



Her Excellency Nirupama Rao
Ambassador to the United States of America
Embassy of India
2107 Massachusetts Avenue, N.W.
Washington, DC 20008

Dear Ambassador Rao:

We understand that the government of India continues to consider further restrictions on the ability of foreign tobacco companies to participate in the Indian market. We are writing to express our concerns about the ongoing effort to completely eliminate foreign company participation in the Indian market. This raises serious concerns about India's willingness to stand by its proclamation to welcome foreign investors per current policy and calls into question India's adherence to its international obligations.

The Indian market is dominated by Indian companies. With 99.6 percent of the market held by domestic Indian companies, and one very large Indian company controlling 80 percent of the market by itself, it is hard to understand any concern about the ability of Indian industry to compete. Furthermore, India is a leading exporter of tobacco, and its manufacturing industry also sells tobacco products internationally, including in the U.S.

Some proponents of further restrictions have apparently cited public health as a justification, but since there is absolutely no difference in the health effects from consuming Indian or foreign tobacco products, that argument cannot be taken seriously.

In addition to the reported consideration of further restrictions on foreign direct investment in the tobacco wholesale business which on their face raise international obligation issues, we understand restrictions are also being considered in regard to the importation of tobacco products, including a possible import ban. Some of those arguing for this restriction cite existing quantitative limits on domestic production capacity as justification, and, in turn, suggest that imports should be constrained via the imposition of a restrictive import licensing regime. We also understand it is being suggested that legitimate imports facilitate illicit trade, and an even more extreme step should be taken to ban imports.

We note that the quantitative production capacity limits on tobacco manufacturing by Indian companies do not actually constrain Indian manufacturing companies at all, given that at present only 56 percent of the capacity is being utilized. We would also call to your attention India's obligations under the World Trade Organization (WTO) which preclude restrictions on imports in these circumstances. With respect to the issue of illicit trade, the causes of illicit trade in tobacco products tend to be two-fold: imprudent

excise tax policies and ineffective law enforcement and legal regimes. Other factors can implicate illicit trade, but the notion that legitimate trade should be banned because it fosters illicit trade makes no sense.

With respect to the argument that the lawful wholesale business model enables foreign companies to invest in India in wholesaling and somehow this is viewed as problematic, we presume the Indian government intended to structure the law to enable foreign companies to invest in a wholesale business, while we recognize India's government has precluded investment in manufacturing. We fail to see the problem with companies investing in a manner that is consistent with Indian law.

In short, the arguments of the proponents of additional restrictions do not contain a valid rationale, unless one considers valid the parochial political notion that India should be rid of even the miniscule foreign company competition that currently exists.

We have included with this letter a brief analysis that was prepared by the law firm of Sidley & Austin, which has a well-respected international practice related to the WTO and its obligations. We would ask that you share this analysis with those in your government who are involved in the discussion regarding further restrictions on foreign tobacco company participation in the market.

In conclusion, we also respectfully seek your reply confirming that the Indian government has discontinued its consideration of further restrictions on foreign company participation in this sector.

We would welcome an opportunity to discuss this important issue with you at your earliest convenience.

Sincerely,



Calman J. Cohen
President
Emergency Committee for American Trade (ECAT)



Frank Vargo
Vice President, International Economic Affairs
National Association of Manufacturers



William A. Reinsch
President
National Foreign Trade Council



Peter M. Robinson
President and CEO
United States Council for International Business



Ron Somers
President
U.S.-India Business Council

Cc: The Honorable Anand Sharma, Minister of Commerce and Industry of the Government of India

The Honorable Secretary of State Hillary Clinton

The Honorable United States Trade Representative Ron Kirk

The Honorable Ambassador Nancy J. Powell, U.S. Embassy New Delhi

Enclosure