trade policy

The central responsibility of the DGFT is implementation. Once the Central Government formulates foreign trade policy, the DGFT translates the broad policy into procedures, authorisations, licences, notifications within its lawful authority, administrative directions and digital systems.

The Supreme Court in *Director General of Foreign Trade v. Kanak Exports* made the distinction particularly clear. The Court recognised the DGFT's responsibility to carry out the policy but held that the DGFT's powers are primarily procedural and implementation-oriented and cannot be used to exercise the Central Government's reserved policy-making powers.[9]

6.3 Administration of the Importer-Exporter Code

Section 7 provides that imports and exports ordinarily require an Importer-Exporter Code number granted by the DGFT or an officer authorised by it, in accordance with the prescribed

---

[7] *M/s Deepak Enterprises v. Union of India & Ors.*, W.P. (C) No. 5935/2017, decided 19 January 2018 (Delhi High Court).

[8] Ibid.

[9] *Director General of Foreign Trade v. Kanak Exports*, (2016) 2 SCC 226.

procedure. The IEC system therefore constitutes one of the principal regulatory gateways through which businesses enter the formal foreign-trade system.

The IEC framework allows the Government to identify and monitor persons participating in international trade. At the same time, the digitalisation of the system has substantially reduced the administrative burden associated with obtaining and maintaining trade registration. The DGFT consequently performs both a regulatory and facilitative role.[10]

6.4 Suspension and cancellation of IEC

Section 8 gives the DGFT significant enforcement powers. Where statutory grounds exist, the DGFT or an authorised officer may call for records or information and, after following the prescribed notice and hearing requirements, suspend or cancel an IEC.

The grounds include contravention of the FTDR Act, rules or orders, foreign trade policy, certain customs, excise or foreign-exchange laws and specified economic offences. The provision also addresses conduct prejudicial to India's trade relations or the interests of persons engaged in foreign trade. Importantly, Section 8 incorporates procedural safeguards. The affected person must be informed of the proposed action and given an opportunity to make a representation and, where requested, to be heard. The DGFT's power is therefore not an unregulated administrative discretion. It is subject to statutory procedure and principles of natural justice.[11]

6.5 Grant and regulation of licences

Section 9 represents another major source of DGFT authority. The DGFT or an officer authorised by it may, after inquiry, grant or renew or refuse to grant or renew licences for prescribed classes of goods, services or technology. The provision also extends to certificates, scrips and instruments conferring financial or fiscal benefits.[33]

The licensing function demonstrates how the DGFT acts as the operational regulator of India's trade policy. A policy may classify an item as restricted, but the actual administration of the

[10] Ibid.; Foreign Trade Policy 2023.
[11] Ibid., § 8(1).

restriction often occurs through licensing decisions taken by DGFT authorities. This makes the quality, consistency and transparency of DGFT decision-making particularly important.

Section 9(4) also authorises suspension or cancellation of licences, certificates, scrips and other specified instruments for good and sufficient reasons recorded in writing, subject to a reasonable opportunity of hearing. The requirement to record reasons strengthens administrative accountability and permits effective appellate review.[12]

The Delhi High Court in *M/s Supreme Castings Ltd. v. Joint Director General of Foreign Trade* recognised the significance of Section 9 in the licensing framework and considered questions concerning the authority's power in relation to import licences. The decision demonstrates that licensing powers must remain connected to the statutory framework and cannot be exercised arbitrarily.

7. DELEGATED POWERS UNDER SECTION 6(3)

Section 6(3) is perhaps the most important limitation on the authority of the DGFT. It provides that the Central Government may, by an order published in the Official Gazette, direct that powers exercisable by it under the Act may also be exercised by the DGFT or an officer subordinate to the DGFT, subject to specified conditions. However, the provision expressly excludes Sections 3, 5, 15, 16 and 19. Consequently, the DGFT cannot acquire through delegation the power to make provisions under Section 3, formulate or amend the foreign trade policy under Section 5, exercise appellate powers reserved under Section 15, undertake the review contemplated by Section 16 in the manner reserved to the Central Government, or make rules under Section 19.[13]

This limitation is not merely technical. It reflects the principle that delegated administrative power must remain within the boundaries prescribed by the enabling statute. The Central Government cannot delegate what Parliament has expressly made non-delegable, and the DGFT cannot enlarge its own jurisdiction by administrative practice.

The Supreme Court's decision in *Director General of Foreign Trade v. Kanak Exports* is the leading authority on this issue. The Court held that the Central Government alone possessed

[12] Ibid., § 9(4).
[13] Foreign Trade (Development and Regulation) Act, 1992, § 6(3).

the statutory power to formulate and amend the policy under Section 5. The DGFT's attempt to alter the policy through a public notice was therefore held beyond its authority.[14]

The same principle was reinforced in *Union of India v. Agricas LLP*. The Supreme Court considered the interaction between Central Government notifications under Section 3 and a Trade Notice issued by DGFT. The case confirms the significance of the statutory division between Central Government policy powers and DGFT implementation powers.[15]

8. DGFT AS A POLICY-IMPLEMENTATION AUTHORITY

The most accurate description of the DGFT is therefore not that it is the "maker" of foreign trade policy, but that it is the principal **administrator and implementer** of that policy. Its role involves translating governmental policy into operational decisions capable of being applied to individual exporters, importers, products and transactions.

This distinction is particularly important in a regulatory environment where public notices, circulars, trade notices, policy circulars and procedural instructions may have significant commercial consequences. An administrative instruction cannot, merely because it is issued by the DGFT, override the FTDR Act or amend a policy provision which the statute reserves to the Central Government.[16]

The Calcutta High Court in *Sanmarg Private Limited v. Union of India* applied this principle directly. The Court held that the DGFT could not exercise powers under Sections 3 or 5 because Section 6(3) expressly excludes those powers from delegation. The Court also emphasised the requirement that a delegation order under Section 6(3) must be published in the Official Gazette.[17]

9. POWER RELATING TO SEARCH AND SEIZURE

Section 10 concerns search, inspection and seizure. The provision permits the Central Government to authorise persons by notification in the Official Gazette to exercise specified powers relating to premises, goods, documents, things and conveyances connected with imports and exports. The provision is significant because foreign-trade regulation cannot be

[14] *Director General of Foreign Trade v. Kanak Exports*, (2016) 2 SCC 226.
[15] *Union of India v. Agricas LLP*, 2020 SCC OnLine SC 675.
[16] *Director General of Foreign Trade v. Kanak Exports*, (2016) 2 SCC 226.
[17] *Sanmarg Private Limited v. Union of India*, 5 October 2018.

effective if the regulatory authority has no mechanism to investigate suspected violations. Search and seizure powers enable the administration to secure evidence, identify prohibited or improperly imported/exported goods and investigate possible violations of the FTDR framework.[18]

However, the exercise of these powers is subject to statutory requirements and the applicable safeguards concerning search and seizure. The Act also incorporates, so far as applicable, the procedural provisions of the Code of Criminal Procedure relating to searches and seizures.

The historical notifications issued under the Act demonstrate that various DGFT officers, including Additional, Joint, Deputy and Assistant Directors General, have been authorised to exercise enforcement powers. This illustrates the administrative hierarchy through which the DGFT's statutory responsibilities are operationalised.[19]

10. PENALTY, CONFISCATION AND ENFORCEMENT

Section 11 deals with contraventions of the FTDR Act, rules, orders and foreign trade policy. It provides for monetary penalties where a person makes, abets or attempts to make an import or export in contravention of the statutory or policy framework. The provision reflects the enforcement dimension of foreign-trade administration. The DGFT is not concerned only with facilitating transactions; it must also protect the integrity of the regulatory system. Without enforcement powers, licensing conditions, export obligations and restrictions could become ineffective.[20]

Section 11 further provides mechanisms for recovery of penalties. Where a penalty is unpaid, the Director General may employ specified recovery mechanisms, including deductions from money payable to the person, requiring customs authorities to recover amounts and, in prescribed circumstances, recovery as arrears of land revenue.

The enforcement jurisdiction, however, is constrained by principles of legality and fair procedure. In *Embio Limited v. Director General of Foreign Trade*, the Supreme Court

[18] Ibid.
[19] Ministry of Commerce/DGFT, historical authorisation notifications under Sections 9, 10, 13 and 15 of the FTDR Act.
[20] Foreign Trade Policy 2023, para. 2.58.

emphasised that Section 11(2) is penal in character and must be strictly construed. The Court set aside a penalty where the statutory ingredients of the contravention were not established.

This judgment is important for the DGFT because it demonstrates that enforcement objectives cannot substitute for statutory proof. A regulatory authority may have legitimate concerns about an export obligation or licensing condition, but penalty jurisdiction must be exercised only where the conduct falls within the language of the penal provision.[21]

11. ADJUDICATORY ROLE AND NATURAL JUSTICE

The FTDR Act creates a statutory adjudicatory framework under Section 13. The adjudicating authority is empowered to determine specified contraventions and impose penalties or take other measures authorised by the Act. The DGFT administration therefore operates partly within an adjudicatory environment. Orders affecting licences, IECs, financial benefits and penalties may have serious commercial consequences. Such decisions must consequently conform to statutory requirements, natural justice and reasoned decision-making.[22]

Section 14 requires an opportunity to be given to the owner of goods or other affected persons before specified adverse consequences are imposed. Section 15 establishes appellate remedies, while Section 16 provides a review mechanism in the circumstances specified by the statute.[23]

The recent Delhi High Court decisions involving personal liability of company directors illustrate the importance of procedural fairness. In *Ajit Gulabchand v. Director General of Foreign Trade*, the Court held that personal liability under Section 11(2) cannot be imposed merely because a person happens to be a director. There must be a basis for attributing responsibility, and the concerned individual must receive appropriate notice and an opportunity to respond.

Similarly, in *Tukaram Bhat v. Director General of Foreign Trade*, the Delhi High Court stressed the need for the adjudicating authority to consider the individual's actual role and provide reasons for fastening personal liability.[24]

[21] Ibid

[22] Ibid., §§ 13–16.

[23] *Ajit Gulabchand v. Director General of Foreign Trade*, W.P.(C) 4260/2014, Delhi High Court, 2025.

[24] *Tukaram Bhat v. Director General of Foreign Trade*, W.P.(C) 6421/2014, Delhi High Court, 22 April 2025.

12. DGFT'S POWER OF POLICY INTERPRETATION

Foreign Trade Policy 2023 expressly recognises a significant interpretive function of the DGFT. Paragraph 2.58 states that the decision of DGFT is final and binding on matters relating to interpretation of the Policy, the Handbook of Procedures, Appendices and Aayat Niryat Forms, as well as classification of items for import/export under ITC (HS).

This power is practically important because foreign-trade policy contains technical classifications and complex procedural requirements. Exporters frequently require authoritative clarification concerning whether a product is freely exportable, restricted, prohibited or subject to a particular authorisation or condition.

Nevertheless, interpretive authority must not be confused with legislative authority. Interpretation explains an existing policy provision; it cannot be used to create a substantially new restriction or alter the basic content of a policy where such alteration is legally reserved for the Central Government. The distinction drawn in *Kanak Exports* remains applicable.[25]

13. POWER TO GRANT RELAXATION

Foreign Trade Policy 2023 also gives the DGFT a significant facilitative function. Paragraph 2.59 permits DGFT, in public interest, to grant exemption, relaxation or relief from provisions of the Policy or procedures on grounds including genuine hardship and adverse impact on trade, subject to prescribed conditions and consultation with relevant committees.[26]

This power recognises the practical reality that rigid application of general trade rules may sometimes produce disproportionate hardship. Foreign trade transactions involve fluctuating markets, transport disruptions, technological changes, geopolitical developments and circumstances beyond the control of exporters. A structured relaxation mechanism can therefore prevent unnecessary economic loss while preserving the overall policy framework.

At the same time, relaxation powers should be exercised through transparent criteria. If similar traders receive different treatment without intelligible reasons, the legitimacy of the regulatory

[25] *Director General of Foreign Trade v. Kanak Exports*, (2016) 2 SCC 226.

[26] Foreign Trade Policy 2023, para. 2.59

system may be questioned. Written reasons, published precedents and consistent standards can reduce arbitrariness and strengthen confidence in DGFT decision-making.[27]

14. DGFT AND EXPORT PROMOTION

The role of DGFT is not limited to controlling trade. The broader statutory objective is to facilitate imports and augment exports. The DGFT therefore has an important export-promotion function through implementation of various authorisation, remission, exemption and facilitation schemes.

Foreign Trade Policy 2023 adopts a facilitative approach by emphasising technology, reduction of transaction costs and institutional support for exporters. DGFT Regional Authorities also participate in district-level export promotion through the Districts as Export Hubs initiative and related institutional structures.

This reflects an important evolution in the DGFT's role. The traditional image of the DGFT as a licensing bureaucracy is increasingly incomplete. Modern DGFT administration involves digital trade facilitation, export promotion, policy interpretation, grievance redressal, compliance monitoring and engagement with industry.[28]

15. DGFT AND INTERNATIONAL TRADE OBLIGATIONS

India's foreign-trade law does not operate in isolation from international law and international economic relations. The FTDR Act expressly incorporates concepts relating to international obligations, including specified goods, services and technology connected with national security, foreign policy and international arrangements.

The Supreme Court's decision in *Union of India v. Agricas LLP* illustrates the importance of this international dimension. The case concerned restrictions on imports of agricultural commodities and involved questions relating to the FTDR Act, GATT 1994 and India's international obligations. The Supreme Court upheld the relevant Central Government notifications and recognised the statutory basis for imposing import restrictions under Section 3.

---

[27] Ibid.

[28] Ministry of Commerce and Industry, Government of India, DGFT organisational information.

The case also demonstrates why the DGFT must carefully distinguish between policy implementation and policy creation. Where a restriction is imposed by the Central Government under Section 3, DGFT may perform the procedural and administrative tasks necessary for implementing that restriction, but it cannot independently assume the Central Government's reserved legislative or policy function.[29]

16. IMPORTANT CASE LAWS

16.1 Director General of Foreign Trade v. Kanak Exports

This is the leading Supreme Court authority concerning the limits of DGFT power. The dispute arose from changes affecting the EXIM Policy 2002–2007. The Supreme Court held that the Central Government possesses the authority under Section 5 to formulate and amend foreign trade policy and that the DGFT cannot exercise that power through a public notice.[30]

The judgment establishes three important principles. First, the power to formulate and amend policy belongs to the Central Government. Secondly, Section 6(3) expressly prevents delegation of the powers under Sections 3 and 5. Thirdly, the DGFT's role is primarily to implement policy and exercise procedural powers lawfully entrusted to it.

The significance of *Kanak Exports* extends beyond foreign trade. It represents a broader administrative-law principle that an executive authority cannot expand its statutory jurisdiction through subordinate instruments. The case therefore reinforces separation of powers, delegated legislation principles and administrative accountability.

16.2 Union of India v. Agricas LLP

In *Union of India v. Agricas LLP*, the Supreme Court considered restrictions imposed on imports of peas and other pulses. The dispute involved the relationship between Section 3(2), Section 9A and the role of DGFT in implementing Central Government restrictions.

The Court upheld the relevant Central Government notifications and clarified that Section 9A does not eliminate the Central Government's power under Section 3(2) to impose quantitative restrictions. The case demonstrates that the source of regulatory power must be identified

[29] *Union of India v. Agricas LLP*, 2020 SCC OnLine SC 675.
[30] *Director General of Foreign Trade v. Kanak Exports*, (2016) 2 SCC 226.

carefully and that a DGFT Trade Notice implementing a valid governmental policy must be distinguished from an attempt by DGFT to independently create policy.[31]

16.3 M/s Deepak Enterprises v. Union of India

The Delhi High Court in *M/s Deepak Enterprises v. Union of India* examined the DGFT's role under Section 6 in the context of a dispute concerning Terminal Excise Duty and deemed exports. The Court reiterated that DGFT is responsible for implementing the export-import policy formulated by the Central Government.

The decision is useful for understanding the institutional character of DGFT. The authority possesses significant administrative powers, but those powers remain subordinate to the statutory scheme and cannot be treated as a general power to alter policy.[32]

16.4 Sanmarg Private Limited v. Union of India

In *Sanmarg Private Limited v. Union of India*, the Calcutta High Court directly addressed the legality of a DGFT notification which allegedly altered foreign trade policy. The Court held that the DGFT could not exercise powers under Sections 3 or 5 because those provisions are specifically excluded from delegation under Section 6(3).[33]

The decision also emphasised the importance of publication of the delegation order in the Official Gazette. This requirement ensures that the source and extent of administrative authority are ascertainable and publicly verifiable.

16.5 M/s Supreme Castings Ltd. v. Joint Director General of Foreign Trade

The case concerned questions regarding the authority to retrospectively amend an import licence and the procedural safeguards associated with such action. The decision demonstrates the importance of Section 9 in defining the licensing authority's powers and the need to exercise those powers within the statutory framework.[34]

---

[31] *Union of India v. Agricas LLP*, 2020 SCC OnLine SC 675..

[32] *M/s Deepak Enterprises v. Union of India & Ors.*, W.P. (C) No. 5935/2017, Delhi High Court, 19 January 2018.

[33] *Sanmarg Private Limited v. Union of India*, 5 October 2018.

[34] *M/s Supreme Castings Ltd. v. Joint Director General of Foreign Trade*, decided 17 August 2016

16.6 Embio Limited v. Director General of Foreign Trade

The Supreme Court's 2024 decision in *Embio Limited v. Director General of Foreign Trade* is particularly relevant to the enforcement dimension of DGFT administration. The Court held that Section 11(2) is a penal provision and must be strictly construed. In the absence of the statutory ingredients necessary to constitute the contravention, the penalty could not be sustained.

The case reinforces a critical proposition: DGFT enforcement powers are powerful but not unlimited. Regulatory authorities must establish a statutory violation before imposing a penalty, and administrative assumptions cannot replace the legal requirements of a penal provision.[35]

16.7 Ajit Gulabchand v. Director General of Foreign Trade

The Delhi High Court's 2025 decision in *Ajit Gulabchand v. DGFT* concerned the personal liability of an independent non-executive director for a company's failure to fulfil export obligations. The Court emphasised that mere designation as a director is insufficient to establish personal liability. There must be a demonstrated duty, obligation or conscious failure connected with the contravention.

The case is significant because it places procedural and substantive limits on the enforcement powers exercised by DGFT authorities. It also reinforces the principle that individual liability cannot be presumed merely from corporate status.[36]

17. LIMITATIONS ON THE POWERS OF DGFT

The first and most important limitation is statutory. Section 6(3) expressly excludes Sections 3, 5, 15, 16 and 19 from delegation. Consequently, DGFT cannot independently formulate or amend the foreign trade policy or exercise the Central Government's rule-making power under Section 19.

The second limitation arises from the principles of delegated legislation. An administrative

---

[35] *Embio Limited v. Director General of Foreign Trade & Ors.*, Civil Appeal No. 6394 of 2024, decided 13 May 2024.

[36] *Ajit Gulabchand v. Director General of Foreign Trade*, Delhi High Court, 2025.

authority must exercise only those powers conferred by the parent statute or validly delegated under it. Any action going beyond the enabling provision is vulnerable to judicial review.

The third limitation is procedural. Powers relating to IEC suspension, licence cancellation and penalties may affect significant commercial interests. The statutory requirements of notice, hearing, recording of reasons and appellate remedies must therefore be respected. The fourth limitation arises from constitutional administrative law. DGFT decisions remain subject to judicial review under Articles 226 and 32 where appropriate. The existence of statutory finality clauses or administrative expertise does not generally remove the authority's actions from constitutional scrutiny where jurisdictional error, arbitrariness, violation of natural justice or other legal infirmity is established.[37]

The fifth limitation is the principle of proportionality. Although the FTDR Act permits strong enforcement measures, the exercise of regulatory power should correspond to the nature and seriousness of the violation. A modern trade regulator must pursue compliance without unnecessarily imposing disproportionate burdens on legitimate commercial activity.[38]

18. CRITICAL ANALYSIS

The DGFT occupies an unusual position because it simultaneously performs facilitative, regulatory, licensing, interpretive and enforcement functions. This concentration of administrative responsibilities is understandable because foreign trade requires specialised expertise and rapid decision-making. However, it also creates the possibility of excessive administrative discretion.

One of the strongest features of the present system is its flexibility. International commerce changes rapidly, and a rigid statutory system would be unable to respond efficiently to changing market conditions. The delegation of implementation powers to DGFT allows the administration to respond to commercial realities without requiring legislative amendment for every procedural issue.

At the same time, flexibility must not become unpredictability. Exporters and importers often make contractual commitments months before shipment. Sudden changes in administrative

[37] Constitution of India, arts. 32 and 226.
[38] *Embio Limited v. Director General of Foreign Trade*, Civil Appeal No. 6394 of 2024, decided 13 May 2024.

interpretation can therefore have substantial economic consequences. The distinction drawn in *Kanak Exports* provides an important safeguard against administrative alteration of substantive policy.[39]

Another significant issue concerns the publication and accessibility of administrative instructions. Foreign-trade law consists not only of the parent statute but also of policies, notifications, public notices, circulars, procedures, appendices and digital instructions. The regulatory burden can become difficult for small exporters and MSMEs to navigate. Simplification and consolidation are therefore essential components of effective trade governance.

The digitalisation of DGFT services represents a major improvement. Online IEC management, electronic applications and digital authorisation systems have reduced physical interaction and transaction costs. Nevertheless, digitalisation should not be treated as synonymous with transparency. Users must also be able to understand why an application was rejected, what evidence is required and what remedy is available.[40]

19. FINDINGS

The study produces the following principal findings:

First, the DGFT is fundamentally an implementation authority. Section 6 gives it a central role in implementing foreign trade policy but does not make it the independent maker of that policy.

Second, the Central Government retains important non-delegable powers. Sections 3, 5, 15, 16 and 19 are expressly excluded from delegation under Section 6(3).

Third, the DGFT exercises extensive administrative powers in relation to IECs, licences, certificates, scrips, authorisations and trade procedures. These powers are central to India's foreign-trade administration.

Fourth, the DGFT's enforcement authority is substantial but must be exercised according to statutory conditions and principles of natural justice. Recent cases such as *Embio* demonstrate

[39] *Director General of Foreign Trade v. Kanak Exports*, (2016) 2 SCC 226.
[40] Ministry of Commerce and Industry, DGFT organisational information.

that penalties cannot be imposed unless the statutory ingredients of contravention are established.

Fifth, judicial decisions consistently discourage the DGFT from converting procedural or interpretive authority into substantive policy-making power. *Kanak Exports* remains the leading authority on this distinction.

Sixth, the Foreign Trade Policy 2023 has expanded the DGFT's practical facilitation and interpretive functions, including policy interpretation and relaxation in cases of genuine hardship.[1]

Seventh, the modern DGFT is no longer merely a licensing office. It is an integrated trade-governance institution dealing with digital facilitation, export promotion, policy implementation, compliance, dispute resolution and administrative enforcement.

20. SUGGESTIONS

20.1 Clearer separation between policy and procedure

The Government should continue to maintain a clear distinction between substantive policy decisions and procedural implementation. Any amendment that changes the substance of foreign trade policy should be issued through the legally prescribed mechanism by the competent authority rather than through administrative instructions.

20.2 Comprehensive publication of delegation orders

Delegation orders under Section 6(3) should be consolidated and made easily accessible on the DGFT website. Exporters should be able to determine precisely which officer possesses which power and the geographical or monetary limits applicable to that power.[41]

20.3 Reasoned administrative decisions

Orders relating to suspension, cancellation, licence refusal and penalties should contain clear reasons addressing the material submissions of the affected party. This would improve

[41] FTDR Act, § 6(3); historical DGFT delegation notifications.

transparency and reduce avoidable litigation.

20.4 Strengthening natural justice

Before adverse administrative action is taken, the affected party should receive adequate notice, sufficient time to respond and, where appropriate, a meaningful personal hearing. Digital hearings can be used to improve access while reducing delay and cost.

20.5 Publication of interpretive decisions

Since DGFT has an important interpretive function under FTP 2023, significant interpretations should be published in an indexed and searchable database. This would promote consistency and allow exporters to structure their transactions with greater certainty.

20.6 Better grievance redressal

The DGFT's grievance mechanisms should be strengthened through time-bound disposal, reasoned orders and escalation mechanisms. The objective should be to resolve genuine trade difficulties administratively before they become prolonged judicial disputes.

20.7 Special assistance for MSMEs

Small exporters often lack specialised legal and compliance teams. DGFT should therefore continue to develop simplified guidance, sector-specific FAQs, explanatory circulars and multilingual resources for MSMEs and first-time exporters.

20.8 Consistency in enforcement

Enforcement should be risk-based and proportionate. Similar violations should ordinarily receive similar treatment, subject to relevant differences in facts. A published enforcement framework would improve predictability while preserving necessary discretion.

20.9 Periodic review of subordinate instruments

The large volume of public notices, circulars and procedural instructions should be periodically reviewed. Obsolete or overlapping instruments should be withdrawn so that traders do not have to navigate conflicting or outdated directions.

20.10 Institutional independence with statutory accountability

The DGFT requires sufficient operational flexibility to administer foreign trade efficiently. At the same time, such flexibility should remain accompanied by statutory accountability, parliamentary oversight, judicial review and transparent publication of delegated powers.

21. CONCLUSION

The Director General of Foreign Trade is one of the most important administrative authorities in India's foreign-trade regime. The FTDR Act, 1992 places the DGFT at the centre of the implementation architecture by assigning responsibility for carrying out foreign trade policy and providing specific powers relating to IECs, licences, authorisations, interpretation, compliance and enforcement.

The statutory structure, however, deliberately stops short of making the DGFT an independent policy-making body. Section 6(3), particularly its exclusion of Sections 3, 5, 15, 16 and 19, establishes clear boundaries. The Supreme Court's decision in *Kanak Exports* provides the clearest judicial affirmation that the DGFT cannot amend substantive foreign trade policy merely through a public notice.

The contemporary DGFT must therefore be viewed through two complementary lenses. From the perspective of economic governance, it is a trade facilitator responsible for making India's import-export system more accessible, efficient and responsive. From the perspective of administrative law, it is a statutory authority whose powers are conditioned by the FTDR Act, delegated legislation, principles of natural justice and constitutional limitations.

Recent judicial decisions such as *Embio Limited* and *Ajit Gulabchand* further demonstrate that effective regulation does not mean unrestricted enforcement. Penalties must be based upon statutory contraventions, individual liability must be properly established and affected parties must receive procedural safeguards.

The future of DGFT administration therefore lies not in expanding administrative power without corresponding safeguards, but in creating a system in which **facilitation, predictability, transparency and enforcement operate together**. A modern foreign-trade regulator should make legitimate trade easier while making unlawful trade more difficult.

Achieving that balance requires clear delegation, consistent interpretation, accessible procedures, reasoned orders and effective grievance mechanisms.

Ultimately, the success of the DGFT should not be measured merely by the number of licences issued, applications processed or enforcement proceedings initiated. It should be measured by whether India's foreign-trade administration provides a predictable legal environment in which legitimate businesses can participate confidently in international commerce while national economic, security and regulatory interests remain adequately protected. The FTDR Act provides the foundation for that balance; the continuing task of the DGFT is to implement it faithfully, efficiently and fairly.

BIBLIOGRAPHY

1] STATUTES AND LEGAL MATERIALS

- **The Constitution of India, 1950.**
- **The Foreign Trade (Development and Regulation) Act, 1992**, Act No. 22 of 1992.
- **The Foreign Trade (Regulation) Rules, 1993**, G.S.R. 791(E), Ministry of Commerce, Government of India.
- **The Customs Act, 1962.**
- **The Foreign Exchange Management Act, 1999.**
- **The Special Economic Zones Act, 2005.**
- **The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005.**
- **The Foreign Trade (Development and Regulation) Amendment Act, 2010.**
- **Foreign Trade Policy 2023**, Government of India, Ministry of Commerce and Industry.
- **Handbook of Procedures 2023**, Directorate General of Foreign Trade, Government of India.

2] GOVERNMENT AND INTERNATIONAL MATERIALS

- Government of India, **Ministry of Commerce and Industry, Department of Commerce**, materials relating to Foreign Trade Policy and DGFT.
- Directorate General of Foreign Trade, **Foreign Trade Policy 2023**.
- Directorate General of Foreign Trade, **Handbook of Procedures 2023**.
- Directorate General of Foreign Trade, **ITC (HS) Classification of Export and Import Items**.
- Directorate General of Foreign Trade, **Aayat Niryat Forms and Appendices under FTP 2023**.
- World Trade Organization, **General Agreement on Tariffs and Trade 1994**.

- World Trade Organization, **General Agreement on Trade in Services 1994**.
- World Trade Organization, **Trade Policy Review: India**, World Trade Organization.

3] CASE LAWS

- *Director General of Foreign Trade v. Kanak Exports*, **(2016) 2 SCC 226**.
- *Union of India v. Agricas LLP*, **2020 SCC OnLine SC 675**.
- *M/s Deepak Enterprises v. Union of India & Ors.*, W.P. (C) No. 5935/2017, Delhi High Court, decided 19 January 2018.
- *Sanmarg Private Limited v. Union of India & Ors.*, Calcutta High Court, decided 5 October 2018.
- *M/s Supreme Castings Ltd. v. Joint Director General of Foreign Trade*, decided 17 August 2016.
- *M/s Surya Lakshmi Cotton Mills Ltd. v. Joint Director General of Foreign Trade*, decided 1 March 2019.
- *Embio Limited v. Director General of Foreign Trade & Ors.*, Civil Appeal No. 6394 of 2024, Supreme Court of India, decided 13 May 2024.
- *Ajit Gulabchand v. Director General of Foreign Trade*, W.P.(C) 4260/2014, Delhi High Court, 2025.
- *Tukaram Bhat v. Director General of Foreign Trade*, W.P.(C) 6421/2014, Delhi High Court, 22 April 2025.
- *Rich Source International v. Additional Director General of Foreign Trade*, decided 9 January 2009.

4] BOOKS

- R.K. Jain, **Foreign Trade Policy 2023**, Centax Publications, 30th ed., 2026.
- Abhishek Jain, Shweta Jain & S.C. Jain, **Foreign Trade Policy and Handbook of Procedures**, Commercial Law Publishers (India) Pvt. Ltd., 2023.
- Gajendra Singh, K.M. Bansal & Ekta Singh, **Export-Import Management**, Taxmann, 2026 ed.

- Justin Paul, **Export Import Management**, Oxford University Press, 2nd ed.

- Parminder Kaur & Chandni Aswal, **Export-Import Management**, JSR Publishing, 1st ed., 2024.

- H.S. Madhusudana, **Foreign Trade and Export-Import Policy of India**, New Century Publications, 2020.

5] JOURNALS AND ARTICLES

- Articles and case comments concerning the Foreign Trade (Development and Regulation) Act, 1992 published in **SCC Online**, **Supreme Court Cases**, **Indian Journal of International Law** and other Indian legal periodicals.

- Scholarly writings concerning delegated legislation, administrative discretion and foreign-trade regulation in Indian constitutional and administrative law journals.

- Academic commentary concerning the relationship between the FTDR Act, WTO law and India's quantitative restriction regime.

- Case comments on *Director General of Foreign Trade v. Kanak Exports* concerning the limits of delegated authority under Sections 5 and 6 of the FTDR Act.

- Case comments on *Union of India v. Agricas LLP* concerning Sections 3 and 9A of the FTDR Act and India's WTO obligations.

6] ONLINE SOURCES

- **India Code**, Government of India — authoritative statutory database containing the Foreign Trade (Development and Regulation) Act, 1992.

- **Directorate General of Foreign Trade**, Government of India — official DGFT materials, policies, notifications and procedures.

- **Ministry of Commerce and Industry, Government of India** — official information concerning DGFT and India's foreign-trade administration.

- **Indian Kanoon** — database used for accessing judicial decisions and statutory material.

- **Supreme Court Cases / SCC Online** — case reports and legal commentary.

- **World Trade Organization** — official international trade agreements and trade-policy materials.