



H.E. Dr. Manmohan Singh  
Honorable Prime Minister of the Republic of India  
Prime Minister's Office (PMO)  
South Block, Raisina Hill  
New Delhi  
India – 110 011

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Excellency,

BUSINESSEUROPE speaks on behalf of the largest and most innovative European companies doing business around the world. Our members consider India to be an increasingly important market and global partner. Many of our members have invested locally to such an extent – for many years – that they are no longer just European companies, but could be considered to be Indian companies as well.

As companies doing business in India and as investors looking for opportunities to do more, India's business and investment climate is of great interest to us. You and your Government have shown exceptional leadership in enhancing the business environment. Your commitment, for example, to spend €1.3 trillion on infrastructure development in the next five years will be of great benefit to India's economy.

While recognizing progress, we are concerned that certain Indian innovation and technology policies may impede innovation and technological advancement. Over the past two years, the Government of India has taken several steps that could be perceived as a departure from what had been a positive trajectory in innovation, technology, and intellectual property (IP) policy-making. Such steps include:

- A policy of "compulsory licensing" of clean technology, set forth in India's National Manufacturing Policy;
- A 2010 Ministry of Commerce discussion paper, which posited that "compulsory licensing has a strong and persistent positive effect on domestic invention";
- A decision by the Controller General of Patents to compulsorily license patented inventions if, among other things, the invention is not being "worked" (i.e. manufactured) in India. European companies as well as our international partners are concerned this could lead to a more wide-ranging, frequent and discretionary use of this tool;



- Beyond compulsory licensing, a number of questionable decisions regarding patents recently taken by the Indian authorities, impacting life sciences companies;
- A national regulatory framework on access and benefit sharing which creates legal uncertainty and does not provide for rules which enable the creation of value and related benefit sharing in relation to Indian genetic resources;
- India's advocacy of weakening IPR in certain global fora, including the United Nations climate negotiations (UNFCCC) and the World Intellectual Property Organisation (WIPO); and
- Domestic manufacturing requirements for technology purchases by both the Government of India and private sector customers (so-called Preferential Market Access Policy);

We are pleased that India has committed to joining the Madrid Protocol and we urge the Trademarks Registry to promptly address the obstacles to its implementation. These would include digitization and other technology upgrades to the current system, an increase in workforce and a reduction of the significant backlog.

We further witness some recognition of the need for effective IP protection, as demonstrated by India's recent ratification of the Nagoya Protocol of the Convention on Biological Diversity on access and benefit sharing of genetic resources. However, the current Indian National Biodiversity Act does not assure legal certainty, is administratively complex, imposes more stringent barriers on foreign companies even those established in India and creates trade barriers. Such level of uncertainty is rather deterring foreign companies to invest in activities that would aim at developing new products integrating genetic resources of India and eventually does not help India to value its genetic resources potential. In addition, the overall legislative framework could be significantly improved in the fields of patent protection, plant variety protection and protection of regulatory data.

We believe that both India and the EU share a clear set of common objectives: to increase investments by foreign and Indian companies in key technological and industrial sectors; to grow India's innovative and advanced manufacturing industries; and to enable these industries to play an integral role in both global value chains and the global economy. In our view, the above policies and actions do not support achievement of these common objectives.

Rather than weakening technology and IP protection, we would encourage the Government of India to adopt and maintain policies that reassure foreign and domestic technology providers that their technologies will not be appropriated by competitors in India. Robust IP and technology policies including proper IP enforcement encourage and enhance investment in Indian infrastructure, partnerships, collaboration and innovation. Furthermore, they could accelerate the integration of Indian companies in global innovation and manufacturing value chains.



Among all of the major emerging economies, India probably has most to gain from a business and policy environment that stimulates advanced manufacturing investment and enables and encourages innovation and technology. India's innovative potential, and the gains it can achieve from being part of global technology value chains are virtually second to none.

We hope that you will take our observations into consideration and look forward to continuing to work together.

Yours sincerely,

Markus J. Beyrer

CC:

The Honorable Shri P. Chidambaram  
Union Finance Minister  
North Block, Raisina Hill  
New Delhi  
India – 110 011

The Honorable Kapil Sibal  
Minister of Communications and Information Technology  
Electronics Niketan, 6, CGO Complex  
Lodhi Road  
New Delhi  
India – 110 003

The Honorable Anand Sharma  
Minister of Commerce and Industry  
Udyog Bhawan  
New Delhi  
India – 110 107

The Honorable Shri Salman Khurshid  
Minister of External Affairs  
South Block, Raisina Hill  
New Delhi  
India – 110 011