STUDY

The Anatomy of a ~~Prohibition~~

Investment Law and the Reform of India's Tobacco Sector

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INDIA FOUNDATION · NEW DELHI

VOLUME I · OCTOBER 2026

Contents

Executive Summary **3**

The Regulatory Record **8**

Consumption Trends and the Policy Record 10

Institutional Architecture of Tobacco Regulation 18

The FDI Prohibition **24**

The FDI Prohibition in Comparative Perspective 26

Market Structure and the Incumbency Effect 32

The Grower Economy **38**

Buyer Concentration in FCV Leaf Markets 40

Agricultural Economics of Tobacco Cultivation 47

Constitutional Parity and the Classification Question 55

Products, Treaties and Taxation **60**

Classification and Regulation of Novel Tobacco Products 62

India's Obligations under the FCTC 75

Taxation, Illicit Trade and Revenue Design 82

Towards Reform **87**

Comparative FDI Regimes and the Case for Staging 89

Draft Instruments and Regulatory Design 96

Recommendations **102**

Executive Summary

On the Government's own household record, every instrument aimed at Indian tobacco over the past sixteen years has failed the single test its stated health justification implies.

The share of urban households reporting any tobacco expenditure rose from 34.94 per cent in 2011-12 to 45.64 per cent in 2023-24, while the rural share rose from 59.31 per cent to 68.49 per cent, and real per-capita spending on tobacco climbed fifty-eight per cent in rural India and seventy-seven per cent in urban India over the same period.[1] Among the poorest rural households, spending on pan, tobacco and intoxicants runs at four per cent of consumption while education receives two and a half per cent, and tobacco expenditure impoverishes roughly eighteen million Indians.[2] The economic cost of the diseases and deaths attributable to tobacco among Indians aged 35 and over was INR 1,773.4 billion (about Rs 1.77 lakh crore) in 2017-18, or 1.04 per cent of GDP, and excise revenue recovered roughly one rupee in eight of it.[3]

The toll is not only economic. The Ministry of Health and Family Welfare estimates that nearly thirteen lakh deaths annually are attributable to tobacco.[4] Chapter 1 does the measuring, instrument by instrument, stated objective against recorded outcome, and meets the customary defence with comparators rather than assertion, since a high MPOWER score is not sufficient for a falling curve and India's own "on track" modelled projection measures individual prevalence, not the household record.[5]

However, the most recent official measurement of individual tobacco prevalence, GATS-2 of 2016-17, records adult use falling from 34.6 to 28.6 per cent, a decline this study states rather than hides, because GATS-2 remains the latest official prevalence evidence India has.[6] Naturally, the two records measure different things over different windows. Hence this study rests on what is available and keeps them apart.

The institutional finding is the study's own. The economics of a farm-to-factory sector are governed, in India, by instruments whose reasons and evidence come from the health establishment and whose economic effects no economic institution has ever examined. The 2010 prohibition was a Cabinet decision on a proposal of the Department, announced by a press note that states no reasons, while the 1999 licensing practice beneath it stands on health grounds in DPIIT's own words.[7] PECA was enacted as pure prohibition without any regulatory question being answered, while the disclosure of contents that Parliament wrote into COTPA in 2003 has never been commenced, so that no limit on contents or emissions exists at all.[8] Chapter 2 establishes this diagnosis and states the flagship recommendation.

In no other sector governed by the Union's investment policy do economic entry rules rest on a health rationale that no economic assessment has tested.

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[1]Economic Advisory Council to the Prime Minister, Working Paper EAC-PM/WP/42/2026, "Rise in Tobacco Consumption and Policy Implications" (Shamika Ravi and Partha Protim Barman), February 2026, pp. 6, 11. The EAC-PM's analysis of HCES unit-level data (2022-23/2023-24 round). The household measure counts homes reporting any tobacco expenditure on a seven-day recall, not individuals who use.

[2]EAC-PM/WP/42/2026, p. 4; John RM and Dauchy EP, "A Quantitative Exploration of the Influence of Tobacco Use on Poverty in India" (2025) 27 *Nicotine & Tobacco Research* 620, doi 10.1093/ntr/ntae129.

[3]John RM and others, "Economic Costs of Diseases and Deaths Attributable to Tobacco Use in India, 2017-2018" (2021) 23 *Nicotine & Tobacco Research* 294, abstract and Table 6, doi 10.1093/ntr/ntaa154. Excise revenue in the preceding year covered 12.2 per cent of the cost; Chapter 10 sets out the ratio.

[4]EAC-PM/WP/42/2026, p. 4. The paper's statement of a Ministry estimate.

[5]WHO Global Health Observatory, age-standardised tobacco-use prevalence series (same estimation round as the *WHO global report on trends in prevalence of tobacco use 2000-2024*, 6 October 2025), Table A1.7; WHO, *Report on the global tobacco epidemic, 2025*, data as at 31 December 2024. India classified "On track" under the NCD Global Action Plan on a modelled series of age-standardised individual prevalence, not on the household expenditure record.

[6]Global Adult Tobacco Survey, GATS 2 India 2016-17 (Second Round), Ministry of Health and Family Welfare (with TISS, WHO and US CDC), printed pp. xxxv and xli. GATS-2 fieldwork closed February 2017 (printed p. 13).

[7]Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010; Press Note No. 2 (2010 Series), Department of Industrial Policy and Promotion, 10 May 2010; DPIIT, Industrial Licensing Services, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026. The CCEA release of 8 April 2010 approved "a proposal of the Department of Industrial Policy & Promotion." The 1999 licensing practice is described by DPIIT's own page as refusing licences "on health grounds since 1999."

[8]Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019 (Act 42 of 2019), ss. 3(d), 4; Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (Act 34 of 2003). COTPA s. 7(5) was omitted from S.O. 1955(E) of 16 November 2007 (in force 1 December 2007). No limits on contents or emissions have been issued under s. 31(2)(b), in force since 1 May 2004.

The Prohibition Construed

The entry on India's FDI prohibited list bars manufacturing and nothing else, because technology collaboration, licensing, franchise, trademark and management contracts remain lawful, while wholesale trading follows ordinary sectoral restrictions.[9] It arrived late. Since DPIIT's own record shows that no fresh industrial licence for cigarette manufacture has been granted on health grounds since 1999, the May 2010 press note added nothing to the control of new capacity, which means its entire marginal effect fell on who may own the capacity that already existed.[10] In sixteen years no reasoned review has ever examined that effect.

Chapter 3 finds two defects where one would suffice. A bar on investors regulates who may profit from manufacture, not who smokes, since no mechanism connecting the passport of capital to consumption has ever been stated. And the bar is aimed at the wrong segment of the wrong market, because the entry reaches cigarettes under tariff heading 2402 while India's consumption burden sits in the smokeless and bidi segments that fall under heading 2403.[11] However, the Convention neither requires nor forbids the entry, so this report alleges no treaty breach and judges the instrument on domestic reason alone.[12]

Chapter 4 maps the market the prohibition shelters. On the filed shareholding pattern of ITC Limited as at 30 June 2026, a BAT group concert party holds 22.91 per cent of the dominant cigarette manufacturer, classified on the company's own filing as foreign direct investment.[13] That arrangement is not unique to ITC. Philip Morris Global Brands Inc. holds 25.10 per cent of Godfrey Phillips India, the second-largest manufacturer, whose Marlboro is manufactured and distributed under exclusive procurement and supply agreements.[14] Nor is the state a stranger to the arrangement, since the Union itself holds 7.78 per cent of ITC through the Specified Undertaking of the Unit Trust of India, with a Joint Secretary of DIPAM sitting on the board as SUUTI's representative.[15]

Hence the prohibition operates not as an exclusion of foreign money but as a freeze of the market as it stood in 2010, protecting incumbency from entry while leaving every non-equity channel open to those already seated.

The Grower

On the Tobacco Board's own published record, a single manufacturer takes between 43 and 60 per cent of the flue-cured Virginia leaf sold at the Board's auction platforms in Andhra Pradesh, with the only other manufacturer at 7 to 9 per cent, so that the two together constitute the entire Manufacturers class.[16] Chapter 5 takes this structure to the Competition Act. This dominance is not a market accident but a state construction, since the 2010 entry bars the competing buyers whose presence is the ordinary remedy. However, competition law can police the conduct of a dominant buyer, but it cannot conjure the rivals that investment policy forbids. There is no answer to this bind within the Act itself, which is why the Member of Parliament for the growing belt has proposed, on the record, that foreign buyers be invited in to break the market monopoly.[17] Hence the study recommends a Competition Commission market study into FCV leaf buying, so that the finding is made on the Commission's own record.

[9]Consolidated FDI Policy Circular of 2020, DPIIT, para 5.1, p. 28, and closing sentence. The closing sentence extends the technology-collaboration bar only to "Lottery Business, Gambling and Betting activities."

[10]DPIIT, Industrial Licensing Services, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026; Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010. The CCEA's second stated reason records the 2010 entry as bringing "the policy in line with the administrative decision not to grant industrial licence for cigarette manufacturing."

[11]Consolidated FDI Policy Circular of 2020, para 5.1(g); GATS-2, printed p. xli. GATS-2 records smokeless use at 21.4 per cent of adults against cigarette use at 4.0 per cent.

[12]WHO Framework Convention on Tobacco Control, 21 May 2003, 2302 UNTS 166; India, Implementation Report under the WHO Framework Convention on Tobacco Control (2025 reporting cycle), 17 July 2025. "Invest" does not occur anywhere in India's 2025 implementation report, and the Article 2.1 answer lists PECA and enforcement measures, not the FDI entry.

[13]ITC Limited, Shareholding Pattern as at 30 June 2026, BSE filing, Table III, "Foreign Direct Investment" classification. Three BAT group entities acting in concert.

[14]Godfrey Phillips India Limited, Annual Report 2025-26, Note 17(iii), p. 143; Godfrey Phillips India Limited, FY26 Earnings Presentation, PDF p. 4, fn 2.

[15]ITC Limited, Shareholding Pattern as at 30 June 2026, Table III, (1) Institutions (Domestic), (j) Other Financial Institutions; ITC Limited, Report and Accounts 2026, PDF pp. 31, 35, 41.

[16]Tobacco Board, Annual Reports 2019-20 to 2023-24, company-wise buyer annexure. ITC 43 to 60 per cent in AP, GPI 7 to 9 per cent. Combined Manufacturers' share 40 to 68 per cent across both states.

[17]"'Ensure Higher Prices for Tobacco Farmers': H D Kumaraswamy to Board, Traders", *Deccan Herald*, 2 March 2026. Reported speech of Mysuru-Kodagu MP Yaduveer Krishnadatta Chamaraja Wadiyar, 2 March 2026.

Chapter 6 examines the ground on which the crop grows, where the diversification programmes have a record the study reads without charity, because value addition is the only welfare path open to the grower, the path the investment prohibition closes. Since exit is foreclosed by the soil in some zones and by the institutions in all of them, the remedy lies in entry.

The Government's settled agricultural policy is forward integration. Food processing admits full foreign investment, and production-linked incentives walk the fruit grower into the juice factory.[18] However, the tobacco grower alone is barred by the same Government from the value chain built on his own crop. Chapter 7 puts this discrimination to the test that equality doctrine would apply to any classification and finds the stated object, public health, connected to this differentia by no mechanism the state has ever articulated. Parliament's own commerce committee held in 2020 that regulated FDI would stimulate the production and processing of Indian tobacco for export and recommended the Department study the opening of the sector.[19]

No study answering the recommendation has been published.

Therefore the parity argument is the report's moral centre. Where the single-buyer chapter shows what the grower suffers, the parity chapter shows that the suffering is a policy choice.

Products, Treaties and Taxes

PECA is prohibition without regulation, whose prior defect is that it prohibits without classifying.[20] Sections 3(d) and 4 sweep vapour products, heat-not-burn devices and their parts into one undifferentiated class, while the combustible cigarette sits outside it, whereas oral nicotine products fall outside every statute that names a product, so that drug regulators have begun to suppress them as unapproved drugs under a Health Ministry advisory, on a reading of the definition that the Bombay High Court left open in September 2026. The visible product of the statute is a market that pays no tax, checks no age, meets no standard and answers to no regulator. Chapter 8 reviews the international evidence on relative risk and sets the WHO's own control scores against recorded consumption, where Sweden, Japan, New Zealand and the Philippines have bent their curves while Türkiye, which prohibits, and Indonesia, which regulates, have barely moved, so that neither choice sorts countries by outcome. It answers the youth objection with the American, New Zealand and Swedish data, sets out the dual-use and youth risks that a regulated market must contain, and proposes the replacement of PECA with a licensing and standards statute that sets the minimum age at twenty-one and makes the brand owner presumptively liable for every sale to a minor.[21] Transferring the American model's proportional results to the cost of Indian smoking, the study puts the annual gain from a switch to lower-risk products at between INR 110 billion and INR 457 billion (about Rs 11,000 crore to Rs 45,700 crore), or 0.06 to 0.27 per cent of GDP, and presents that band as a scenario rather than a forecast, since the Indian parameters a forecast would need have never been measured.[22]

Chapter 9 takes the treaty objections first, beginning with a ledger drawn from India's own 2025 implementation report to the Convention.[23] That ledger is stark. India has over-implemented where the Convention asks nothing but under-implemented where the Convention actually operates, with no limits on contents or emissions, no mandatory disclosure to government, while the disclosure provision of COTPA that Parliament enacted in 2003 remains uncommenced twenty-three years later. Article 1(d) defines tobacco control itself as a range of supply, demand and harm reduction strategies, so a harm-

[18]Consolidated FDI Policy Circular of 2020, paras 5.2.1 (agriculture, 100 per cent automatic), 5.2.2.1 (plantation, 100 per cent automatic), 5.2.5.1 (manufacturing, including food processing, automatic route).

[19]Department-related Parliamentary Standing Committee on Commerce, 154th Report, "Export of Agricultural and Marine Products, Plantation Crops, Turmeric and Coir", Rajya Sabha, submitted 26 August 2020, presented 18 September 2020. No study answering the recommendation had been published as at 11 September 2026.

[20]PECA 2019, ss. 3(d), 4; COTPA 2003; Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011, reg. 2.3.4. Oral nicotine products are reached by none of these instruments definitively; Ministry of Health and Family Welfare (Tobacco Control Division), "Advisory on Oral Nicotine Pouches", File No. T-20018/10/2026-SAS-1, 18 September 2026; *Mumbai Travel Retail Ltd v Union of India*, Writ Petition No. 3079 of 2026, Bombay High Court, judgment of 22 September 2026, paras 41 and 50.

[21]FDA, National Youth Tobacco Survey (NYTS) 2025. US youth e-cigarette use at 5.2 per cent in 2025, the lowest in over a decade, under a regulated and age-gated market.

[22]Chapter 8; Levy DT and others, "Potential deaths averted in USA by replacing cigarettes with e-cigarettes" (2018) 27 *Tobacco Control* 18, Table 1; John and others (2021), Table 4.

[23]India, Implementation Report under the WHO FCTC (2025 reporting cycle), pp. 23, 24, 28, 50. Contents regulated, "No" (p. 24); emissions regulated, "No" (p. 23); disclosure to government, "No" (p. 28); markings on unit packaging, "No" (p. 50).

reduction statute exercises the Convention's vocabulary rather than departing from it. Article 5.3 protects health policymaking from industry influence, yet the guidance that reaches economic ministries asks for coherence and carve-outs, never for an ownership bar.[24] The Illicit Trade Protocol, joined in 2018, imposes a tracking regime that Section 148A of the CGST Act, in force since October 2025, enables, yet no goods notification for tobacco has been issued.[25]

Taxation and enforcement are the state's genuine demand-side instruments, because each acts on consumption through a mechanism its own drafters can name. Chapter 10 gives the fiscal regime rebuilt from 1 February 2026 at the steepest specific rates in the country's history its due.[26] However, household consumption rose across the twelve years of escalating taxation that the household record covers. If the instruments that do have a mechanism have not delivered the objective, then the 2010 investment prohibition, which sets no rate, collects no revenue, changes no shelf price, marks no pack and stops no consignment, cannot borrow their justification. The level at which tobacco is taxed is the Government's fiscal judgment, and the study takes no position on it.

The Reform

Among the leaf-producing economies that admit private manufacture, India alone bars foreign investment in cigarette manufacture.[27] The only other exclusions the study found are state monopolies. Chapter 11 surveys who admits such investment and on what conditions, using trade data rather than industry narratives, and turns to the staging forms Indian law already keeps, because Gujarat licenses manufacture under state prohibition, carabeef exports run beside slaughter bans, and the SEZ statute deems each zone a territory outside the customs territory of India for the purposes of undertaking the authorised operations. Accordingly, these forms are offered not as the ask but as the sequence.

Because exhortation is easy to shelve, the report ends in drafting. Chapter 12 carries seven instruments. The ask is the deletion of the FDI entry for tobacco manufacture paired with a reasoned review of the 1999 licensing practice beneath it. The two move together because deleting the entry while the practice stands would add no new manufacturer-buyer at any auction. Entry is conditioned on grower welfare, and any change of capacity must pass a separate assessment of its health and competition effects. The two are accompanied by the replacement of PECA with a licensing and standards statute, carrying a minimum age of twenty-one, presumptive liability on the brand owner for sales to minors, risk-tiered rates given effect through the excise and GST laws and a Tobacco Transition Fund for cessation and cancer care, together with the commencement of COTPA's disclosure provision, the exercise of its limits power and the notification of Section 148A for tobacco. Amendments to the Tobacco Board Act widen buyer registration and open the auctions to competition, a Competition Commission market study examines the conduct of the incumbent buyers and the integration of leaf buying with manufacture and distribution, and a standing sectoral assessment, which reviews the restrictions already in force as well as any new one, completes the package.

The study examines and sets aside the staged alternative of an approval route confined to existing manufacturers, which would change the passport of the capital and not the number of buyers. The package couples the capital reform to the completion of the harm-side ledger. Commencement of the disclosure provision, limits on contents and emissions, closure of the point-of-sale exemptions and removal of the smoking-room carve-outs are conditions of the reform, so that the package leaves tobacco control stronger than the status quo leaves it, on identical conditions for every company, domestic or foreign.

[24] WHO FCTC, art. 5.3; UNDP and WHO FCTC Convention Secretariat, "Tobacco Control: What Ministries of Trade and Industry Need to Know" (2024). The 2024 UNDP/Secretariat sectoral briefs cover trade, industry and finance ministries expressly, asking for coherence, tax, illicit-trade and treaty carve-outs. Nothing in the series asks an economic ministry to impose or maintain a bar on foreign ownership.

[25] Finance Act, 2025, s. 132, inserting s. 148A in the Central Goods and Services Tax Act, 2017; Notification No. 16/2025-Central Tax, 17 September 2025 (in force 1 October 2025). Protocol to Eliminate Illicit Trade in Tobacco Products, 12 November 2012; India, accession, 5 June 2018. No goods notification for tobacco on CBIC's published notification record as at 11 September 2026.

[26] Central Excise (Amendment) Act, 2025 (Act 34 of 2025); Health Security se National Security Cess Act, 2025 (Act 35 of 2025). Regime commenced 1 February 2026.

[27] Nine leaf-producing economies with private manufacture tested against their operative instruments: Decreto-Lei no. 1.593/1977, art. 1 (Brazil); Law No. 4733, Madde 6 (Türkiye); 21 U.S.C. Section 387e(b) (United States); Perpres 10/2021 (Indonesia); and five others, each set out in the first note to Chapter 11. The seven reform instruments are enumerated at Chapter 12.

WHAT THE INDUSTRY GIVES UP

Each obligation falls on the manufacturers already in the market, and each is drafted in the instruments of Chapter 12. A letter marks the WHO MPOWER measure the obligation serves.

W	Manufacturers declare the nicotine and tar in every product against statutory maxima, a duty Parliament wrote in 2003 and the executive never commenced, and a product above the limit can no longer be sold.	*A7(a) and (b)*
E	The point-of-sale advertising exemption goes, leaving a plain price list, and a novel product marketed at minors loses its licence for good.	*A7(c); A3, ss. 11 and 19A(2)*
P	The proviso that keeps smoking rooms open in hotels, restaurants and airports goes, after a transition.	*A7(d)*
O	Licence fees, penalties and a share of the duty on novel products pay for cessation services and the treatment of tobacco-related cancer.	*A3, s. 13A*
M	Every pack carries a unique mark generated by the State, the industry is barred from running the tracking system, and every buyer's purchases at the leaf auctions are published.	*A5; A4, s. 13C*
AGE	Novel products reach only verified adults of twenty-one and above, through licensees alone, and the brand owner is presumed liable for every sale to a minor unless it shows due diligence.	*A3, ss. 9 and 19A(1)*
ENTRY	No manufacturing capacity is built or changed without a published assessment of its effects on health and competition, and no investor acquires a right that regulation will stand still.	*A1.1, conditions (ii) and (v); A3, s. 21(3)*
AUCTION	Incumbent leaf buyers lose the power to keep rivals off the auction floor.	*A4, s. 12A*

Hence the flagship recommendation, which is institutional before it is instrumental, leads. Economic regulation of the sector must be re-founded on economic evidence owned by economic institutions, through a standing sectoral assessment of the EAC-PM or NITI class, with each ministry confined to the instruments of its own competence. India already seats its other risk products with specialist regulators, the FSSAI for food, the CDSCO for drugs, even as it leaves alcohol to the revenue side of the states, while Japan runs tobacco from its finance ministry. The health ministry keeps what is genuinely its own, cessation, warnings, surveillance and health education. However, it loses the writ to direct investment policy and market structure.

Accordingly, the reform couples the opening of the capital gate to the completion of the harm-side ledger, because the standing sectoral assessment is the institutional reform that ensures no instrument governs this sector again without evidence.

PART

I

The Regulatory Record

THE REGULATORY RECORD

01

Consumption Trends and the Policy Record

01

Consumption Trends and the Policy Record

Every instrument aimed at India's tobacco sector over the past sixteen years carries a health justification, which in this sector means reducing consumption. The investment prohibition of May 2010, the statutory ban on electronic cigarettes in 2019, the gutkha bans running in every major state for over a decade, the warning and packaging regime and the steadily escalating taxation all stated their objectives on the official record, each in words that leave no room for ambiguity.[1] Yet on the findings of the Prime Minister's own Economic Advisory Council, the share of urban households reporting expenditure on any tobacco product rose from 34.94 per cent in 2011-12 to 45.64 per cent in 2023-24, while the rural share rose from 59.31 per cent to 68.49 per cent.[2] Exhibit 1 sets out both series. After adjusting for inflation, real per-capita spending on tobacco rose fifty-eight per cent in rural India and seventy-seven per cent in urban India over the same period.[3,4,5] A regime is entitled to be judged by the test it set for itself. This one failed it. This chapter does the measuring, instrument by instrument, stated objective against recorded outcome, and meets the customary defence with comparators rather than assertion.

The Instruments and Their Stated Objectives

The prohibition on foreign direct investment in cigarette manufacture was notified as Press Note No. 2 (2010 Series), on a Cabinet decision of 8 April 2010.[6] The Press Note states no reasons at all. However, the CCEA release of the same date invokes the alignment of FDI policy with tobacco control without naming the evidence behind it or the mechanism by which the prohibition would reduce consumption.[7,8] Behind it sits an older practice, since DPIIT has refused fresh cigarette-manufacturing licences on health grounds since 1999, though no notification has been produced for that embargo.[9] PECA prohibits vapour products, heat-not-burn devices and their components as one undifferentiated class, resting on public health under Article 47 of the Constitution, without any predicted effect on consumption or baseline measurement from which a future review could depart.[10,11] Warnings and packaging are the one arm of the regime that can

[1]The instruments and their stated objectives are set out in the section that follows; the verbatim quotations are drawn from the sources cited therein.

[2]Economic Advisory Council to the Prime Minister, Working Paper EAC-PM/WP/42/2026, "Rise in Tobacco Consumption and Policy Implications" (Shamika Ravi and Partha Protim Barman), February 2026, p. 11. The EAC-PM's analysis of HCES unit-level data (2022-23/2023-24 round). "Incidence" in the paper means "the proportion of households reporting consumption of tobacco products, rather than the epidemiological definition of incidence" (p. 10), on a seven-day expenditure recall (p. 8). In absolute terms the count rose from 2.8 crore to 4.7 crore urban households and from 9.9 crore to 13.3 crore rural; the paper describes the urban rise as "a staggering 59%" (p. 11), though that percentage cannot be reproduced from the printed counts (2.8 to 4.7 crore implies approximately 68 per cent; no rounding of either figure yields 59). The rural share appears as 68.49 per cent (p. 11), 68.6 per cent (pp. 3, 37) and 68.59 per cent (Appendix Table 1, p. 57); this chapter cites the body-text figure. The paper describes its data as HCES 2023-24 but states a fieldwork window of August 2022 to July 2023 (p. 9), which is MoSPI's HCES 2022-23 window; the discrepancy is unreconciled in the paper, and the direction and magnitude of the change are unaffected.

[3]EAC-PM/WP/42/2026, p. 6. "After adjusting for inflation, this represents a 58 percent increase in rural areas and a 77 percent increase in urban areas."

[4]EAC-PM/WP/42/2026, p. 6. Nominal per-capita monthly tobacco expenditure rose from twenty-one rupees to sixty-one rupees in rural India and from nineteen to sixty-three rupees in urban India.

[5]EAC-PM/WP/42/2026, p. 6. The paper does not state the deflator used. The real increase of fifty-eight per cent in rural areas and seventy-seven per cent in urban areas cannot be separated into price and quantity components, though the direction of travel is beyond dispute.

[6]Press Note No. 2 (2010 Series), Department of Industrial Policy and Promotion, 10 May 2010.

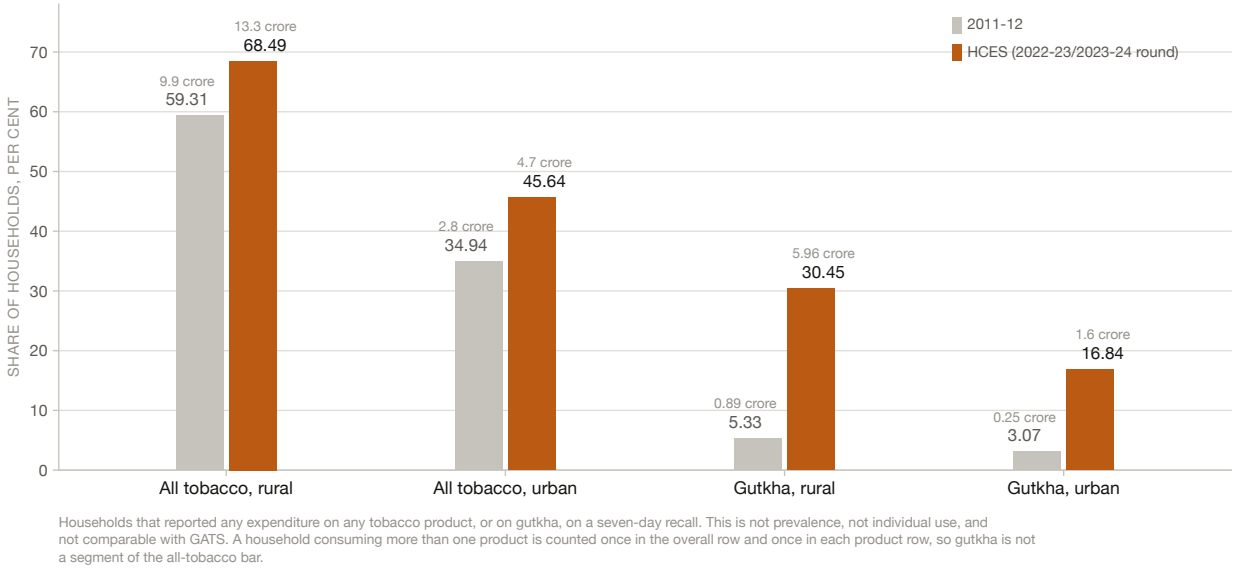
[7]Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010. The release records that the approval was "expected to enhance public accountability by way of the Government's commitment towards proliferation of anti-smoking regime in the country" and would "align the FDI policy with the existing legislation on Tobacco control to a greater extent." The first of these formulations appears, in the same words, in the Government's answer to Lok Sabha Unstarred Question No. 3840 of 19 April 2010 (see fn 8), the only other occasion on which this entry has been explained on the public record.

[8]Lok Sabha, Unstarred Question No. 3840, 19 April 2010.

[9]DPIIT, Industrial Licensing Services, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026, "Other Sectors", third bullet. The page states that fresh licences for the manufacture of "Cigars and cigarettes of tobacco and manufactured tobacco substitutes" are "not being issued for manufacture of this item on health grounds since 1999". The Department's separate licensing FAQ (services.dpiit.gov.in/lms/faq, accessed 11 September 2026) reads "not being granted". No press note, notification or order has been produced for that earlier embargo, which is why this study describes it as a practice rather than an instrument.

[10]Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019 (Act 42 of 2019), Statement of Objects and Reasons, p. 7 (paragraph 4). The Statement records that "in view of the above recommendations and in the overall interest of public health as envisaged under article 47 of the Constitution, it was expedient that the e-cigarettes and the like devices should be prohibited." Section 3(d) defines "electronic cigarette" to sweep vapour products and heat-not-burn devices into one undifferentiated class; Section 4 bans their production, manufacture, import, export, sale and distribution, "whether as a complete product or any part thereof" (see fn 11).

EXHIBIT 1 **Households That Buy Tobacco, 2011-12 and 2023-24**



Households that reported any expenditure on any tobacco product, or on gutkha, on a seven-day recall. This is not prevalence, not individual use, and not comparable with GATS. A household consuming more than one product is counted once in the overall row and once in each product row, so gutkha is not a segment of the all-tobacco bar.

Source: Economic Advisory Council to the Prime Minister, Working Paper EAC-PM/WP/42/2026, February 2026. Share of households reporting any expenditure on any tobacco product, or on gutkha, on a seven-day recall, with the household count printed on each bar. These are not prevalence figures and are not comparable with GATS. The paper dates the later round 2023-24, but its fieldwork (August 2022 to July 2023) is the HCES 2022-23 window.

point to a mechanism, which is the reduction of initiation through health information, and to an active compliance framework.[12,13]

The taxation of tobacco was rebuilt from 1 February 2026 at the steepest specific rates in the country's history.[14,15,16] Therefore the fiscal yield has climbed while the fiscal instrument has not achieved its stated purpose of reducing consumption, since the share of tobacco products in gross tax revenue rose from 1.27 per cent in 2016-17 to 2.39 per cent in 2022-23.[17] The gutkha prohibition runs across every major state as annually renewed one-year orders under the Food Safety and Standards Act, a construction whose legality as executive permanence built from statutory impermanence has never been tested.[18,19]

Two observations run through this ledger. Every stated objective is a commitment, an expediency or an interest, since not one names a predicted effect with evidence behind it.[20] Accordingly, the instruments have been in force for periods ranging from eight months to over sixteen years without any office asking whether they achieved their stated objective.

[11]PECA 2019, ss. 3(d) and 4, pp. 3-4.

[12]India, Implementation Report under the WHO Framework Convention on Tobacco Control (2025 reporting cycle), Art. 11, answer 10.1.1.2. India's 2025 implementation report describes health warnings "covering 85% of the principal display areas" and states that the latest warning rules are "evidence based/ field tested." The Supreme Court, staying the Karnataka High Court's judgment that had struck down the 85 per cent warning rules, observed that "health of a citizen has primacy" (see fn 13).

[13]*Health for Millions Trust v Union of India*, SLP (C) No. 37348 of 2017, Supreme Court, order of 8 January 2018.

[14]Central Excise (Amendment) Act, 2025 (Act 34 of 2025); Health Security se National Security Cess Act, 2025 (Act 35 of 2025). The taxation was rebuilt under the Central Excise (Amendment) Act, 2025 and the Health Security se National Security Cess Act, 2025.

[15]Health Security se National Security Cess Act, 2025 (Act 35 of 2025), Statement of Objects and Reasons. The cess declares its purpose to be to "contribute towards twin purposes of enabling targeted utilisation for public health, as well as national security."

[16]Central Excise (Amendment) Act, 2025 (Act 34 of 2025), s. 2, Fourth Schedule; rate notifications of 31 December 2025, in force 1 February 2026. GST on tobacco products other than bidi stands at forty per cent computed on the printed retail price, with the additional excise running per stick for cigarettes and ad valorem for smokeless tobacco, at the steepest specific rates in the country's history.

[17]EAC-PM/WP/42/2026, p. 53, n. 7. The revenue share is sourced by the paper to Lok Sabha Unstarred Question No. 215.

[18]Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011, gazette p. 12 (PDF p. 3), reg. 2.3.4. Regulation 2.3.4 provides in its entirety that "Tobacco and nicotine shall not be used as ingredients in any food products." State governments enforce this regulation through orders under s. 30(2)(a) of the Food Safety and Standards Act, 2006 (see fn 19), which permits an order "not exceeding one year."

[19]Food Safety and Standards Act, 2006, s. 30(2)(a).

[20]No published assessment of any of these instruments has been located as at 11 September 2026. Since the CCEA release of 2010 invoked no study and proposed no review date, the investment prohibition entered the FDI list without a stated mechanism for achieving its stated objective. PECA relied on an ICMR recommendation and proceeded first by ordinance, bypassing the regulatory questions that a licensing statute would have forced the Government to answer. The cess names its purposes without naming a method for measuring their fulfilment. The gutkha orders are renewed annually, and each renewal presents a natural occasion for assessment that no state has taken.

What the Record Shows

The household measure is not prevalence, because it counts homes reporting any tobacco expenditure on a seven-day recall, not individuals who use.[21] This chapter's claim is about the spread of tobacco expenditure across Indian homes. Hence, on that measure, the spread has widened while the instruments in the preceding section, save the 2026 fiscal regime, were in force.

Within the household record the movement is a redistribution as much as a spread, which runs directly against the instrument designed to stop it. Rural households reporting expenditure on gutkha rose from 5.33 per cent to 30.45 per cent, a movement from 89 lakh households to 5.96 crore.[22,23] The EAC-PM describes this rural gutkha rise as "very alarming" and records that gutkha now commands forty-one per cent of all rural tobacco expenditure by value.[24] In a sector where prohibition is the governing instrument, a nearly six-fold rise in the share of rural households spending on the prohibited product is a singular outcome.

At the same time, cigarette households rose from 4.81 per cent to 11.20 per cent in rural India and from 8.41 to 18.05 per cent in urban India.[25,26] The redistribution from bidi towards gutkha and cigarettes does not cancel the aggregate rise, because the all-tobacco dummy itself rose.[27,28,29]

However, the distributional profile carries the graver implication. Bottom-forty rural households "spend just 2.5 % of MPCE on education, while spending 4 % on pan, tobacco and intoxicants".[30,31,32] Naturally, a household that spends four per cent of its consumption on pan, tobacco and intoxicants while spending two-and-a-half per cent on education is choosing between present relief and future welfare, because the pharmacology set out below explains why present relief wins. Nor does the record spare any consumption class, since the rise spans the entire income distribution in both rural and urban India.[33,34]

Hence the argument that tobacco is a poverty-driven consumption choice which income growth will resolve is defeated on the Government's own numbers.

The state collects roughly one-eighth in excise of what tobacco costs it in disease and death.[35,36] If these instruments had been accompanied by published assessments, the assessments would have recorded these figures. Because no assessment was ever published, the record sat unexamined until the EAC-PM brought it to light in February 2026.[37]

[21] EAC-PM/WP/42/2026, pp. 8 and 10 (definition of incidence and recall period). The EAC-PM defines its incidence as "the proportion of households reporting consumption of tobacco products, rather than the epidemiological definition of incidence", on a seven-day expenditure recall, wherein a household counts once however many of its members use tobacco and however much they consume.

[22] EAC-PM/WP/42/2026, p. 13 ("Only 89 lakhs households consisting of 5.33% of the households were consuming Gutkha in 2011-12. It has increased significantly to 5.96 crores households (30.45% of households) in 2023-24.").

[23] EAC-PM/WP/42/2026, p. 13. Urban gutkha households rose from 3.07 per cent to 16.84 per cent.

[24] EAC-PM/WP/42/2026, p. 3 (Executive Summary) and p. 13.

[25] EAC-PM/WP/42/2026, pp. 13-14; Appendix Table 1, p. 57.

[26] EAC-PM/WP/42/2026, pp. 13-14; Appendix Table 1, p. 57. Leaf-tobacco households rose from 18.23 per cent to 24.48 per cent in rural India and from 5.39 per cent to 7.50 per cent in urban India.

[27] EAC-PM/WP/42/2026, p. 13. Rural bidi households fell from 26.85 per cent to 23.18 per cent and "other tobacco" from 15.37 per cent to 7.74 per cent.

[28] EAC-PM/WP/42/2026, p. 27. The paper reads this as substitution, recording that "as monthly per capita consumption expenditure has increased, people started to move away from bidi to more packaged and branded tobacco items like cigarette and gutkha." Since the overall dummy counts each household once regardless of how many products it reports, a household switching from bidi to gutkha moves between product columns without adding to the aggregate total; the gutkha rise tells us where tobacco money goes.

[29] EAC-PM/WP/42/2026, p. 10 (dummy variable methodology).

[30] EAC-PM/WP/42/2026, p. 4.

[31] EAC-PM/WP/42/2026, p. 4 ("Poorer rural households spend a larger share of their MPCE on tobacco (1.7 %) than the top 20 % (1.2 %)").

[32] Khatoon S and others, "Opportunity cost of tobacco consumption on household nutrition in India" (2026) 32 *Nutrition and Health* 845. Khatoon and others, on the same 2011-12 survey round, find tobacco accounting for 3.6 per cent of rural food expenditure nationally, rising to 7.5 per cent in Rajasthan, 5.4 per cent in Maharashtra and 4.9 per cent in the north-eastern states.

[33] EAC-PM/WP/42/2026, p. 37. Among the poorest forty per cent of rural households, tobacco incidence rose from 62.1 per cent to 70.2 per cent, and among the wealthiest twenty per cent from 49.2 per cent to 63.4 per cent. In urban India the pattern holds, with bottom-forty incidence rising from 43.4 per cent to 52.0 per cent and top-twenty incidence from 22.3 per cent to 36.6 per cent (see also fn 34).

[34] EAC-PM/WP/42/2026, p. 37.

[35] EAC-PM/WP/42/2026, p. 4 ("The Ministry of Health and Family Welfare estimates that nearly 13 lakh deaths annually in India are attributable to tobacco").

[36] John RM and others, "Economic Costs of Diseases and Deaths Attributable to Tobacco Use in India, 2017-2018" (2021) 23 *Nicotine & Tobacco Research* 294, doi 10.1093/ntr/ntaa154 (WHO-funded). The study estimated the economic cost of tobacco-attributable diseases and deaths at INR 1,773.4 billion in 2017-18, equal to 1.04 per cent of GDP, while tobacco excise revenue the previous year covered only 12.2 per cent of that cost. The Ministry of Health and Family Welfare estimates that nearly 13 lakh deaths annually in India are attributable to tobacco (see fn 35).

[37] EAC-PM/WP/42/2026. The paper was published in February 2026 (see note 2 above).

The Two Records, Kept Apart

The most recent official measurement of individual tobacco prevalence in India is GATS-2, fielded between August 2016 and February 2017, which recorded current tobacco use among adults falling from 34.6 per cent in 2009-10 to 28.6 per cent in 2016-17.[38,39] This chapter states that decline rather than hiding it, because GATS-2 is the latest official prevalence evidence India has.

The two records do not collide. They measure different things over different years.[40,41] GATS-2 does not speak to the post-2017 years, which is why the EAC-PM paper, whose window extends six years beyond it, does not contradict the earlier decline. As at October 2026, GATS-3 remained unpublished, since its main fieldwork could begin only after main-survey training in late December 2025 and early January 2026.[42,43]

Hence this chapter rests on what is available and keeps the two records apart.

The Two Prohibitions Read Closely

Two instruments in the ledger take the form of outright prohibition and therefore supply the cleanest reading, since a ban, unlike a tax or a warning, is not a matter of degree. The gutkha bans are past their first decade in every major state. Yet the chewing-tobacco economy they were meant to end still anchors Indian consumption, its products sold openly as twin packs which the EAC-PM records as the standard method of circumvention.[44,45,46] Thus the regulation that was meant to remove a product from the market has instead pushed it into a different package, which no state order has been able to close for more than one year at a time because the very provision under which these orders issue permits them for only one year.

The electronic-cigarette prohibition tells a story not of evasion but of measurement failure, because when PECA was enacted in 2019 the only national measurement of the market it prohibited was GATS-2, which in 2016-17 found 0.02 per cent of Indian adults currently using e-cigarettes.[47,48] No national survey of adults

[38]Global Adult Tobacco Survey, GATS 2 India 2016-17 (Second Round), Ministry of Health and Family Welfare (with TISS, WHO and US CDC), printed pp. xxxv and xli (PDF pp. 37, 43); fieldwork, printed p. 13 (PDF p. 59). Current tobacco use among adults aged fifteen and above fell from 34.6 per cent in 2009-10 to 28.6 per cent in 2016-17, a decline of six percentage points, with each headline prevalence indicator (any tobacco use, smoking, smokeless use) falling by a statistically significant margin (see fn 39).

[39]GATS-2, printed p. 86 (PDF p. 132). "Prevalence of any form of tobacco use has decreased significantly by six percentage points, from 34.6 percent to 28.6 percent." The MPOWER Summary Indicators table at printed pp. xli-xliii (PDF pp. 43-45) marks each headline prevalence indicator as statistically significant at the 99 per cent level.

[40]EAC-PM/WP/42/2026, pp. 8-10. The EAC-PM's unit is the household, defined by reported expenditure on a seven-day recall. GATS-2's unit is the individual, defined by self-reported current use in an interviewer-administered questionnaire, with one respondent randomly chosen from each selected household (GATS-2, printed p. 255 (PDF p. 301) (sampling design); printed p. 285 (PDF p. 331) (question B01); printed p. xxxiv (PDF p. 36)). The household series runs to fieldwork the EAC-PM dates to July 2023, while GATS-2's fieldwork closed in February 2017 (GATS-2, printed p. 13 (PDF p. 59) (fieldwork August 2016 to February 2017); EAC-PM/WP/42/2026, p. 9 (fieldwork "started in August 2022 and ended in July 2023")). Because the household series has only two data points, it cannot say when within its 2011-to-2023 window the rise occurred, and six years of that window lie beyond the last national prevalence observation.

[41]GATS-2, MPOWER table, printed p. xli (PDF p. 43). "Current gutka users" fell from 8.2 per cent to 6.8 per cent; relative change −17.1, marked ** (statistically significant). Within the household record the movement is also a product redistribution. GATS-2 records gutkha prevalence falling from 8.2 per cent to 6.8 per cent over its own window, while the household series, which runs six years past that window, records rural gutkha household incidence rising from 5.33 per cent to 30.45 per cent (EAC-PM/WP/42/2026, p. 13). A fall in the proportion of individuals using gutkha can sit with a rise in the proportion of households reporting gutkha expenditure, if the product spread to more households while intensity within each fell, or if the rise occurred principally after the GATS-2 fieldwork closed. The two are not inconsistent once the constructs are separated.

[42]As at 7 October 2026.

[43]International Institute for Population Sciences, "Global Adult Tobacco Survey (GATS-3)", iipsindia.ac.in/content/global-adult-tobacco-survey-gats-3, accessed 7 October 2026; International Institute for Population Sciences, "GATS-3 Methodology", iipsindia.ac.in/content/gats-3-methodology, accessed 7 October 2026; International Institute for Population Sciences, "GATS-3 Events", iipsindia.ac.in/content/gats-3-events, accessed 7 October 2026. The survey was commissioned by the Ministry of Health and Family Welfare with the International Institute for Population Sciences as nodal agency, covers all states and union territories with a planned sample of 110,121 respondents ("GATS-3 Methodology"), and could begin its main fieldwork only after the main-survey training of trainers held from 29 December 2025 to 4 January 2026 ("GATS-3 Events"); no report, fact sheet or headline finding had appeared as at 7 October 2026. When GATS-3 is published, it will for the first time allow a test of whether individual prevalence moved in the same direction as household incidence.

[44]EAC-PM/WP/42/2026, p. 55. The paper records the "'twin sachet' method of selling tobacco less pan masala and tobacco sachet together to circumvent the gutkha ban." The Supreme Court, in *Central Arecanut Marketing Company v Union of India* (see fn 45), recorded the same finding through the amicus curiae, who reported manufacturers "selling separate pouches of pan masala and flavored chewing tobacco together, meaning for the pouches to be mixed as one." Press accounts as recently as September 2026 record Karnataka issuing fresh orders reaching products "individually packaged in a manner that facilitates mixing by the consumer" (see fn 46).

[45]*Central Arecanut Marketing Company v Union of India*, TC (C) No. 1 of 2010, Supreme Court, order of 23 September 2016, as summarised in the advocacy-funded Tobacco Control Laws litigation database (tobaccocontrollaws.org).

[46]"If Gutkha Is Banned Across India, Why Is It Still Sold? Inside Loopholes, State Orders and a Failing Enforcement Regime", *Open*, 1 September 2026, recording Karnataka's 2026 gutkha order.

[47]GATS-2, Table 4.41, printed p. 83 (PDF p. 129). Current e-cigarette use 0.02 per cent of adults overall; awareness 3.03 per cent.

[48]GATS-2, printed p. 82 (PDF p. 128). "Till now, there was no data showing either extent of knowledge of e-cigarette or its use in India. GATS 2 is the first survey to include questions on awareness, and ever and current use of e-cigarettes." GATS-2 was the first Indian survey to ask about e-cigarettes, and it carried no comparator from the earlier round.

has measured Indian e-cigarette use since.[49,50] However, the honest statement is not that use is above or below its pre-ban level, because the state lacks the measurement to say either.

The state prohibited a product it had barely measured and has not measured in adults since.

Why the Curve Has Not Bent

The persistence of demand under these instruments is no puzzle once we read the crowd-out economics and the dependence pharmacology together, because the first explains why consumption survives expenditure constraints while the second explains its survival against information and intention. Tobacco crowds out milk, education, clean fuels and entertainment from the household budget, with the crowding-out similar across income groups, not confined to the poor.[51,52] This is so because a household spending on tobacco forgoes whatever the same rupee would have purchased, and the goods it forgoes have, as John observed, "more direct bearing on women and children in the household than on men".[53] It is the spillover onto non-users in the same household that matters most for policy. Bonu and others found that non-users in tobacco-using households face raised odds of distress borrowing, which means that tobacco harms people who do not consume it through a channel that no cessation programme reaches.[54,55] John and Dauchy estimated that tobacco expenditure impoverishes roughly 18 million Indians.[56,57,58]

The pharmacology supplies the second half. Benowitz, in the canonical clinical review, established that dependence is pharmacological, timed to receptor tolerance rather than to any considered decision to continue.[59,60] Hence the perceived benefit of continued use is substantially the repair of a deficit the drug itself created.[61] For the smokeless and areca products that dominate Indian consumption, the dependence mechanism overlaps across smoked and smokeless forms, since arecoline acts on the same cholinergic

[49]Kuthe SM and others, "Electronic Cigarettes (ENDS or ENNDS) Smoking in Asian Countries After Complete Vaping Ban: A Systematic Review and Meta-Analysis" (2026) 61 *Substance Use & Misuse* 793, doi 10.1080/10826084.2025.2577277. The review, searched to 8 May 2024, draws a pooled estimate of sixteen per cent from twenty-two post-ban studies, mostly from Thailand, with an India subgroup reporting fourteen per cent, an I-squared of 99.7 per cent indicating extreme heterogeneity, and study populations that are not nationally representative samples. The review's authors conclude only that vaping "remains prevalent, albeit at lower levels", which they suggest may reflect enforcement gaps, illicit market access and limited public awareness (see fn 50).

[50]Kuthe and others (2026), abstract (conclusion). "Despite bans presenting an impression of elimination, vaping remains prevalent, albeit at lower levels."

[51]John RM, "Crowding out effect of tobacco expenditure and its implications on household resource allocation in India" (2008) 66 *Social Science & Medicine* 1356, doi 10.1016/j.socscimed.2007.11.020. John, on 1999-2000 National Sample Survey data and conditional Engel curves across ten commodity groups, found that tobacco-consuming households had lower consumption of milk, education, clean fuels and entertainment, with negative effects on per-capita nutrition intake, and that the crowding-out was similar across income groups, not confined to the poor.

[52]Gallego JM, Paraje G and Rodriguez-Lesmes PA, "Inequality of the Crowding-Out Effect of Tobacco Expenditure in Colombia" (2024) 19 *PLoS ONE* e0303328. Gallego, Paraje and Rodriguez-Lesmes found no crowding-out of education or healthcare in Colombia, attributing it to free universal access to health insurance and basic education. The counter-case matters, because crowd-out of a given category turns on whether the state supplies that category free. In India, where education and nutrition are not universally free of cost, the crowd-out findings stand.

[53]John (2008). The inference about gender effects is the author's, stated in the abstract.

[54]Bonu S and others, "Does use of tobacco or alcohol contribute to impoverishment from hospitalization costs in India?" (2005) 20 *Health Policy and Planning* 41. On 120,942 households from the NSS 52nd round, the study found raised odds of distress borrowing or asset sale not only for tobacco users (OR 1.35) but for non-users in tobacco-using households (OR 1.38), with a population-attributable risk proportion of sixteen per cent. In an earlier study on NFHS-II data, Bonu and others found that children in tobacco-using households were less likely to be immunised and more likely to suffer acute respiratory infection, malnutrition and infant mortality, after controlling for socio-economic characteristics (see fn 55).

[55]Bonu S and others, "Household tobacco and alcohol use, and child health: an exploratory study from India" (2004) 70 *Health Policy* 67.

[56]John RM and others, "Counting 15 million more poor in India, thanks to tobacco" (2011) 20 *Tobacco Control* 349, doi 10.1136/tc.2010.040089. John, Sung, Max and Ross estimated that tobacco expenditure impoverished roughly fifteen million Indians on 2004 NSS data.

[57]John RM and Dauchy EP, "A Quantitative Exploration of the Influence of Tobacco Use on Poverty in India" (2025) 27 *Nicotine & Tobacco Research* 620, doi 10.1093/ntr/ntae129 (funded by the Campaign for Tobacco-Free Kids). The study raised the impoverishment estimate to 18.4 million pushed into poverty, with tobacco use raising a household's likelihood of being poor by 3.4 to 3.7 per cent.

[58]The most recent Indian crowd-out estimate located uses 2011-12 data (Khatoon 2026), and it is an opportunity-cost calculation rather than a conditional Engel system. No post-2012 Indian conditional-Engel crowd-out estimate exists in the published literature accessible to this study, and the gap deserves to be stated rather than papered over.

[59]Benowitz NL, "Nicotine addiction" (2010) 362 *New England Journal of Medicine* 2295, doi 10.1056/NEJMra0809890. Funded by the Flight Attendants Medical Research Institute and NIDA (US Public Health Service grants DA02277 and DA20830); no tobacco-industry funding. Route and rate of delivery, not the nicotine molecule alone, determine addictiveness, because arterial concentrations during smoking run "up to 10 times as high as venous levels", while cessation medications "deliver nicotine slowly, and the risk of abuse is low."

[60]Benowitz (2010). On desensitisation, receptor upregulation and the withdrawal mechanism. The mechanism is desensitisation of the alpha-4-beta-2* nicotinic cholinergic receptors, following which "the symptoms of craving and withdrawal begin in smokers when desensitized alpha-4-beta-2* nicotinic cholinergic receptors become responsive during periods of abstinence."

[61]Benowitz (2010). "Relief from withdrawal symptoms", Benowitz writes, "is probably the primary reason for this enhanced performance and heightened mood."

pathways.[62,63]

Hence the failure of the instruments described in this chapter is predictable rather than surprising. Demand for tobacco persists because the pharmacology generates a dependence that information about harm does not reach, which crowds out goods whose absence deepens the vulnerability of the household. A regime that has never assessed either mechanism has no reason to expect that adding another instrument of the same kind will bend the curve.

The Customary Defence

The customary defence holds that matters would have been worse without these instruments. It deserves to be met with data rather than assertion.

Eight comparator economies supply the test (Exhibit 2), among them the Philippines and Indonesia, middle-income countries with large tobacco economies of their own.[64] Prohibition of new products does not sort countries by outcome. Brazil prohibits electronic nicotine delivery systems outright and Türkiye does so in effect,[65] yet Brazil's prevalence has nearly halved on WHO's modelled series while Türkiye's, at the highest tax share in the set,[66] has barely moved.[67] Regulation does not sort them either, since the Philippines, which regulates these products through its trade ministry, has fallen by 44 per cent, while Indonesia, which taxes and regulates them but has never joined the Convention, has fallen by 11.[68] Japan, whose pharmaceutical law keeps nicotine e-cigarettes off the market while heated tobacco is sold freely, has also nearly halved.[69] New Zealand, which regulates rather than prohibits, and Norway, which prohibits the nicotine device but regulates its nicotine-free counterpart, have recorded the steepest falls, though Norway's figure counts smoking alone and leaves out the snus that some 16 per cent of its adults use daily.[70] Hence a high MPOWER score is not sufficient for a falling curve, and neither is the choice between prohibition and regulation.

India's own position in the WHO's modelled series is, on its face, favourable. This chapter states it plainly because it is the strongest fact the defence has. The WHO projects India's age-standardised prevalence falling from 38.5 per cent in 2010 to 21.9 per cent in 2025, which places India "on track" under the NCD Global Action Plan.[71] However, this modelled series measures individual prevalence, which does not sit

[62]Shao M and others, "Understanding betel nut addiction" (2026) 16 *Translational Psychiatry* 94, doi 10.1038/s41398-026-03875-0. Funded by Natural Science Foundation of Hunan Province; no tobacco-industry funding. Arecoline, the principal active component in betel nut, "leads to addiction by modulating the cholinergic, dopaminergic, and glutamatergic systems."

[63]Thawal VP and others, "Development and psychometric evaluation of the Khaini Smokeless Tobacco Dependence Scale" (2023) 21 *Tobacco Induced Diseases* 40, doi 10.18332/tid/160073. Indian smokeless dependence requires its own measurement instrument, because the standard cigarette-derived scales do not transfer to khaini and gutkha.

[64]WHO Global Health Observatory, age-standardised tobacco-use prevalence series (same estimation round as the *WHO global report on trends in prevalence of tobacco use 2000-2024*, 6 October 2025); WHO, *Report on the global tobacco epidemic, 2025*, data as at 31 December 2024. Age-standardised tobacco-use prevalence for India and eight comparator economies is set out in Exhibit 2; the series for the Philippines and Indonesia was retrieved on 7 October 2026 from the same estimation round.

[65]WHO, *Report on the global tobacco epidemic, 2025*, MPOWER Summary Indicators. Brazil at "Complete" on P, O, W (warnings), E and R; Türkiye at "Complete" on P, O, W (warnings), E and R; both at "Moderate" or above on W (mass media). ENDS status: WHO, *Report on the global tobacco epidemic, 2025*, printed p. 106, and country profiles (Brazil, Türkiye), p. 7.

[66]WHO, *Report on the global tobacco epidemic, 2025*. Türkiye's total tax share of 81.5 per cent is the highest of the nine economies in Exhibit 2.

[67]WHO Global Health Observatory, prevalence series, Table A1.7, printed pp. 105 and 109. Brazil's age-standardised prevalence has nearly halved, from 23.2 per cent in 2000 to 11.9 per cent in 2024, earning the WHO's classification as "on track"; Türkiye's has barely moved, from 32.8 per cent to 31.1 per cent, classified as "unlikely to experience a significant change in prevalence." The WHO series for Brazil rests on surveys up to the Pesquisa Nacional de Saúde of 2019, so its later years are projections. Brazil's own telephone survey of adults in the state capitals and the Federal District recorded current smoking at 15.7 per cent in 2006, 10.7 in 2014, 9.2 in 2023 and 11.5 in 2024, the last after most interviews had moved to mobile phones, and the Ministry of Health and INCA read 2019 to 2024 as stable rather than rising: Brasil, Ministério da Saúde, *Vigitel Brasil 2006-2024* (Brasília, 2025), pp. 18-19, 22-23, 100, 102-103; INCA, "Prevalência do tabagismo", updated 3 July 2026.

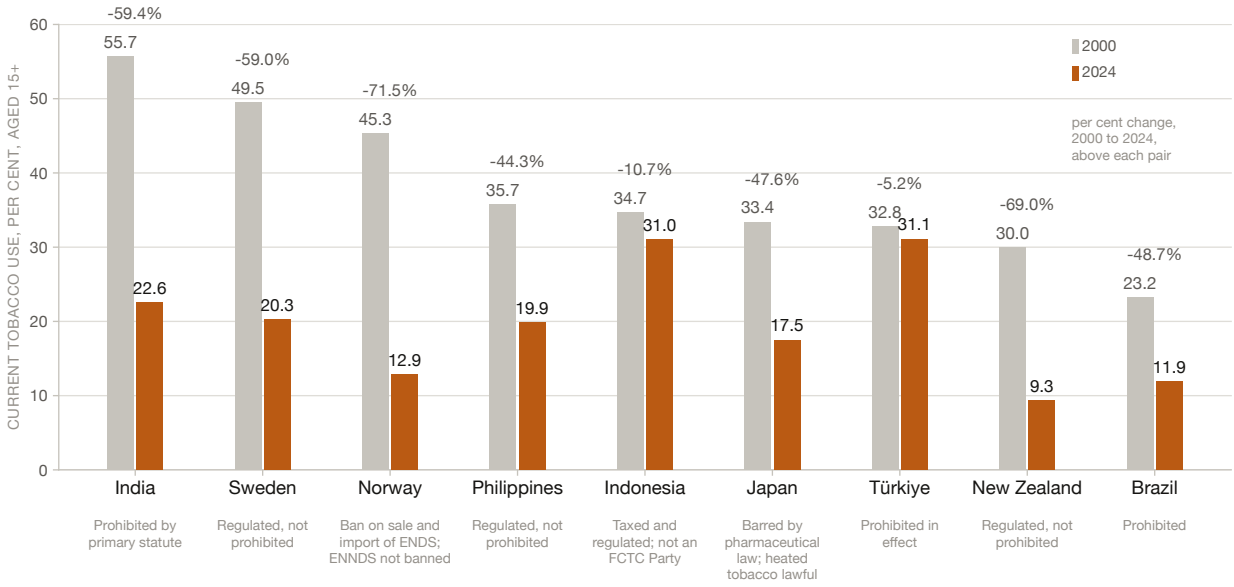
[68]WHO Global Health Observatory, indicator M_Est_tob_curr_std, accessed 7 October 2026: the Philippines 35.7 per cent in 2000 and 19.9 in 2024; Indonesia 34.7 and 31.0. Republic Act No. 11900 (Philippines), 2022, ss. 6 and 21 (regulation by the Department of Trade and Industry, minimum age 18); Law No. 17 of 2023 on Health (Indonesia), arts. 149-152, and Government Regulation No. 28 of 2024, arts. 429-449 (minimum age 21); UN Treaty Collection, Chapter IX-4, status as at 7 October 2026 (Indonesia neither a signatory nor a Party to the WHO FCTC).

[69]WHO Global Health Observatory, prevalence series (Japan's prevalence fell from 33.4 per cent to 17.5 per cent); WHO, *Report on the global tobacco epidemic, 2025* (Japan at "no measure or weak measure" on E). Nicotine-containing e-liquid is an unapproved pharmaceutical in Japan, while heated tobacco is a manufactured tobacco product under the Tobacco Business Act; Chapter 8 sets out the split.

[70]WHO Global Health Observatory, prevalence series. Norway 45.3 to 12.9 per cent; New Zealand 30.0 to 9.3 per cent. WHO, *Report on the global tobacco epidemic, 2025*, printed p. 106, and country profiles (New Zealand, Norway), p. 7 (New Zealand regulates with age-gating; Norway bans ENDS sale and import but regulates ENNDS). WHO models no separate smokeless component for Norway, so its tobacco-use series counts smoking only; Statistics Norway records daily snus use at 16 per cent in 2025 against daily smoking at 7 per cent.

[71]WHO Global Health Observatory, prevalence series; *WHO global report on trends in prevalence of tobacco use 2000-2024*, Table A1.7, printed p. 107. India is classified as "On track to achieve a 30% relative reduction. More reliable."

EXHIBIT 2 **What the Instruments Did Not Sort: Nine Countries, 2000 to 2024**



No line is fitted through these nine points, since nine countries are not a sample and the exhibit displays cases rather than testing anything. WHO models no smokeless use for Norway, so its figure leaves out snus. Brazil's series ends with its 2019 national survey, while its capital-cities survey recorded 9.2 per cent in 2023 and 11.5 in 2024 after a change of method. India's fall runs from a modelled 2000 value to a projected one. Türkiye's flat line is the sum of a fall in male use and a rise in female use; Japan's fall is male-driven.

Source: WHO, Global Tobacco Epidemic 2025 profiles and Annex 1; prevalence from the WHO Global Health Observatory age-standardised series for current tobacco use, aged 15 and over. The exhibit plots tobacco use, which differs from smoking only where WHO models smokeless use: chewed tobacco in India, snus in Sweden and a small margin in Indonesia.

in the same frame as the household record that opens this chapter since the two measure different things over different windows, as we have established.

Accordingly, the defence does not defeat the record. It sits alongside it, both part of the evidence the instruments have never been made to face.

The Question the Record Leaves

When five instruments over sixteen years all carry a health justification yet all fail on the single test they set for themselves, the question the record raises is institutional rather than empirical, since it is who makes the instruments, on what evidence, and whether any office has ever been required to account for what they produce. Hence the 2010 prohibition, behind which sits the 1999 licensing embargo on DPIIT's own health grounds, was a Cabinet decision with no assessment published.[72] PECA too was enacted as pure prohibition, yet even the disclosure Parliament wrote into COTPA in 2003 has never been commenced. Obviously, if the instruments have never been assessed, no office has ever been required to produce the evidence that would justify keeping them.

When every instrument fails on its own stated purpose and each survives without review, the explanation lies not in the instruments but in the institutions that made them and were never made to account for them.

Chapter 2 answers that question.

[72] This is the claim Chapter 2 examines in full.

02

Institutional Architecture of Tobacco Regulation

02

Institutional Architecture of Tobacco Regulation

The economics of a farm-to-factory sector are governed, in India, by instruments that take their reasons from public health, whose evidence is produced by the health establishment, and whose economic effects no economic institution has ever assessed.[1] That is the institutional configuration of Indian tobacco, and it holds for tobacco alone among the sectors governed by the Union's investment policy.[2] The 2010 prohibition on investment in cigarette manufacturing was a Cabinet decision on a proposal of the Department, announced by a press note that states no reasons.[3] The 1999 licensing embargo beneath it stands on health grounds in the Department's own words, citing no notification, order or file number.[4] Japan, for contrast, administers its tobacco statute from its finance ministry.[5] Nothing on the public record connects the health rationale for the entry bar to the economic instrument that delivers it.[6]

EXHIBIT 3 **Where Five Risk Sectors Seat Their Regulators**

SECTOR	PRODUCT AND CONSUMPTION LAW	CROP OR INDUSTRY	TAXATION	NEW-GENERATION PRODUCTS	ECONOMIC ENTRY (FDI)	EVIDENCE FOR RESTRICTION
Tobacco	COTPA 2003 (Act 34 of 2003), administered by the Ministry of Health and Family Welfare	Tobacco Board under the Tobacco Board Act 1975 (Act 4 of 1975), Ministry of Commerce and Industry	GST Council recommendations given effect by Department of Revenue and CBIC notifications	PECA 2019 (Act 42 of 2019), ss. 3(d) and 4: prohibition only. No standards, no licensing, no regulator named **PROHIBITION, NOT REGULATION**	Prohibited by Press Note No. 2 (2010 Series) of 10 May 2010, now para 5.1(g) of the Consolidated FDI Policy 2020. No published economic assessment before or since **ANOMALY**	Commissioned within the health establishment. No instrument creates an economic assessment seat for the sector **AUTHOR AUDITS ITSELF**
Pharmaceuticals	CDSCO under the Drugs and Cosmetics Act 1940, Ministry of Health and Family Welfare	Department of Pharmaceuticals, with NPPA for price control	GST Council, Department of Revenue		Open under DPIIT policy: para 5.2.27, greenfield 100 per cent automatic, brownfield 100 per cent with automatic up to 74 per cent and Government route beyond	Owned by the administering side
Food	FSSAI under the Food Safety and Standards Act 2006, under the Ministry of Health and Family Welfare	Ministry of Food Processing Industries, with production-linked incentive support	GST Council, Department of Revenue		Open under DPIIT policy: manufacturing on the automatic route under para 5.2.5.1, and 100 per cent under the Government approval route for retail trading in food products manufactured or produced in India under para 5.2.5.2	No standing bar to justify
Alcohol	FSSAI standards for alcoholic beverages, with state rules alongside	State excise departments, on the revenue side of each state, license manufacture and trade	State excise duties; alcoholic liquor for human consumption sits outside GST		Open, subject to licence. Alcohol is not on the FDI prohibited list at para 5.1, and distillation and brewing are not among the four industries DPIIT names as still requiring compulsory industrial licensing	Prohibition, where a state chooses it, is owned by its own administrator
Narcotics (opium)	NDPS Act 1985, with CDSCO for medicinal use	Central Bureau of Narcotics, Department of Revenue: cultivation licensed and the crop bought by the state	Department of Revenue		State monopoly, run from the revenue side. Not on the FDI prohibited list at para 5.1, because entry is foreclosed by the licensing monopoly rather than by capital policy	Rationale owned by the administering ministry

[1]Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010; Press Note No. 2 (2010 Series), Department of Industrial Policy and Promotion, 10 May 2010; DPIIT, *Industrial Licensing Services*, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026; Consolidated FDI Policy Circular of 2020, DPIIT, para 5.1, p. 28; Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (Act 34 of 2003); Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019 (Act 42 of 2019); India, Implementation Report under the WHO FCTC (2025 reporting cycle), reporting period 2023-2025. The institutional configuration is assembled from the cited sources; the claim that no published economic assessment exists rests on the five parliamentary answers of 2015 to 2017 cited in this chapter and the absence of any assessment on the record.

[2]Exhibit 3, allocation across five sectors, confirms the proposition across pharmaceuticals, food, alcohol and narcotics.

[3]Press Note No. 2 (2010 Series), 10 May 2010, para 2.0, D/o IPP F. No. 5(10)/2008-FC.

[4]DPIIT, *Industrial Licensing Services*, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026; DPIIT, *FAQ, IDR / Arms*, services.dpiit.gov.in/lms/faq, accessed 11 September 2026. Both pages live as at 11 September 2026.

[5]Ministry of Finance, Japan, Functions, mof.go.jp/english/about_mof/functions/, accessed 11 September 2026 (Financial Bureau).

[6]Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010; Press Note No. 2 (2010 Series), 10 May 2010; the parliamentary answers of 2010 to 2017 cited in this chapter.

Source: COTPA 2003; Tobacco Board Act 1975; PECA 2019; Consolidated FDI Policy 2020; Press Note No. 2 (2010 Series); FSSAI Regulations 2011; the tax instruments in force from 1 February 2026. Three cells carry a flag; the seats are institutional descriptions, and most of the comparator seats are not drawn from the instruments' own text.

The flagship recommendation, which is institutional before it is instrumental, therefore leads.

The 2010 Decision

On 8 April 2010 the Cabinet Committee on Economic Affairs approved a proposal of the Department to prohibit foreign direct investment in the manufacture of cigarettes.[7] The release offered three reasons, all framed as consistency arguments rather than evidentiary ones, and none citing any health study, mortality figure or WHO material.[8,9,10,11] None named a mechanism by which restricting who may own manufacturing capacity would reduce who smokes. The strongest reason derived the capital bar from what the release itself described as "the administrative decision" not to grant industrial licences, which is the very forbearance the Department's own website now dates to 1999.[12,13] The justification thereby runs backwards, the 2010 note resting on the 1999 forbearance which rests on no traced notification. Even the alignment reason hedged, promising conformity with tobacco legislation only "to a greater extent" without identifying the remaining distance. Hence none of the three states a mechanism by which the instrument is to serve the objective it invokes.

Press Note 2 (2010 Series), issued on 10 May 2010, gave the decision its operative form by inserting a new entry in the prohibited list, widening the scope from cigarettes to the full 24.02 tariff basket.[14,15,16] However, the entry reaches manufacturing alone, since wholesale trading, technology collaboration, licensing, franchise and management contracts remain open.[17,18] The only reason on the parliamentary record restated the CCEA formula.[19] Every later answer restated scope without rationale.[20] Between 2015 and 2017 five answers in both Houses, one on opening the sector and four on closing it entirely, announced no change and cited no study, and the Standing Committee's 2020 recommendation for a study has produced no published study.[21,22,23,24] The record after the decision is as bare as the record before it.

[7]Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010.

[8]Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010 (reason (i), verbatim). The release stated that the approval "is expected to enhance public accountability by way of the Government's commitment towards proliferation of anti-smoking regime in the country."

[9]Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010 (reason (ii), verbatim). The release stated that the decision "would bring the policy in line with the administrative decision not to grant industrial licence for cigarette manufacturing."

[10]Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010 (reason (iii), verbatim). The release stated that it "will also align the FDI policy with the existing legislation on Tobacco control to a greater extent."

[11]Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010. The release text carries only the three quoted sentences as substantive justification.

[12]DPIIT, *Industrial Licensing Services*, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026. The Department describes the practice as dating to 1999.

[13]Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010 (reason (ii), verbatim).

[14]Press Note No. 2 (2010 Series), 10 May 2010, paras 2.0 and 3.0. Signed by Gopal Krishna, Joint Secretary.

[15]Press Note No. 2 (2010 Series), 10 May 2010, para 3.2. The entry reads: "j) Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes." Defined by reference to Code 24.02 of the Indian Trade Classification (Harmonized System).

[16]Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010 (release text: "manufacturing of cigarettes"); Press Note No. 2 (2010 Series), 10 May 2010, para 2.0 (Press Note text: ITC/HS 24.02 basket).

[17]Consolidated FDI Policy Circular of 2020, para 5.1, closing sentence, p. 28. The extension to technology transfer, licensing, franchise, trademark and management contracts names only lottery, gambling and betting.

[18]Lok Sabha, Unstarred Question No. 1068, answered 15 November 2010, Jyotiraditya M. Scindia, Minister of State for Commerce and Industry. The Department stated that "FDI in Cash & Carry Wholesale Trading/ Wholesale Trading is not prohibited for tobacco and cigarettes" and that "[o]nly FDI in manufacturing" of the specified products is barred.

[19]Lok Sabha, Unstarred Question No. 3840, answered 19 April 2010, Jyotiraditya M. Scindia, Minister of State for Commerce and Industry. The Minister restated the CCEA formula that the decision "is expected to enhance public accountability by way of the Government's commitment towards proliferation of anti-smoking regime in the country."

[20]Lok Sabha, Unstarred Question No. 1254, answered 2 August 2010; Rajya Sabha, Unstarred Question No. 3038, answered 25 August 2010; Lok Sabha, Unstarred Question No. 1068, answered 15 November 2010; Rajya Sabha, Unstarred Question No. 2326, answered 1 December 2010; Lok Sabha, Unstarred Question No. 6062, answered 14 May 2012; Lok Sabha, Starred Question No. 141, answered 16 December 2013, each restating scope without rationale.

[21]Lok Sabha, Unstarred Question No. 844, answered 24 July 2015, Nirmala Sitharaman, Minister of State (Independent Charge) for Commerce and Industry. The Department stated that "there is no proposal under the consideration of the Government to review extant FDI policy in tobacco sector."

[22]Lok Sabha, Unstarred Question No. 1355, answered 25 July 2016; Rajya Sabha, Unstarred Question No. 1841, answered 3 August 2016; Lok Sabha, Unstarred Question No. 4280, answered 12 December 2016. In the first two the position was that "no decision has been taken by the Government in this regard"; in the third, that "the Government has not taken any decision in the matter."

[23]Lok Sabha, Unstarred Question No. 54, answered 17 July 2017, Nirmala Sitharaman, Minister of State (Independent Charge) for Commerce and Industry. "Review of FDI policy on different sectors is a continuous process, however the Government has not taken any decision in the matter."

The 1999 Embargo

The Department's own website, on two pages that remain live, states that fresh licences for cigarette manufacture have not been issued on health grounds since 1999, citing no notification, order or file number.[25,26] Tobacco is one of only four industries still requiring compulsory industrial licensing, and the only one withheld on health grounds rather than by reason of the activity's safety characteristics.[27,28] However, the other three are governed by formal instruments. The tobacco sentence describes a practice. The 1999 decision itself, if recorded in a formal instrument, has not been traced in the public domain.[29]

The consequence of this dating is that the 1999 embargo froze manufacturing capacity a full eleven years before the 2010 note froze the ownership of that capacity. This is so because no new licence has issued for cigarette manufacture since 1999, which means the May 2010 press note added nothing to the control of new capacity.[30] Its entire marginal effect fell on who may own the capacity that already existed, which is a question about the passport of the capital. It is not about the production of cigarettes.

Hence the configuration as of the date of writing is a two-tier structure in which the upper tier, the FDI entry, states no reasons in its operative form, while the lower tier, the licensing forbearance, cites health grounds but rests on no traceable notification.[31]

What the Health Instruments Leave Undone

If the justification for the entry bar is public health, then the health instruments on which that rationale depends have a split record, with genuine compliance on what the health ministry chose to implement and a conspicuous non-implementation of what Parliament enacted on the product side. PECA defines "electronic cigarette" at Section 3(d) as an electronic device creating an aerosol for inhalation, sweeping all forms of electronic nicotine delivery into one undifferentiated prohibition without product standard, licence, risk classification or regulator.[32,33,34,35,36] Hence prohibition was chosen so that the regulatory questions would never have to be answered.

On the disclosure side, Section 7(5) of COTPA requires every package to indicate the nicotine and tar contents along with maximum permissible limits.[37] The commencement notification brought most of Section 7 into force but omitted sub-section (5), and Section 11, which obliges the Central Government to recognise testing laboratories for the purpose, was left out too, and came into force only on 1 September 2019.[38,39,40] Three National Tobacco Testing Laboratories now operate under it, but the disclosure duty

[24]Department-related Parliamentary Standing Committee on Commerce, 154th Report, "Export of Agricultural and Marine Products, Plantation Crops, Turmeric and Coir", Rajya Sabha, submitted 26 August 2020, presented 18 September 2020. No study answering the recommendation had been published as at 11 September 2026.

[25]DPIIT, *Industrial Licensing Services*, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026, tobacco row. The sentence reads: "Cigars and cigarettes of tobacco and manufactured tobacco substitutes [Fresh Licenses are not being issued for manufacture of this item on health grounds since 1999]."

[26]DPIIT, *FAQ, IDR / Arms*, services.dpiit.gov.in/lms/faq, accessed 11 September 2026, tobacco row. Identical wording save that licences "are not being granted" in place of "are not being issued."

[27]DPIIT, *Industrial Licensing Services*, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026; DPIIT, *FAQ, IDR / Arms*, services.dpiit.gov.in/lms/faq, accessed 11 September 2026. The four industries requiring compulsory licensing under the Industries (Development and Regulation) Act, 1951 are tobacco, electronic aerospace and defence equipment, explosives and hazardous chemicals.

[28]DPIIT, *Industrial Licensing Services*, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026. The tobacco entry alone cites health grounds; the other three are licensed by reason of the nature of the activity.

[29]DPIIT, *Industrial Licensing Services*, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026. No notification, order or file number is cited.

[30]DPIIT, *Industrial Licensing Services*, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026 (practice since 1999); Press Note No. 2 (2010 Series), 10 May 2010.

[31]DPIIT, *Industrial Licensing Services*, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026; Press Note No. 2 (2010 Series), 10 May 2010. The two-tier structure is assembled from the two cited sources.

[32]PECA 2019, ss. 3(d) and 4.

[33]PECA 2019, p. 3, preamble: assent 5 December 2019; deemed to have come into force on 18 September 2019, s. 1(2).

[34]PECA 2019, p. 3, s. 3(d). Section 3(d) defines "electronic cigarette" as "an electronic device that heats a substance, with or without nicotine and flavours, to create an aerosol for inhalation", sweeping all forms of ENDS, HNB, e-Hookah and "the like devices, by whatever name called."

[35]PECA 2019, p. 4, s. 4.

[36]PECA 2019, ss. 1 to 18. No section establishes a product standard, creates a licence or names a regulator.

[37]COTPA 2003, s. 7(5).

[38]COTPA 2003, ss. 7(5) and 11; S.O. 1955(E), 16 November 2007, in force 1 December 2007 (commencement of ss. 7(1)-(4), 8, 9, 10 and 20; sub-section (5) and s. 11 omitted). Section 11 was commenced separately by S.O. 3134(E), 29 August 2019 (Gazette of India, Extraordinary, No. 2862), with effect from 1 September 2019.

[39]COTPA 2003, footnote to s. 1(3); S.O. 1955(E), 16 November 2007: "sub-sections (1), (2), (3) and (4) of sec. 7, ss. 8, 9, 10 and 20".

[40]COTPA 2003, s. 11.

they were built to serve remains uncommenced, so nothing they measure need appear on a pack.[41] The health ministry's affidavit before the Kerala High Court this summer defended the non-commencement as a conscious policy decision, arguing that figures for nicotine and tar alone would mislead, since the two are only some of the toxic elements in tobacco smoke, and that pictorial warnings already do the work.[42,43,44,45]

However, Section 31(2)(b) of COTPA confers a separate rule-making power to specify maximum permissible nicotine and tar contents.[46] Although clause (b) is expressed by reference to the proviso to Section 7(5), Section 31 itself has been in force since 2004.[47,48] The tricky part is that Section 31(2)(b) could have been exercised at any point in the last twenty-two years, because a rule-making power requires only the will to make the rule and a standard against which to set the limit.[49] The will was never exercised.

India's 2025 filing to the Convention answers "No" to emissions regulation, "No" to contents regulation, and "No" to the disclosure of both to government.[50,51,52,53] This is the health side's own record, filed in its own hand.

India's pictorial warnings and cessation network are genuine achievements that demonstrate the health ministry delivers well on what it chooses to pursue.[54,55] They do not answer the question of why the measures Parliament enacted on the product side were left in indefinite abeyance while the entry bar resting on the health rationale those very measures were meant to serve has gone sixteen years without a published assessment.

The Unexamined Join

As we have seen, the health establishment asserts the rationale for the entry bar, produces the evidence on which that rationale could be tested, and has chosen for over two decades not to commence the disclosure duty Parliament enacted.[56,57,58] The Department administers the FDI circular through which the entry bar operates, yet it has never published an economic assessment of the prohibition or the licensing forbearance beneath it.[59,60,61,62] No institution sits between these two sides, charged with connecting the

[41] India, Implementation Report under the WHO FCTC (2025 reporting cycle), pp. 21 and 80. The report records three National Tobacco Testing Laboratories established under s. 11, at Mumbai, Guwahati and Noida, with a fourth approved.

[42] *Sangeerthana M. v Union of India*, W.P. (C) No. 8332 of 2025, Kerala High Court, Division Bench (Chief Justice Soumen Sen and Syam Kumar V.M. J.), hearings 26 March and 9 July 2026, as reported in "Smoking part of life since dawn of civilisation; we cannot prevent it: Kerala High Court", *Bar & Bench*, 26 March 2026, and "Disclosing Nicotine, Tar Content On Cigarette Packs May Confuse Consumers About Health Risks: Centre Tells Kerala High Court", *LiveLaw*, 9 July 2026.

[43] *Sangeerthana M. v Union of India*, W.P. (C) No. 8332 of 2025, Kerala High Court, MoHFW affidavit, reasons for non-commencement, as reported in "Disclosure of nicotine, tar levels on cigarette packs may be counter-productive: Centre to Kerala HC", *Bar & Bench*, 10 July 2026. As *Bar & Bench* reported it, the Government pointed out that nicotine and tar constitute "only a limited category of the toxic and carcinogenic elements involved in smoking tobacco". The report then quotes the affidavit itself: "Disclosure of numerical values relating only to nicotine and tar may, therefore, provide incomplete and potentially misleading information regarding the overall health risks associated with tobacco consumption."

[44] *Sangeerthana M. v Union of India*, W.P. (C) No. 8332 of 2025, Kerala High Court, MoHFW affidavit, on existing warnings, as reported in *Bar & Bench*, 10 July 2026, which records the Government's point that pictorial and textual health warnings on cigarette packs are already mandatory.

[45] *Sangeerthana M. v Union of India*, W.P. (C) No. 8332 of 2025, Kerala High Court, MoHFW affidavit, on the policy decision, as reported in *Bar & Bench*, 10 July 2026. In that report's words, the affidavit stated that whether s. 7(5) should be operationalised through a notification "is a policy decision", and the Government "has consciously refrained from notifying Section 7(5) of COTPA".

[46] COTPA 2003, s. 31(2)(b).

[47] COTPA 2003, s. 31(2)(b). In force since 2004.

[48] COTPA 2003, s. 31(2)(b), which provides for rules to "specify the maximum permissible nicotine and tar contents in cigarettes or other tobacco products under the proviso to sub-section (5) of section 7". Section 31 was brought into force on 1 May 2004 by S.O. 238(E), 25 February 2004.

[49] COTPA 2003, s. 31(2)(b). No rules traced.

[50] India, Implementation Report under the WHO FCTC (2025 reporting cycle), pp. 23, 24, 28. Exported 17 July 2025.

[51] India, Implementation Report under the WHO FCTC (2025 reporting cycle), p. 23. Question 7.3.1 (emissions regulation): "No" for smokeless tobacco (7.3.1.1), cigarettes (7.3.1.2), waterpipe tobacco (7.3.1.4) and other smoked tobacco products (7.3.1.6).

[52] India, Implementation Report under the WHO FCTC (2025 reporting cycle), p. 24. Question 7.3.3.1 ("Do you regulate the contents of tobacco products?"): "No."

[53] India, Implementation Report under the WHO FCTC (2025 reporting cycle), p. 28. Question 8.2.1.1 (disclosure of emissions to government): "No." Question 8.2.2.1 (disclosure of contents to government): "No."

[54] India, Implementation Report under the WHO FCTC (2025 reporting cycle), p. 32. Warning rules of 3 December 2024, front and back, 85 per cent.

[55] India, Implementation Report under the WHO FCTC (2025 reporting cycle), p. 42. Over 2,000 cessation centres.

[56] COTPA 2003, s. 7(5); s. 11, in force from 1 September 2019 (S.O. 3134(E), 29 August 2019).

[57] India, Implementation Report under the WHO FCTC (2025 reporting cycle), pp. 23, 24, 28.

[58] *Sangeerthana M. v Union of India*, W.P. (C) No. 8332 of 2025, Kerala High Court, MoHFW affidavit, as reported in *Bar & Bench*, 10 July 2026.

[59] Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010; DPIIT, *Industrial Licensing Services*, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026; Consolidated FDI Policy Circular of 2020, para 5.1, p. 28.

[60] Parliamentary record, 2010-2017, cited earlier in this chapter. No published assessment traced.

[61] Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010 (reason (i)).

health proposition that tobacco kills to the economic proposition that barring foreign investment in its manufacture will reduce that killing. Thus in sixteen years five parliamentary invitations to re-examine the policy have drawn answers citing no study, and the Standing Committee's 2020 recommendation for one has produced no published study.[63,64]

Hence the institutional configuration is not that someone examined the join and found it sound, but that no one examined it.

The claim concerns the absence of a stated mechanism and of any published assessment, not the competence or the motives of either ministry. However, a lawful rationale that has never been connected through a stated mechanism to the instrument it justifies, and whose economic effects have never been assessed in a published study, is a rationale whose join to the instrument remains unaccounted for. The accounting is the work of the chapters that follow, beginning with Chapter 3, which puts the entry bar itself to the test of domestic reason.

The Other Risk Sectors

If this institutional configuration were the ordinary way India governs health-risk products, the observation would be unremarkable. It is not.[65] In no other sector governed by the Union's investment policy do all three conditions of the departure hold together, as Exhibit 3 confirms across pharmaceuticals, food, alcohol and narcotics.[66,67,68,69]

Japan demonstrates that a state which takes tobacco at least as seriously as India does can seat its entire tobacco statute with its finance ministry, which registers wholesalers, licenses retailers, approves retail prices and prescribes the health warning, with the health ministry appearing zero times in the statute.[70,71,72] The comparison carries limitations, including the statute's revenue-first framing and the Government of Japan's shareholding in Japan Tobacco, which the Japan Tobacco Inc. Act requires to exceed one-third.[73,74] It is not invoked as a liberalisation model but for the narrower proposition that the seating India has chosen for its entry bar is a policy choice and not a structural necessity.

The Recommendation

Economic regulation of the sector must be re-founded on economic evidence owned by economic institutions, through a standing sectoral assessment of the EAC-PM or NITI class, with each ministry confined to the instruments of its own competence,[75] so that the health ministry keeps what is genuinely its own, namely cessation, warnings, surveillance and health education.[76] However, it loses the writ over investment policy and market structure, because an investment policy circular is an economic instrument administered by an economic department whose justification has never, in this sector, been held to the

[62]DPIIT, *Industrial Licensing Services*, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026.
[63]Lok Sabha, Unstarred Question No. 844, answered 24 July 2015; Lok Sabha, Unstarred Question No. 1355, answered 25 July 2016; Rajya Sabha, Unstarred Question No. 1841, answered 3 August 2016; Lok Sabha, Unstarred Question No. 4280, answered 12 December 2016; Lok Sabha, Unstarred Question No. 54, answered 17 July 2017.
[64]Department-related Parliamentary Standing Committee on Commerce, 154th Report, submitted 26 August 2020, presented 18 September 2020. No study answering the recommendation had been published as at 11 September 2026.
[65]Exhibit 3.
[66]Consolidated FDI Policy Circular of 2020, para 5.2.27, pp. 66-67. Pharmaceuticals: greenfield at 100 per cent automatic route, brownfield at 100 per cent with Government route beyond 74 per cent.
[67]PECA 2019, s. 3(d), which carves out products licensed under the Drugs and Cosmetics Act, 1940.
[68]Consolidated FDI Policy Circular of 2020, para 5.1, p. 28 (alcohol absent from the prohibited list); DPIIT, *FAQ, IDR / Arms*, services.dpiit.gov.in/lms/faq, accessed 11 September 2026 (distillation and brewing absent from the four compulsory licensing industries).
[69]Constitution of India, Seventh Schedule, List II, Entry 8; art. 47.
[70]Ministry of Finance, Japan, Functions, mof.go.jp/english/about_mof/functions/, accessed 11 September 2026 (Financial Bureau and Local Finance Bureaux).
[71]Cabinet Office, Japan, Office for Trade and Investment Ombudsman, summary of the Tobacco Business Act, cao.go.jp, accessed 11 September 2026.
[72]たばこ事業法 (Tobacco Business Act), Act No. 68 of 1984 (Japan), e-Gov, accessed 11 September 2026. Japanese original: 財務大臣 (Minister of Finance) 42 occurrences; 財務省令 (Ordinance of the Ministry of Finance) 23; 厚生労働 (health ministry) zero.
[73]Cabinet Office, Japan, OTO summary of the Tobacco Business Act, art. 1 (verbatim: "the sound development of the tobacco industry in Japan, thereby contributing to ensuring stably fiscal revenue" [sic]).
[74]Japan's Health Promotion Act runs the passive-smoking regime. The Government's shareholding floor in Japan Tobacco is set by art. 2(1) of 日本たばこ産業株式会社法 (Japan Tobacco Inc. Act), Act No. 69 of 1984 (Japan), e-Gov, accessed 15 October 2026, which requires the Government at all times to hold more than one-third of the company's issued shares.
[75]Exhibit 4. The flagship recommendation is set out in matching form in Chapter 12.
[76]India, Implementation Report under the WHO FCTC (2025 reporting cycle), pp. 32, 42.

standards of economic reasoning. Every economic restriction that cannot be re-founded on assessed evidence, tested periodically and published, goes, whether it is already in force or yet to be proposed, which is why the standing assessment reviews the restrictions in force on a timetable as well as every new proposal.

EXHIBIT 4 **The Tobacco Column, Today and As Proposed**

FUNCTION	TODAY	AS PROPOSED, CHAPTER 12	PROPOSED INSTRUMENT
Economic entry (FDI)	Prohibited by the press note of 10 May 2010: a Cabinet decision on a proposal of the Department, announced by a press note that states no reasons. Unexamined for sixteen years. The 1999 licensing forbearance sits beneath it and survives it	Entry restored under DPIIT policy, with conditions attached, among them grower welfare, auction participation and capacity. The ask is deletion of the FDI entry outright, paired with a reasoned review of the 1999 embargo, since deleting the entry while the embargo stands would add no new buyer at any auction. Any change of capacity passes a separate assessment of its health and competition effects. The staged alternative of an approval route confined to investment in existing manufacturers is examined and set aside, because it changes the passport of the capital and not the number of buyers	Deletion of the tobacco manufacturing entry, para 5.1(g), from the Consolidated FDI Policy, with the reasoned review of the 1999 industrial licensing embargo as the paired instrument
New-generation products	PECA prohibition for devices, a standards vacuum for oral products, a grey market for both	A licensing and standards statute replacing PECA: BIS standards, age gates and a dedicated regulator, with oral products regulated on their own terms	PECA replacement bill, carrying the licensing and standards scheme and a risk-tiered taxation schedule for the categories it regulates
Evidence and review	Commissioned within the health establishment. No economic review since 2010	A standing economic assessment of the sector, seated outside the health ministry, of the EAC-PM or NITI class, with periodic review of every economic restriction	Constitution and mandate of the standing economic assessment, benchmarked rather than invented
Crop and market	Tobacco Board rationing supply into an auction with one buyer that matters	The Board reformed: buyer registration widened and auctions opened to competing purchasers	Amendments to the Tobacco Board Act 1975 to widen buyer registration and open the auctions to competition
Taxation and enforcement	New regime in force from 1 Feb 2026. The s.148A power is enacted and in force from 1 Oct 2025, but unnotified for tobacco	Risk-tiered taxation, s.148A notified and track and trace live for tobacco	Notification of tobacco goods under CGST s.148A; risk-tiered taxation schedule (carried with the PECA replacement bill)
Health policy	Also runs the economics	Cessation, warnings, surveillance and education. Held in full, and held to its own field, with the harm side completed so the package leaves tobacco control stronger than the status quo leaves it, on identical conditions for every company, domestic or foreign	Commencement of COTPA s.7(5); maximum limits for contents and emissions under s.31(2)(b); closure of the point of sale exemptions; removal of the smoking room carve-outs

Source: Chapter 12 of this study. The middle column is the study's own recommendation, not a description of law in force. The health policy row proposes an expansion of health's work, not a reduction.

The objection that such an assessment body would formalise the separation of tobacco policy from health oversight must be met squarely, since it is the strongest limb of the Article 5.3 challenge.[77] Article 5.3 protects the setting of health policy from the industry, and its 2024 sectoral guidance reaches economic ministries for coherence, tax and illicit-trade carve-outs.[78,79] It neither requires nor authorises a bar on manufacturing ownership. The separation the objection fears is the ordinary Indian pattern for pharmaceuticals, food and alcohol alike.

The better objection, that a standing assessment body is itself a capture risk, deserves a conceded premise.[80] However, the present arrangement answers capture not with neutrality but with the complete absence of assessment, on a record carrying none before 2010, none since, five answers announcing no change and a request for a study that has produced none.[81] A published assessment with a stated method is reviewable by Parliament, by the Convention's own review machinery and by the courts. An unpublished commitment is not. Hence the recommendation rests not on the neutrality of economic institutions but on the reviewability of their output.

[77]The objection is stated, and answered, in Annex B, Objection 1, "Article 5.3 and Industry Seeding".

[78]WHO Framework Convention on Tobacco Control, 21 May 2003, 2302 UNTS 166, art. 5.3. The text concerns the setting and implementing of public health policies with respect to tobacco control.

[79]UNDP and WHO FCTC Secretariat, "Tobacco Control: What Ministries of Trade and Industry Need to Know" (sectoral brief), 2024; UNDP and WHO FCTC Secretariat, "Tobacco Control: What Ministries of Finance Need to Know" (sectoral brief), 2024. The 2024 sectoral guidance reaches trade, industry and finance ministries for coherence, tax, illicit-trade and treaty carve-outs; neither brief requires or authorises a bar on manufacturing ownership.

[80]The structural-capture objection is addressed in Chapter 12, under "The Standing Assessment", and in Annex B, Objection 7.5.

[81]Five answers, 2015-2017, on whether the policy would change, cited earlier in this chapter, none citing a study; Department-related Parliamentary Standing Committee on Commerce, 154th Report, submitted 26 August 2020, whose recommendation for a study had produced no published study as at 11 September 2026.

PART

II

The FDI Prohibition

03

The FDI Prohibition in Comparative Perspective

03

The FDI Prohibition in Comparative Perspective

The manufacture of tobacco products is the only manufactured consumer good on which India prohibits foreign investment.[1] Paragraph 5.1 of the Consolidated FDI Policy Circular of 2020 lists the prohibited sectors as follows:

a) Lottery Business including Government/private lottery, online lotteries, etc.
b) Gambling and Betting including casinos etc.
c) Chit funds
d) Nidhi company
e) Trading in Transferable Development Rights (TDRs)
f) Real Estate Business or Construction of Farm Houses …
g) Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
h) Activities/sectors not open to private sector investment e.g.(I) Atomic Energy and (II) Railway operations (other than permitted activities mentioned in para 5.2).[2]

The company is revealing. Lottery and betting, chit funds and Nidhi companies, transferable development rights and real estate are speculative or land-linked activities, while atomic energy and the core of railway operations belong to the public sector. However, entry (g) sits among them as an anomaly, because a manufactured consumer good carrying no security dimension and no speculative character has been placed on the same footing as gambling and nuclear energy.[3] This chapter construes that entry and finds two defects where one would suffice.

The entry bars manufacturing and nothing else, since the closing sentence of paragraph 5.1 extends the additional prohibition on foreign technology collaboration only to "Lottery Business, Gambling and Betting activities".[4] Nor does the entry bar wholesale trading, which remains open to foreign investment as the parliamentary record and the Reserve Bank of India have confirmed.[5,6] Its words track tariff heading 2402 of the Indian Trade Classification, though the DPIIT licensing list uses a different formula for the same product range.[7,8] Through the Non-Debt Instruments Rules of 2019, the prohibition also sits in subordinate legislation and reaches portfolio investment.[9,10,11]

[1]Consolidated FDI Policy Circular of 2020, DPIIT, para 5.1(g), p. 28.
[2]Consolidated FDI Policy Circular of 2020, para 5.1(a)-(h), p. 28.
[3]Press Note No. 2 (2010 Series), Department of Industrial Policy and Promotion, 10 May 2010. The tobacco entry was inserted as (j) in the then para 5.1.
[4]Consolidated FDI Policy Circular of 2020, para 5.1, closing sentence, p. 28: "Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business, Gambling and Betting activities." The entry therefore does not bar foreign technology collaboration, licensing, franchise, trademark, brand name or management contracts for tobacco products.
[5]Lok Sabha, Unstarred Question No. 1068, answered 15 November 2010. The Minister stated that "as per extant FDI policy, FDI in Cash & Carry Wholesale Trading/ Wholesale Trading is not prohibited for tobacco and cigarettes" and that "only FDI in manufacturing … has been prohibited".
[6]RBI, A.P. (DIR Series) Circular No. 2 of 3 July 2015, as cited in Rajya Sabha, Unstarred Question No. 185, answered 22 July 2015.
[7]Press Note No. 2 (2010 Series), 10 May 2010, para 2.0: "Code 24.02 of Indian Trade Classification which follows the Harmonized Commodity Description and Coding System." The tariff-code anchor in Press Note 2 did not survive into the 2020 consolidated circular, but the product description did, and its scope is the scope of heading 2402.
[8]DPIIT, *Industrial Licensing Services*, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026, "Other Sectors" panel: "Cigars and cigarettes of tobacco and manufactured tobacco substitutes." The FDI entry reads "cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes" (the difference lies in the additional product types and the conjunction). Whether the two formulations differ in legal scope has never been tested by any court or tribunal, since both operate through administrative practice; for present purposes, both reach the class of products within heading 2402 and no further.
[9]Foreign Exchange Management (Non-debt Instruments) Rules, 2019, S.O. 3732(E), 17 October 2019, Schedule I, para (2)(g).
[10]Foreign Exchange Management (Non-debt Instruments) Rules, 2019, Schedule II, para (1)(a)(ii), fourth proviso: "the aggregate limit with respect to an Indian company in a sector where FDI is prohibited shall be 24 per cent." Also restated at Consolidated FDI Policy Circular of 2020, Annexure 8, p. 103. The proviso therefore operates on listed Indian tobacco manufacturers as a standing ceiling on foreign portfolio ownership, not merely as a bar on new direct investment.
[11]The Rules are cited as made in October 2019; no later amendment touching the tobacco clause or the portfolio proviso has been traced.

The Two Locks

Before Press Note 2 took effect on 10 May 2010, 100 per cent foreign direct investment in cigarette manufacturing was permitted under the Government route, subject to industrial licensing under the Industries (Development & Regulation) Act, 1951.[12,13] However, the capacity-control gate mattered more than the investment-policy gate, because the industrial licence had already closed. The Department for Promotion of Industry and Internal Trade states on its own page, in a sentence unchanged since at least May 2022, that fresh licences for this item "are not being issued … on health grounds since 1999".[14,15,16] Hence, from 1999 no applicant of any nationality could obtain a licence to build new cigarette manufacturing capacity, because the ground on which licences were refused does not distinguish between the nationality of the capital behind the application. Because that gate had held alone since 1999 and barred every applicant from obtaining fresh manufacturing capacity, the May 2010 entry, by closing the investment gate as well, added only a second lock to a door whose first already prevented entry, so that its entire marginal effect fell not on whether new capacity could be built, which it could not, but on who may own the capacity that had been licensed before 1999, since no fresh capacity could be created with or without foreign investment for as long as the administrative decision not to grant licences continued in force.[17,18] This is the structural finding of the chapter.

The 1999 licensing practice is administrative forbearance, not a gazetted instrument, and DPIIT cites no notification or order for it.[19] Exhibit 5 sets out the instrument record from 1999 to 2026. The two gates also differ in durability, since a forbearance may be reversed without amending any rule, whereas the FDI entry is inscribed in the Non-Debt Instruments Rules and requires a formal amendment to remove. Both points are conceded. They do not change the fact that the entry added nothing to the control of new capacity.

The Reasons on the Record

The Cabinet Committee on Economic Affairs, in its release of 8 April 2010, approved a proposal of the Department and stated:

> The approval is expected to enhance public accountability by way of the Government's commitment towards proliferation of anti-smoking regime in the country. This would bring the policy in line with the administrative decision not to grant industrial licence for cigarette manufacturing. It will also align the FDI policy with the existing legislation on Tobacco control to a greater extent.[20]

The release cited no study and no ICMR or WHO recommendation. What it offered was a commitment to anti-smoking "public accountability" without any mechanism connecting the entry to that objective, and a concession that the entry matched the 1999 licensing practice already in force. Its remaining claim, that the entry aligned FDI policy with COTPA "to a greater extent", concedes its own incompleteness, since COTPA regulates advertising, warnings and smoke-free spaces, not the nationality of investors.[21] Nor does Press Note 2 itself state any reasons.[22] The only parliamentary answer offering a rationale restates the CCEA's

[12]Press Note No. 2 (2010 Series), 10 May 2010, para 1.0.

[13]Press Note No. 2 (2010 Series), 10 May 2010, para 1.0: "subject to obtaining industrial license under the Industries (Development & Regulation) Act, 1951."

[14]DPIIT, *Industrial Licensing Services*, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026; the sentence is unchanged since the Internet Archive's capture of 23 May 2022.

[15]DPIIT, *FAQ, IDR / Arms*, services.dpiit.gov.in/lms/faq, accessed 11 September 2026. The FAQ page states that fresh licences "are not being granted for manufacture of this item on health grounds since 1999", in words substantially identical to the ilServices page.

[16]DPIIT, *FAQ, IDR / Arms*, services.dpiit.gov.in/lms/faq, accessed 11 September 2026: "With progressive de-licensing of the industries, only four industries have been retained under compulsory licensing under the Industries (Development & Regulation) Act, 1951." The four are electronic aerospace and defence equipment, industrial explosives, specified hazardous chemicals, and cigars and cigarettes of tobacco and manufactured tobacco substitutes.

[17]Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010. The CCEA's second reason describes the 1999 licensing practice as "the administrative decision not to grant industrial licence for cigarette manufacturing" and presents the FDI prohibition as bringing investment policy "in line with" that decision, which is the Government's own concession that the entry matched a practice already in force.

[18]This is the finding drawn from the CCEA release and the DPIIT licensing pages read together. The CCEA's own second reason confirms that the 1999 embargo was the operative barrier; the entry matched it rather than supplemented it.

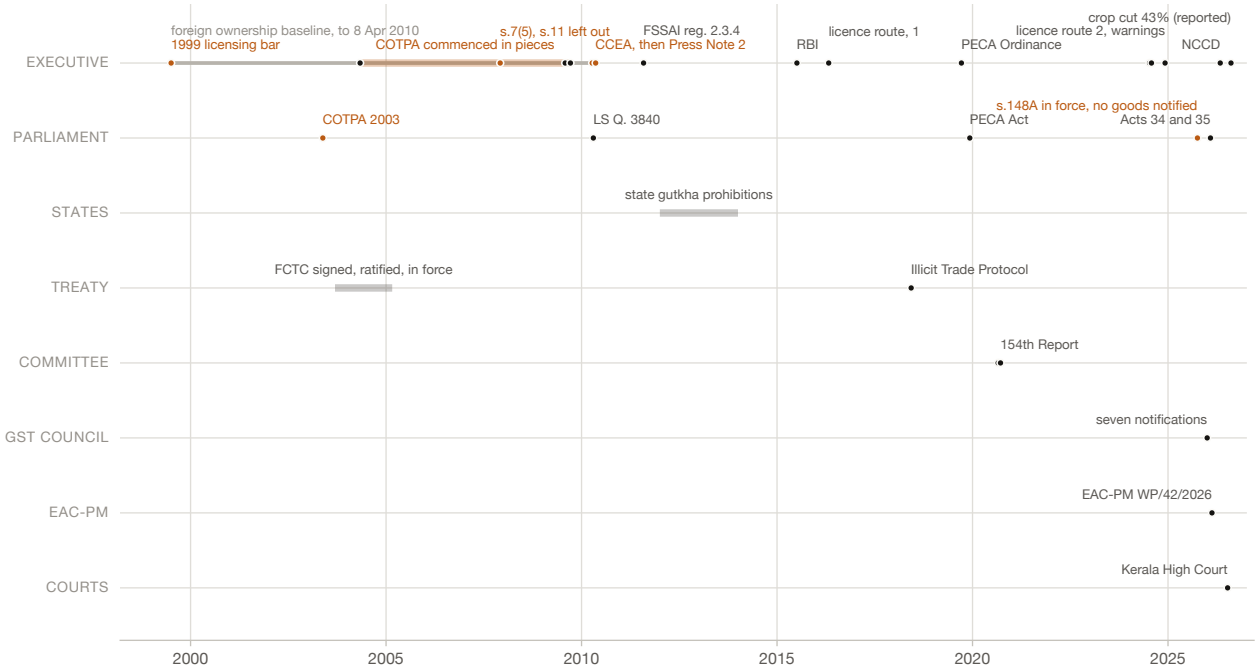
[19]DPIIT, *Industrial Licensing Services*, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026. DPIIT's own pages state the practice without citing any notification or order for it.

[20]Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010.

[21]Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (Act 34 of 2003).

[22]Press Note No. 2 (2010 Series), 10 May 2010. The Press Note records the present position, the revised position, the deletion of para 5.7 and the insertion of entry (j), with no rationale. Anyone reading only the Press Note would find the prohibition unexplained.

EXHIBIT 5 The Instrument Record, 1999 to 2026



Source: the statutes, gazette notifications, press notes, treaty instruments and committee reports, 1999 to 2026. Thirty-two entries, one lane for each issuing authority; twenty carry a short tag. The four COTPA commencements of 2004 to 2009 are shown as one band and the three treaty steps as another.

commitment sentence almost word for word, and every subsequent answer in sixteen years restates the prohibition's scope without supplementing its rationale.[23,24]

It is also on the press record that the Department itself had proposed a less absolute measure, scaling the foreign investment ceiling back from 100 to 74 per cent and requiring cigarettes made in new ventures or upgraded facilities to be "mainly for consumption outside India", before the commerce and finance ministries "did a volte face" and agreed to the blanket prohibition.[25] Hence the abandoned alternative is significant, because the Department had proposed a structure that tied the output of new ventures to export, and the instrument adopted in its place mentions neither export nor the grower. No reason given on the record supplies a causal path from the prohibition to its stated health objective, and if evidence was considered, no trace of that consideration has been made public in the sixteen years since.

No Mechanism

The entry regulates who may hold equity in a company that manufactures products falling under tariff heading 2402.[26] However, each of the dimensions through which tobacco control actually operates, the regulation of output, pricing, advertising, retail availability and minimum purchase age, is the domain of a different instrument, and each of those instruments can point to a causal path between its operation

[23] Lok Sabha, Unstarred Question No. 3840, answered 19 April 2010. The Minister stated that the decision "is expected to enhance public accountability by way of the Government's commitment towards proliferation of anti-smoking regime in the country", repeating the CCEA release word for word from "is expected". This answer was given on 19 April 2010, before Press Note 2 issued on 10 May 2010.

[24] Lok Sabha, Unstarred Question No. 1254, answered 2 August 2010; Rajya Sabha, Unstarred Question No. 3038, answered 25 August 2010; Lok Sabha, Unstarred Question No. 1068, answered 15 November 2010; Rajya Sabha, Unstarred Question No. 2326, answered 1 December 2010; Lok Sabha, Unstarred Question No. 6062, answered 14 May 2012; Lok Sabha, Unstarred Question No. 2089, answered 11 March 2013; Lok Sabha, Starred Question No. 141, answered 16 December 2013; Rajya Sabha, Unstarred Question No. 2181, answered 12 February 2014; Rajya Sabha, Unstarred Question No. 756, answered 16 July 2014; Lok Sabha, Unstarred Question No. 844, answered 24 July 2015; Rajya Sabha, Unstarred Question No. 185, answered 22 July 2015; Lok Sabha, Unstarred Question No. 1355, answered 25 July 2016; Rajya Sabha, Unstarred Question No. 1841, answered 3 August 2016; Lok Sabha, Unstarred Question No. 4280, answered 12 December 2016; Lok Sabha, Unstarred Question No. 54, answered 17 July 2017. Between 2010 and 2017 these fifteen answers restated the prohibition's scope without supplementing its rationale.

[25] As reported in "Govt Bans FDI in Cigarette Manufacturing", *Business Standard*, 9 April 2010.

[26] The entry at para 5.1(g) is exhausted by the word "Manufacturing" and the product description that follows it. It does not regulate the output of such a company, the price of its products, the composition or emissions of those products, the packaging or labelling, the advertising or promotion, the retail availability, or the minimum age at which those products may be purchased. No other regulatory dimension is stated in, or implied by, the entry.

and a reduction in consumption that the entry cannot.[27,28] Hence, the entry touches the capital behind the factory, not the product that comes out of it.

If the entry's purpose is tobacco control, there must be a stated mechanism by which restricting the nationality of a manufacturer's shareholders reduces the consumption of its products. Neither the CCEA release, nor the Press Note, nor the sixteen parliamentary answers given between 2010 and 2017 supply such a mechanism.[29] A bar on foreign investors regulates who may profit from manufacture, not who smokes.

The WHO Framework Convention on Tobacco Control neither requires nor forbids the entry, and Article 2.1 expressly permits Parties to impose stricter measures.[30,31] This study alleges no treaty breach. However, India's own 2025 implementation report does not mention the FDI entry, and in its answer to Article 2.1, which asks Parties to describe measures beyond the Convention, India lists PECA and enforcement measures, not the entry.[32,33,34] Accordingly, the Government itself does not treat the prohibition as a tobacco-control measure, even in a filing designed to record its tobacco-control measures.

Hence, an instrument that cannot state the mechanism by which it serves its stated objective fails the most elementary discipline of rationality, and the burden of justifying it rests on the instrument, not on those who propose its removal.

The Wrong Segment

The entry's words are the words of tariff heading 2402, and every other tobacco product classified by the Government's own rate instruments, biris, chewing tobacco, gutkha, pan masala containing tobacco and products for inhalation without combustion, falls outside that heading and therefore outside the entry.[35] India's tobacco burden does not sit at heading 2402. The Global Adult Tobacco Survey of 2016-17, the most recent official prevalence data, found that 21.4 per cent of Indian adults use smokeless tobacco, against 10.7 per cent for all forms of smoking and 4.0 per cent for cigarettes alone.[36] Khaini is the most commonly used tobacco product at 11.2 per cent, followed by bidi at 7.7 per cent and gutkha at 6.8 per cent.[37] Hence, the entry was aimed at a fraction of the problem, and the fraction was the smallest one.

In the cigarette segment the entry did reach, the EAC-PM's analysis of household consumer expenditure data found that household incidence of cigarette expenditure rose in both urban and rural India while the entry stood.[38] However, even this counter-fact does not help the entry, because it barred the ownership of manufacturing capacity, not consumption itself, and no document has explained why the first should be

[27]COTPA 2003, ss. 4 (prohibition of smoking in public places), 5 (prohibition of advertisement), 7 (warnings on packages).

[28]Notification No. 19/2025-Central Tax (Rate), 31 December 2025, effective 1 February 2026; Central Excise (Amendment) Act, 2025 (Act 34 of 2025). The fiscal regime taxes tobacco products by reference to their printed retail sale price, imposes a per-stick excise on cigarettes and a separate excise on smokeless products. Enforcement and cessation sit with the health administration and its cessation network.

[29]Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010; Press Note No. 2 (2010 Series), 10 May 2010; the sixteen parliamentary answers from 2010 to 2017 cited earlier in this chapter.

[30]WHO Framework Convention on Tobacco Control, 21 May 2003, 2302 UNTS 166, art. 2.1: "In order to better protect human health, Parties are encouraged to implement measures beyond those required by this Convention and its protocols, and nothing in these instruments shall prevent a Party from imposing stricter requirements that are consistent with their provisions and are in accordance with international law." India signed on 10 September 2003, ratified on 5 February 2004; in force for India from 27 February 2005.

[31]WHO FCTC, Part IV (arts. 15-17). The preamble does not mention investment, and Part IV, on supply reduction, runs to illicit trade, sales to minors and alternative livelihoods, with no provision on the ownership of manufacturing capacity.

[32]India, Implementation Report under the WHO FCTC (2025 reporting cycle), reporting period 2023-2025. The report runs to eighty-nine pages.

[33]India, Implementation Report under the WHO FCTC (2025 reporting cycle): the word "invest" does not occur in the report's eighty-nine pages.

[34]India, Implementation Report under the WHO FCTC (2025 reporting cycle), art. 2.1 answer.

[35]Notification No. 19/2025-Central Tax (Rate), 31 December 2025, p. 1; Notification No. 03/2025-Central Excise, 31 December 2025, pp. 1-2. Biris are classified under tariff sub-headings 2403 19 21 and 2403 19 29, chewing tobacco at 2403 99 10, jarda scented tobacco at 2403 99 30, snuff at 2403 99 40, gutkha and pan masala containing tobacco at 2403 99 90, and products intended for inhalation without combustion at 2404 11 00 and 2404 19 00.

[36]Global Adult Tobacco Survey, India, 2016-17 (GATS-2), MPOWER Summary Indicators Table, printed p. xli. GATS-3 has been fielded but no report has been published as at the date of this study.

[37]Global Adult Tobacco Survey, India, 2016-17 (GATS-2), printed p. xxxv: "khaini … is the most commonly used tobacco product in India and this is used by every ninth adult (11.2%). The next most commonly used tobacco product is bidi, smoked by 7.7 percent of adult Indians. In use, gutka … ranks the third (6.8%)."

[38]Economic Advisory Council to the Prime Minister, Working Paper EAC-PM/WP/42/2026, "Rise in Tobacco Consumption and Policy Implications" (Shamika Ravi and Partha Protim Barman), February 2026, Appendix Table 1, p. 57. The EAC-PM measures households reporting expenditure, not individual prevalence; the two constructs are not interchangeable. The share of rural households reporting cigarette expenditure rose from 4.81 per cent in 2011-12 to 11.20 per cent in the more recent round, while urban cigarette-reporting households rose from 8.41 per cent to 18.05 per cent.

expected to produce the second. The entry never reached the segments carrying the larger share of India's tobacco burden, and in the segment it did reach, the metric moved against it.

Sixteen Years Without Review

Since 2010, the parliamentary record discloses five questions between 2015 and 2017 on whether the policy would change, one on opening the sector and four on closing it entirely, and every answer announces no change, in formulaic language that cites no assessment or body of evidence in support of continuing the prohibition.[39,40] The Department-related Parliamentary Standing Committee on Commerce, in its 154th Report of August 2020, held that regulated FDI would stimulate the production and processing of Indian tobacco for export and recommended that the Department study the opening of the sector.[41] Yet no such study has been published.[42] Hence, the only institution that assessed the question recommended opening, and no published study has tested its view.

A qualification on the searchable record is necessary, since the Rajya Sabha's online archive publishes no answer texts from 2021 onward, and the Lok Sabha's none for the 18th Lok Sabha (from June 2024).[43,44] No reasoned review has been published in sixteen years, and the published record is the record the Government chose to create.

Hence, the prohibition persists not because it has earned its continuance through demonstrated results, but because no institution has been required to justify it.

The Passport of the Capital

The entry's marginal effect fell not on capacity, which the 1999 licensing practice already controlled, but on ownership. It never reached the smokeless and bidi segments where India's burden sits, and in the segment it did reach, household incidence rose. Neither a mechanism nor a reasoned review has been stated in sixteen years.

The state came to regulate the passport of the capital more strictly than the contents of the product.

Therefore the burden of justification now rests on the prohibition, not on its removal. However, this chapter concedes what the sharpest objection against it correctly observes. If the entry is deleted while the 1999 licensing practice stands, the deletion changes who may own existing capacity and adds no buyer at any auction, because no fresh capacity can be created while fresh licences are not being granted.[45] That is precisely why the deletion cannot stand alone, since it must be paired with a reasoned review of the licensing practice itself, conditioned on an assessment of health and competition effects. The remaining chapters build the case for that pairing. Neither the entry nor the forbearance beneath it can answer the question this chapter has posed, because the question, whether an instrument with no stated mechanism and no reasoned review should continue to govern who may invest in one of India's largest agricultural value chains, is a question that sixteen years of silence have made overdue.

[39]Lok Sabha, Unstarred Question No. 844, answered 24 July 2015. The Government stated that "there is no proposal under the consideration of the Government to review extant FDI policy in tobacco sector".

[40]Lok Sabha, Unstarred Question No. 1355, answered 25 July 2016; Rajya Sabha, Unstarred Question No. 1841, answered 3 August 2016; Lok Sabha, Unstarred Question No. 4280, answered 12 December 2016; Lok Sabha, Unstarred Question No. 54, answered 17 July 2017. In July and August 2016 the Government stated that "no decision has been taken by the Government in this regard", language repeated in materially identical terms through July 2017.

[41]Department-related Parliamentary Standing Committee on Commerce, 154th Report, "Export of Agricultural and Marine Products, Plantation Crops, Turmeric and Coir", Rajya Sabha, submitted 26 August 2020, presented 18 September 2020. Cited from the PRS Legislative Research summary (8 January 2021) and "Parliamentary panel recommends regulated FDI in tobacco sector", *The Tribune*, 27 August 2020.

[42]No study answering the 154th Report's recommendation had been published as at 11 September 2026.

[43]Answer texts are not available in the Rajya Sabha's online question archive for 2021 onward, or in the Lok Sabha's for the 18th Lok Sabha (June 2024 onward); for those years only question texts can be searched.

[44]Rajya Sabha, Unstarred Question No. 1841, answered 3 August 2016; Lok Sabha, Unstarred Question No. 54, answered 17 July 2017. On the searchable record, these are the last question-and-answer on FDI in tobacco in either House.

[45]DPIIT, *Industrial Licensing Services*, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026; the licensing practice, by DPIIT's own statement, remains in effect. See Chapters 5 and 12 for the pairing of the FDI deletion with a reasoned review of the embargo.

04

Market Structure and the Incumbency Effect

04

Market Structure and the Incumbency Effect

The prohibition on foreign investment in tobacco manufacturing bars equity in the factory and nothing else, since the Consolidated FDI Policy Circular leaves technology collaboration, licensing, franchise, trademark and management contracts lawful, while wholesale trading follows ordinary sectoral restrictions and portfolio investment is capped at twenty-four per cent without being closed.[1] The Department has twice proposed tightening the collaboration route and twice stopped short.[2] However, the foreign holdings seated before the bar came into force in May 2010 have passed through sixteen years of it undisturbed, so that foreign capital sits inside the Indian cigarette market on terms the prohibition itself cannot alter.

On the filed shareholding pattern of ITC Limited, as at 30 June 2026, a BAT group concert party holds 22.91 per cent of India's dominant cigarette manufacturer, classified on the company's own filing as foreign direct investment.[3] Exhibit 6 sets out the holdings. Philip Morris Global Brands Inc. holds 25.10 per cent of Godfrey Phillips India, the second-largest manufacturer, whose Marlboro is manufactured and distributed under exclusive procurement and supply agreements with Philip Morris International.[4,5] Nor is the state a stranger, since the Union holds close to eight per cent of ITC through the Specified Undertaking of the Unit Trust of India, with a Joint Secretary of DIPAM sitting on ITC's board as SUUTI's representative.[6]

EXHIBIT 6 **Who Holds the Two Listed Cigarette Manufacturers, on the Filings**

ENTITY	HOLDING %	PATTERN DATE	CLASSIFICATION IN THE FILING
ITC LIMITED, ON THE SHAREHOLDING PATTERN OF 30 JUNE 2026			
Tobacco Manufacturers (India) Limited	17.7904	30 June 2026	Table III, (2) Institutions (Foreign), (a) Foreign Direct Investment. Declared as acting in concert with the other two BAT entities in Table III's details of shareholders acting as persons in concert
Myddleton Investment Company Limited	3.8823	30 June 2026	Table III, (2) Institutions (Foreign), (a) Foreign Direct Investment. Acting in concert
Rothmans International Enterprises Limited	1.2370	30 June 2026	Table III, (2) Institutions (Foreign), (a) Foreign Direct Investment. Acting in concert
BAT group total (derived: the sum of the three rows above)	22.9098	30 June 2026	One Foreign Direct Investment line: 3 shareholders, 2,869,762,693 shares, 22.9098 per cent. Fully diluted 22.7821. Share count identical at 31 March 2026 and unchanged in every pattern from 30 June 2025
Promoter and Promoter Group	0	30 June 2026	Table I row (A): 0 shareholders, 0 shares, 0 holding. ITC has no promoter, so the BAT entities are public shareholders and Table II is empty
Specified Undertaking of the Unit Trust of India (SUUTI)	7.7798	30 June 2026	Table III, (1) Institutions (Domestic), (j) Other Financial Institutions. Not a government category. Fully diluted 7.7365; 974,531,427 shares; unchanged at 31 March 2026
Central Government / President of India	not printed	30 June 2026	A separate line in the same Table III showing 9,646 shares, with no percentage printed. It is the only holding filed in the Government's own name, since SUUTI's 7.7798 per cent is not filed as a government holding
Foreign Portfolio Investors, aggregate approved limit	24 (a limit, not a holding)	30 June 2026	Note to the pattern: the Company has disclosed the investment limits for Foreign Portfolio Investors (24 per cent) and Non-Resident Indians (10 per cent) under Foreign Direct Investment in Table III. The ceiling is the fourth proviso to Sch. II para (1)(a)(ii) of the Non-Debt Instruments Rules 2019
Non-Resident Indians, aggregate approved limit	10 (a limit, not a holding)	30 June 2026	Same note to the pattern
GODFREY PHILLIPS INDIA LIMITED, ON THE ANNUAL REPORT FOR 2025-26 AND THE PATTERN OF 30 JUNE 2026			
K.K. Modi Investment and Financial Services Private Limited	29.85	31 March 2026	Note 17(iii), shareholders holding more than 5 per cent. 46,553,748 shares after the 2:1 bonus issue of 2025-26 (15,517,916 a year earlier)
Philip Morris Global Brands Inc., USA	25.10	31 March 2026; 30 June 2026	Note 17(iii), shareholders holding more than 5 per cent. 39,151,425 shares after the bonus issue (13,050,475 a year earlier). Classified in the promoter group as foreign on the pattern of 30 June 2026, and listed in the related-party note as an entity having significant influence
Good Investment (India) Limited	8.29	31 March 2026	Note 17(iii), shareholders holding more than 5 per cent. 12,927,660 shares after the bonus issue
THE WHOLESALE VENTURE			

[1]Consolidated FDI Policy Circular of 2020, DPIIT, para 5.1, p. 28; Annexure 8, p. 103.
[2]"Cigarette Stocks Feel FDI Heat, Godfrey Phillips Tanks 17%", *Business Standard*, 26 April 2016; "DPIIT Working on Proposal to Further Tighten FDI Rules in Tobacco Sector", *Business Standard*, 28 July 2024.
[3]ITC Limited, Shareholding Pattern as at 30 June 2026, BSE filing, Table III, "Foreign Direct Investment" line.
[4]Godfrey Phillips India Limited, Annual Report 2025-26, Note 17(iii), p. 143; Godfrey Phillips India Limited, Shareholding Pattern as at 30 June 2026, NSE filing (Philip Morris Global Brands Inc., promoter group, foreign).
[5]Godfrey Phillips India Limited, FY26 Earnings Presentation, PDF p. 4, fn 2.
[6]ITC Limited, Shareholding Pattern as at 30 June 2026, BSE filing, Table III, (1) Institutions (Domestic), (j) Other Financial Institutions; ITC Limited, Report and Accounts 2026, PDF pp. 31, 35, 41.

ENTITY	HOLDING %	PATTERN DATE	CLASSIFICATION IN THE FILING
Godfrey Phillips India Limited	24.80	31 March 2026	Form AOC-1 Part B in the annual report for 2025-26: 49,60,000 shares, extent of holding 24.80 per cent, an associate over which the Company has significant influence
Philip Morris Brands Sàrl, Switzerland	50.1	24 November 2022	Not in a company filing. CRISIL's rating rationale gives the direct stake of this indirect subsidiary of Philip Morris International. Philip Morris International's own filings with the US Securities and Exchange Commission describe the venture as "a 56.3% owned PMI consolidated subsidiary", which matches the direct stake plus Philip Morris's share of Godfrey Phillips's holding
K.K. Modi Investment and Financial Services Private Limited	25.1	24 November 2022	Not in a company filing. Same rating rationale

Source: ITC Limited's shareholding pattern filed under SEBI (LODR) Reg. 31 for 30 June 2026, Godfrey Phillips India's annual report for 2025-26 and its pattern of 30 June 2026, and CRISIL's rating rationale of 24 November 2022 for the wholesale venture. Holdings as filed. Two rows are approved limits and not holdings, and two of the venture's three legs rest on the rating rationale rather than on a company filing.

Hence the prohibition operates not as an exclusion of foreign money from the Indian cigarette market but as a freeze of the market as it stood in 2010, sheltering incumbency from entry while leaving every non-equity channel open to those already seated.

The Scope of the Bar

Paragraph 5.1 of the Consolidated FDI Policy Circular of 2020 lists the sectors in which foreign direct investment is prohibited.[7] The entry for tobacco reads in full:

> Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes[8]

As can be seen, the wording confines itself to the manufacture of the finished product.[9] However, the technology-collaboration bar that Para 5.1 attaches to the prohibited list does not extend to tobacco, since it is confined to lottery, gambling and betting, so that the licensing route has been lawful for tobacco since the entry first appeared.[10,11,12] Since the entry addresses one activity in a chain of many, its scope is considerably narrower than the sector it is presumed to govern.

The Reserve Bank of India confirmed this reading in July 2015, clarifying that the prohibition 'applies only to manufacturing'.[13] In November 2010 the Lok Sabha was told that wholesale trading 'is not prohibited for tobacco and cigarettes'.[14,15] A separate ceiling permits foreign portfolio investors to hold up to twenty-four per cent of a listed manufacturer's equity on the secondary market,[16] which is the only route through which new foreign capital may enter a prohibited-sector company.[17,18,19]

Therefore what the prohibition controls is the passport of the capital, not the product, and what follows from the filed records is a market in which that distinction has produced a structure the prohibition's reputation does not prepare the reader for.

[7]Consolidated FDI Policy Circular of 2020, para 5.1, p. 28.

[8]Consolidated FDI Policy Circular of 2020, para 5.1(g), p. 28; Press Note No. 2 (2010 Series), Department of Industrial Policy and Promotion, 10 May 2010, para 3.2 (inserting entry (j) in para 5.1).

[9]Press Note No. 2 (2010 Series), 10 May 2010; the ITC/HS heading 24.02 anchor appeared in the press note and was dropped in subsequent consolidations.

[10]Consolidated FDI Policy Circular of 2020, para 5.1, closing sentence, p. 28.

[11]Consolidated FDI Policy Circular of 2020, para 5.1, p. 28. The sentence reads "Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business, Gambling and Betting activities."

[12]Press Note No. 2 (2010 Series), 10 May 2010; Consolidated FDI Policy Circular of 2020, para 5.1(g), p. 28; the bar does not cover the growing or curing of leaf, the contract manufacture of cigarettes for a foreign brand owner under a licensing arrangement, the wholesale trading of finished cigarettes, or the export of tobacco products. The ITC/HS heading 24.02 that appeared in the original press note was left behind when the entry was consolidated, but the product basket it describes has not changed.

[13]RBI, A.P. (DIR Series) Circular No. 2 of 3 July 2015, as reported in "Cigarette Makers Decline after RBI Confirms Ban on FDI in Manufacturing of Tobacco Products", *Business Standard*, 6 July 2015. The clarification stated that the prohibition "applies only to manufacturing" and that other activities, "including wholesale cash and carry, retail trading etc.", follow ordinary sectoral restrictions.

[14]Lok Sabha, Unstarred Question No. 1068, 15 November 2010.

[15]Rajya Sabha, Unstarred Question No. 185, 22 July 2015. The answer drew the same distinction between manufacturing and other activities, citing RBI A.P. (DIR Series) Circular No. 2 of 3 July 2015.

[16]Foreign Exchange Management (Non-debt Instruments) Rules, 2019, S.O. 3732(E), 17 October 2019, Schedule II, para (1)(a)(ii), fourth proviso.

[17]Consolidated FDI Policy Circular of 2020, Annexure 8, p. 103; Foreign Exchange Management (Non-debt Instruments) Rules, 2019, Schedule II, para (1)(a)(ii), fourth proviso; the ceiling operates as the aggregate portfolio limit for foreign investors in a company whose manufacturing activity is on the prohibited list.

[18]ITC Limited, Shareholding Pattern as at 30 June 2026, notes to Table III. The pattern discloses the applicable foreign portfolio and non-resident ceilings.

[19]Consolidated FDI Policy Circular of 2020, Annexure 8, p. 103; Foreign Exchange Management (Non-debt Instruments) Rules, 2019, Schedule II, para (1)(a)(ii), fourth proviso; this is so because a foreign portfolio investor may acquire shares of a listed cigarette manufacturer on the secondary market but only up to the aggregate limit, so that the manufacturer's equity may carry foreign portfolio investment of up to 24 per cent even while manufacturing FDI is barred.

Twice Proposed, Twice Stopped

The non-equity channels have survived not because the Department overlooked them but because it considered closing them and chose not to. In 2016, a proposal to close the licensing route stalled on concerns raised in certain quarters, among them tobacco farmers' associations and some companies, and in 2024 a fresh draft note was circulated to which no instrument has been given effect.[20,21,22,23,24] The parliamentary record is consistent, since between 2015 and 2017 the Government was asked five times whether it would change the policy and answered each time that no proposal was under consideration or that no decision had been taken.[25,26,27]

Who Sits Inside

ITC Limited's shareholding pattern as at 30 June 2026 discloses three BAT group entities, acting in concert, holding a combined 22.91 per cent of the dominant cigarette manufacturer, classified under 'Foreign Direct Investment'.[28,29,30] ITC has no promoter.[31] The holding has not changed since the block sale of May 2025, and a representative of Tobacco Manufacturers (India) Limited sits on ITC's board as a non-executive director described as a director 'as Investor'.[32,33,34,35]

Philip Morris Global Brands Inc. holds 25.10 per cent of Godfrey Phillips India Limited, a stake held long before the entry of 2010 and therefore never touched by it.[36] The relationship between the two companies, however, runs through contract as much as through equity. Godfrey Phillips manufactures and distributes Marlboro 'under exclusive procurement and supply agreements with Philip Morris International'.[37] Its accounts also record a technical services fee and royalty paid to Philip Morris Products S.A., a group company other than the shareholder.[38] Godfrey Phillips also holds 24.80 per cent of an associate in wholesale trading, IPM India Wholesale Trading Private Limited, now Philip Morris India Trading Private

[20] "Cigarette Stocks Feel FDI Heat, Godfrey Phillips Tanks 17%", *Business Standard*, 26 April 2016. The proposal would have banned "FDI in licensing for franchise, trademark, brand name and management contract in the sector."

[21] "Cigarette Stocks Feel FDI Heat, Godfrey Phillips Tanks 17%", *Business Standard*, 26 April 2016; "DPIIT Working on Proposal to Further Tighten FDI Rules in Tobacco Sector", *Business Standard*, 28 July 2024; the recorded reason was that "concerns raised in certain quarters, including tobacco farmers' associations and some companies" were sufficient to arrest the proposal; the quoted reason is given in the 2024 report.

[22] No gazette notification or circular giving effect to the 2016 proposal has been published on dpiit.gov.in.

[23] "DPIIT Working on Proposal to Further Tighten FDI Rules in Tobacco Sector", *Business Standard*, 28 July 2024. The Department circulated a draft note "seeking the views of different ministries" on tightening the restrictions further.

[24] As at 11 September 2026, neither a gazette notification nor a revised circular giving effect to that note had been published on dpiit.gov.in or in the Gazette of India.

[25] Rajya Sabha, Unstarred Question No. 1841, 3 August 2016; Lok Sabha, Unstarred Question No. 844, 24 July 2015; Lok Sabha, Unstarred Question No. 1355, 25 July 2016; Lok Sabha, Unstarred Question No. 4280, 12 December 2016; Lok Sabha, Unstarred Question No. 54, 17 July 2017. Between 2015 and 2017 these questions asked whether the Government would change the policy on foreign investment in tobacco, four of them whether it would tighten it; the answers record that no proposal was under consideration (2015) or that no decision had been taken (2016-17).

[26] Rajya Sabha, Unstarred Question No. 1841, 3 August 2016. Suggestions had been received "for and against complete ban of FDI in Tobacco Sector", the Government stated, but "no decision has been taken."

[27] Lok Sabha, Unstarred Question No. 54, 17 July 2017. The Government stated that "No proposal has been received … for FDI in tobacco sector during the last year."

[28] ITC Limited, Shareholding Pattern as at 30 June 2026, Table III.

[29] ITC Limited, Shareholding Pattern as at 30 June 2026, Table III: Tobacco Manufacturers (India) Limited 2,228,495,863 shares (17.7904%); Myddleton Investment Company Limited 486,311,940 shares (3.8823%); Rothmans International Enterprises Limited 154,954,890 shares (1.2370%). Total 2,869,762,693 shares (22.9098%).

[30] ITC Limited, Shareholding Pattern as at 30 June 2026, Table III, classification under "(2) Institutions (Foreign), (a) Foreign Direct Investment"; the three entities appear under "Details of the shareholders acting as persons in Concert" with each other named as persons acting in concert.

[31] ITC Limited, Shareholding Pattern as at 30 June 2026, Table I, row (A) "Promoter & Promoter Group": shareholders 0, shares 0, holding 0. Category (B) Public holds 100% of (A+B+C2). This absence of a promoter distinguishes ITC from the generality of listed Indian companies, where a promoter or promoter group typically holds a controlling or significant minority stake.

[32] ITC Limited, Shareholding Patterns as at 30 June 2025 through 30 June 2026, five filings; the same 2,869,762,693 shares appear in every published pattern. The percentage moves from 22.93 to 22.91 on denominator changes from ESOP allotments.

[33] BAT p.l.c., "Launch of Proposed Block Trade of ITC Shares", regulatory announcement, 27 May 2025: "Following completion of the proposed Block Trade, BAT will remain a significant shareholder of ITC, with a c.23.1 per cent holding." The estimate was published before the book was upsized; the first post-trade filing put the holding at 22.93 per cent and it has since settled at 22.91.

[34] ITC Limited, Shareholding Pattern as at 30 June 2025 (22.93%); subsequent patterns at 22.91%.

[35] ITC Limited, Report and Accounts 2026, PDF pp. 35, 41: Sunil Panray, DIN 09251023, representative of Tobacco Manufacturers (India) Limited, non-executive director, tabulated as director "as Investor".

[36] Godfrey Phillips India Limited, Annual Report 2025-26, Note 17(iii), p. 143: Philip Morris Global Brands Inc. 39,151,425 shares (25.10 per cent) at 31 March 2026, the count trebled by a 2:1 bonus issue from 13,050,475 shares (25.10 per cent) a year earlier, behind K.K. Modi Investment & Financial Services Pvt. Ltd. 46,553,748 shares (29.85 per cent); Godfrey Phillips India Limited, Shareholding Pattern as at 30 June 2026, NSE filing (25.10 per cent, classified in the promoter group as foreign).

[37] Godfrey Phillips India Limited, FY26 Earnings Presentation, PDF p. 4, fn 2: "Marlboro is manufactured and distributed under exclusive procurement and supply agreements with Philip Morris International".

[38] Godfrey Phillips India Limited, Annual Report 2024-25, PDF pp. 153, 169: technical services fee and royalty to Philip Morris Products S.A. Rs 1,803.64 lakhs (FY25).

Limited, whose other partners are Philip Morris Brands Sàrl, an indirect subsidiary of Philip Morris International, and K.K. Modi Investment and Financial Services.[39,40] Godfrey Phillips's filings disclose its own share alone. A 2022 credit-rating rationale puts the direct stake of Philip Morris Brands Sàrl at 50.1 per cent. Philip Morris International's filings with the United States Securities and Exchange Commission, for their part, describe the venture as a 56.3 per cent owned consolidated subsidiary, a figure that matches the direct stake together with Philip Morris's share of Godfrey Phillips's holding, though the filings do not say so.[41]

Each of these arrangements is lawful, each disclosed in the company's own filings. Hence what they show is not an evasion of the prohibition but the limit of its reach. Because the entry bars new equity in manufacture and nothing else, a foreign brand owner that cannot acquire a new stake in an Indian cigarette manufacturer remains free to hold a stake acquired before 2010, to have its brand manufactured under licence, to receive a royalty on the product and to take part in its wholesale distribution.[42]

The Union holds 7.78 per cent of ITC through the Specified Undertaking of the Unit Trust of India, classified not as a government holding but under 'Other Financial Institutions', with a Joint Secretary of DIPAM sitting on the board as SUUTI's representative.[43,44,45] It is the company's own characterisation that tabulates the DIPAM officer alongside BAT's nominee as a director 'as Investor', but the fact it records is that the Government of India is an investor in the company the prohibition shelters.[46]

The Freeze

No fresh industrial licence for cigarette manufacture has issued since 1999 on health grounds, and since May 2010 no new foreign direct investment in the sector has been permitted, so that two restrictions taken together have frozen this market in place.[47,48] However, neither restriction operates on what was already in place. BAT's nearly-a-quarter stake predates the 2010 entry by decades, and the 25.10 per cent held by Philip Morris Global Brands Inc. in Godfrey Phillips also predates it.

The Cabinet's own reasons confirm this alignment, since the second recorded reason states that the decision 'would bring the policy in line with the administrative decision not to grant industrial licence for cigarette manufacturing'.[49] Hence this is a market in which no new capacity can be built and no existing capacity can be acquired by a foreign investor who did not hold a position before the entry came into force.

An instrument that closes no capacity, because the 1999 embargo already did so, and that touches no existing holding, because the 2010 bar is prospective in operation, while leaving every non-equity channel lawful, does not keep foreign capital out of the Indian cigarette market. It fixes the terms on which foreign

[39]Godfrey Phillips India Limited, Annual Report 2025-26, Form AOC-1 Part B, p. 16: Philip Morris India Trading Private Limited (formerly IPM India Wholesale Trading Private Limited), 49,60,000 shares, 24.80 per cent, balance sheet at 31 March 2026.

[40]CRISIL Ratings, Rating Rationale, IPM India Wholesale Trading Private Limited, 24 November 2022 ("About the Company": a joint venture between Philip Morris Brands Sarl, "a wholly owned indirect subsidiary of PMI", Godfrey Phillips India Ltd and KK Modi Investment and Financial Services Pvt Ltd); Godfrey Phillips India Limited, Annual Report 2024-25, PDF pp. 153, 167, 169 (Philip Morris Global Brands Inc. as entity having significant influence; Philip Morris Products S.A., royalty and export purchases).

[41]CRISIL Ratings, Rating Rationale, IPM India Wholesale Trading Private Limited, 24 November 2022: "Philip Morris Brands Sarl holds 50.1% stake in IPM, whereas the other two partners hold 24.8% and 25.1%, respectively"; Philip Morris International Inc., Form 10-K for fiscal year 2025, Note 5, p. 83, and Form 10-Q for the quarter ended 30 June 2026, p. 37 ("a 56.3% owned PMI consolidated subsidiary", with Godfrey Phillips described as one of the non-controlling interest holders and as contract manufacturer and distributor for the venture). HDFC Securities, research note on Godfrey Phillips India, 18 December 2024, p. 1, gives the same 50.1 per cent.

[42]Godfrey Phillips India Limited, Annual Report 2024-25, Note 17(iii), PDF p. 145, Form AOC-1 Part B, PDF p. 20, and PDF pp. 153, 167, 169; Godfrey Phillips India Limited, FY26 Earnings Presentation, PDF p. 4, fn 2.

[43]ITC Limited, Shareholding Pattern as at 30 June 2026, Table III, (1) Institutions (Domestic): Specified Undertaking of the Unit Trust of India, 974,531,427 shares, 7.7798%, filed under "(j) Other Financial Institutions".

[44]"No Plans to Sell SUUTI Stake in FMCG Player ITC, Says Dipam Secretary", *Business Standard* (PTI), 13 March 2024. In March 2024 the Secretary to the Department of Investment and Public Asset Management stated that "There is no such plan at the moment" for a sale of the SUUTI stake.

[45]ITC Limited, Report and Accounts 2026, PDF p. 31: Navin Agarwal, DIN 10684167, "Joint Secretary in the Department of Investment and Public Asset Management, Ministry of Finance" and "Administrator and a Member of the Body of Persons of SUUTI", appointed 1 April 2026; PDF p. 41: tabulated as "Non-Executive Director, Representative of … as Investor".

[46]ITC Limited, Shareholding Pattern as at 30 June 2026, BSE filing, Table III, (1) Institutions (Domestic), (j) Other Financial Institutions; ITC Limited, Report and Accounts 2026, PDF pp. 31, 41.

[47]DPIIT, Industrial Licensing Services, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026: "Cigars and cigarettes of tobacco and manufactured tobacco substitutes [Fresh Licenses are not being issued for manufacture of this item on health grounds since 1999]"; the 1999 decision itself has not been traced in the public domain.

[48]Press Note No. 2 (2010 Series), 10 May 2010, para 4.0: "The above decision will take immediate effect."

[49]Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010: the second recorded reason states that the decision "would bring the policy in line with the administrative decision not to grant industrial licence for cigarette manufacturing."

capital is present. Whoever held a position in May 2010 is sheltered from whoever did not, and the Union, at 7.78 per cent with a DIPAM officer on the board, stands on the sheltered side of the wall.

This is no finding of purpose.

None of the recorded reasons mentions market structure, and this chapter alleges no intention to freeze the market or shelter incumbency.[50] The inference is drawn from scope and effect, not from purpose.

However, a prohibition suppresses the applications it is designed to refuse. If a foreign company knew that its application would be refused at the threshold, it would not apply, so that the 2017 parliamentary answer already cited confirms the prohibition's working, not the absence of demand for entry.[51]

With capacity closed since 1999, a deletion of the FDI prohibition would permit the acquisition of existing capacity, not the construction of new. The concession is due, and the instruments of reform in Chapter 12 answer it.[52]

The Market-Entry Objection

The strongest objection to the deletion is drawn from the history of tobacco markets opened to multinational firms. It deserves an answer on its evidence. When American trade pressure under Section 301 opened the cigarette markets of Japan, Taiwan, South Korea and Thailand in the late 1980s, consumption per person in 1991 ran nearly 10 per cent above what the closed markets would have produced. Similarly, a study of forty-two countries over 1970 to 1995 found that liberalisation raised smoking, with a statistically significant effect in low- and middle-income countries.[53] In the former Soviet Union, where transnational firms bought state monopolies in the 1990s, cigarette production rose by 96 per cent in the countries that received their investment against 11 per cent in those that did not. Worse, the entrants marketed to women and the young, using smuggling in some markets as a route in.[54]

The evidence is real, but the conditions it records are absent here.

Those markets were opened to imports and to new capacity at a time when advertising was unrestricted or newly freed. By contrast, the deletion proposed in Chapter 12 admits no new capacity while the 1999 embargo stands, into a market where COTPA has banned tobacco advertising since 2004 and where the two dominant firms already carry foreign equity of 22.91 and 25.10 per cent. Nor is the later evidence one-sided. The joint monograph of the US National Cancer Institute and WHO concluded that foreign investment and privatisation are 'not inherently bad for tobacco control', since tobacco use fell where strong control policies followed them and rose where none did. A 2017 systematic review found the evidence on tobacco inconclusive, whereas a 2021 study of African countries found foreign investment negatively associated with tobacco use.[55] Hence the objection identifies a risk that conditions must contain, not a reason to keep a bar that contains nothing. If foreign capital is to enter at all, it enters under the conditions drafted in Chapter 12, which allow no investment of itself to authorise a unit and no change of capacity to proceed without a published assessment of its effects on health and competition.[56]

[50] Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010. The three recorded reasons are health-related; none refers to market structure or to the ownership of existing capacity. No document in the public record states a purpose relating to market structure and none of the three reasons concerns who benefits from the bar.

[51] Lok Sabha, Unstarred Question No. 54, 17 July 2017.

[52] The coupling is set out in the instruments of reform, Chapter 12, where the deletion of the FDI entry and the reasoned review of the 1999 licensing practice are treated as linked conditions, with entry conditioned on grower welfare and any change of capacity passing a health and competition assessment. A deletion would permit the acquisition of existing manufacturing capacity through a change in ownership, not the construction of new plants, since no fresh industrial licence is available on health grounds. The number of buyers at the leaf auctions would change through a change in ownership, not through the addition of plants.

[53] F.J. Chaloupka and A. Laixuthai, "U.S. Trade Policy and Cigarette Smoking in Asia", NBER Working Paper No. 5543 (National Bureau of Economic Research, April 1996); A. Taylor, F.J. Chaloupka, E. Guindon and M. Corbett, "The impact of trade liberalization on tobacco consumption", in P. Jha and F.J. Chaloupka (eds), *Tobacco Control in Developing Countries* (Oxford University Press for the World Bank and WHO, 2000) 343-364.

[54] A.B. Gilmore and M. McKee, "Moving East: how the transnational tobacco industry gained entry to the emerging markets of the former Soviet Union", Parts I and II (2004) 13 *Tobacco Control* 143-150 and 151-160; A.B. Gilmore and M. McKee, "Exploring the impact of foreign direct investment on tobacco consumption in the former Soviet Union" (2005) 14 *Tobacco Control* 13-21.

[55] US National Cancer Institute and World Health Organization, *The Economics of Tobacco and Tobacco Control*, NCI Tobacco Control Monograph 21 (2016), ch. 12, pp. 428 and 457, and ch. 13, p. 492; P. Barlow, M. McKee, S. Basu and D. Stuckler, "The health impact of trade and investment agreements: a quantitative systematic review and network co-citation analysis" (2017) 13 *Globalization and Health* 13; M. Immurana, M.K. Boachie and K.G. Kisseih, "Effects of foreign direct investment and trade on the prevalence of tobacco consumption in Africa: a panel study" (2021) 17 *Globalization and Health* 122.

[56] Instrument A1.1, conditions (i) and (ii); Instrument A1.2, para 5.2; COTPA 2003, s. 5.

The prohibition allocates not the presence of foreign capital in the Indian cigarette market but the identity of the foreign participants who may hold positions inside it. If the beneficiary of a prohibition is whoever the prohibition shelters from competition, then the beneficiary here is the incumbent market structure, and the sheltered parties include the Union itself. Naturally, a bar that shelters the very interests it was presumed to discipline should expect hostile review.

None has ever come.

PART

III

The Grower Economy

05

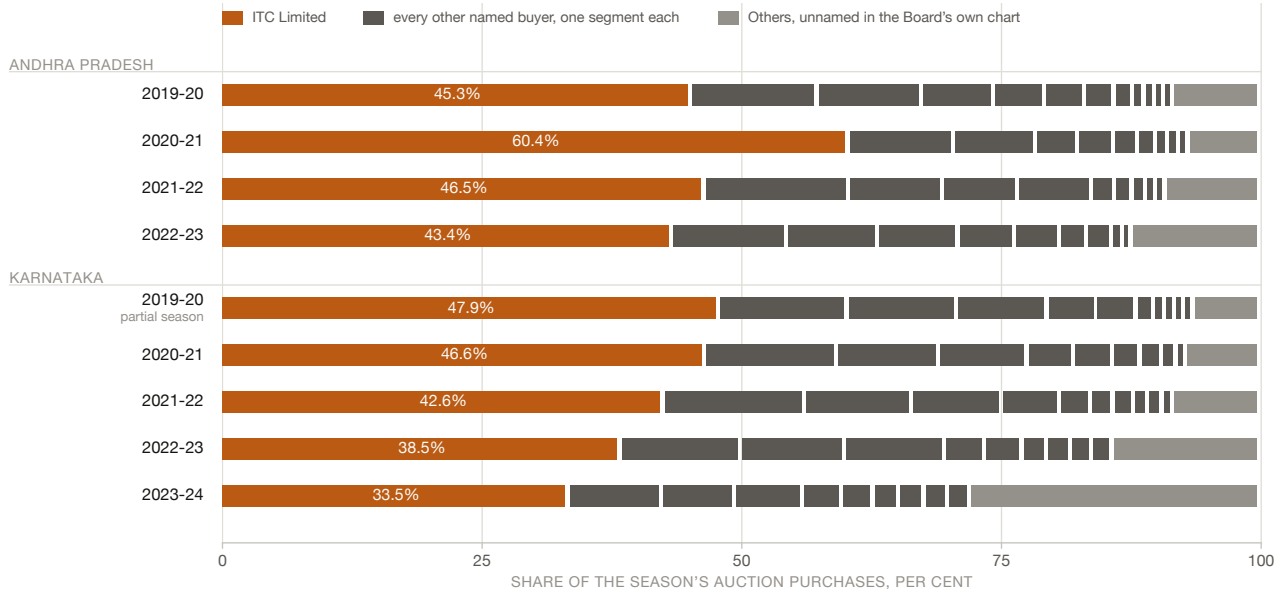
Buyer Concentration in FCV Leaf Markets

05

Buyer Concentration in FCV Leaf Markets

On the Tobacco Board's own published record, a single manufacturer takes between a third and three-fifths of the flue-cured Virginia leaf sold at the Board's auction platforms in every season for which buyer data exist.[1] ITC Limited purchased 43 to 60 per cent across Andhra Pradesh seasons and 34 to 48 per cent across Karnataka's, with the only other Manufacturer, Godfrey Phillips India, at 7 to 9 per cent in Andhra Pradesh and 7 to 10 per cent in Karnataka.[2,3,4] Together they constitute the entire Manufacturers class, whose combined share runs from 40 to 68 per cent.[5] Exhibit 7 sets out the buyers season by season. Hence the remaining buyers, leaf merchants and export houses among them, purchase for export or resale, not for domestic cigarette manufacture.

EXHIBIT 7 **Who Buys the Crop: Named Buyers at the FCV Auctions, 2019-20 to 2023-24**



Source: Tobacco Board, Annual Reports 2019-20 to 2023-24, the buyer-share chart for each season. Share of the season's auction purchases by named buyer, whole crop seasons, computed from the volumes the Board prints. Karnataka 2019-20 is a partial season, read as on 31 March 2020. No later season for Andhra Pradesh (after 2022-23) or Karnataka (after 2023-24) is available, since the Board's Annual Report 2024-25 is not publicly accessible.

Thus two firms buy for manufacture, one of them taking between a third and three-fifths of every crop, while the law that governs entry into cigarette manufacture forbids the appearance of a third.[6] The 1999 licensing embargo, placed on health grounds in the Department's own words, has produced no fresh industrial licence for cigarette manufacture in a quarter of a century.[7] If the ordinary market remedy for

[1] Tobacco Board, Annual Reports 2019-20 to 2023-24, company-wise buyer annexure.

[2] Tobacco Board, Annual Report 2020-21, PDF p. 60; Annual Report 2021-22, PDF p. 62; Annual Report 2022-23, PDF p. 72; Annual Report 2023-24, printed p. 68. ITC share in AP by season: 45% (2019-20), 60% (2020-21), 47% (2021-22), 43% (2022-23).

[3] Tobacco Board, Annual Report 2019-20, PDF p. 63; Annual Report 2020-21, PDF p. 62; Annual Report 2021-22, PDF p. 64; Annual Report 2022-23, PDF p. 74; Annual Report 2023-24, printed p. 71. ITC share in Karnataka: 48% (2019-20, partial season to 31 March 2020), 47% (2020-21), 43% (2021-22), 38% (2022-23), 34% (2023-24).

[4] Tobacco Board, Annual Reports 2019-20 to 2023-24, same pages as nn. 2 and 3 above. GPI share in AP: 7% (2019-20), 8% (2020-21), 9% (2021-22), 9% (2022-23); in Karnataka: 9% (2019-20), 8% (2020-21), 10% (2021-22), 10% (2022-23), 7% (2023-24).

[5] Tobacco Board, Annual Report 2021-22, PDF p. 73; Annual Report 2022-23, PDF p. 82. At both pages the Board lists ITC Limited and Godfrey Phillips India Limited as the only entries under Manufacturers. Across the seasons in Exhibit 7, the combined Manufacturers' share ranges from 40% (Karnataka 2023-24, at ITC 34% + GPI 7%) to 68% (AP 2020-21, at ITC 60% + GPI 8%), each share as the Board rounds it.

[6] Press Note No. 2 (2010 Series), Department of Industrial Policy and Promotion, 10 May 2010.

[7] DPIIT, Industrial Licensing Services, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026: compulsory industrial licensing under the Industries (Development and Regulation) Act, 1951 (65 of 1951), item "Cigars and cigarettes of tobacco and manufactured tobacco substitutes"; no fresh licence issued since 1999 on health grounds.

buyer power is a rival buyer, then investment policy has foreclosed the ordinary remedy, and the question is whether the law can cure a dominance the state itself maintains.

The Competition Act, 2002, can police the conduct of a dominant buyer, but no order under the Act can create a manufacturer-buyer where investment law forbids one to exist.

The Auction as a Legal Artefact

The grower's only lawful market is the Board's auction platform, as the statute makes explicit. Section 10(1) of the Tobacco Board Act 1975 provides that "no person shall grow virginia tobacco except under, and in accordance with, the conditions of a certificate of registration obtained from the Board".[8,9] Since Section 13 forbids any registered grower from selling Virginia tobacco at any place other than the Board's authorised platforms, and Section 13A extends the prohibition to the buyer, the platform is not a trading convenience.[10,11] It is the only lawful market, enforced on both sides by criminal sanction under Section 25.[12]

Processors, exporters, packers and dealers must all register under Sections 11A and 12, the Board levies a fee on every sale under Section 14A(1), and Section 8(2)(a) empowers it to fix the crop size by setting each grower's quota.[13,14,15,16] When the buyer-concentration figures the Board publishes about itself show a single firm taking between a third and three-fifths of the crop, the grower's outside option is unlawful, since the statute ties him to the platforms authorised in his registration and a Karnataka grower cannot carry his bales to Guntur.[17]

The Price Record

The Board reports prices on two incompatible bases, a crop-season average per state and a financial-year average combining both states, which produce different numbers for the same period because they draw on different calendars.[18] On the crop-season basis, both states show broad appreciation, with the AP average more than doubling on the Board's own series and the Karnataka average doubling over the decade.[19,20] However, the trend conceals inter-season swings severe enough to produce annual distress, with Karnataka recording falls of sixteen to seventeen per cent (2013-14 to 2014-15, and across 2018-19 to 2020-21) before recovering, and Andhra Pradesh a fall of about sixteen per cent in the part-season figures for 2025-26.[21,22,23,24,25,26,27] Therefore the price record is one of genuine appreciation against sharp volatility,

[8]Tobacco Board Act, 1975 (4 of 1975), s. 10(1).

[9]Tobacco Board, "Penalties For Violation", tobaccoboard.commerce.gov.in, accessed 11 September 2026. The Board's own page tracks the excess/unauthorised distinction. Tobacco grown by a registered grower beyond the quota breaches "in accordance with, the conditions"; tobacco grown by an unregistered person breaches "except under … a certificate". The Board calls the first "excess" and the second "unauthorised".

[10]Tobacco Board Act 1975, s. 13.

[11]Tobacco Board Act 1975, s. 13A. Section 13A provides that no registered dealer or registered exporter shall purchase Virginia tobacco elsewhere than at an auction platform registered with or established by the Board, or than from another registered dealer or a registered grower or curer.

[12]Tobacco Board Act 1975, s. 25.

[13]Tobacco Board Act 1975, ss. 11A and 12.

[14]Tobacco Board Act 1975, s. 14A(1). The provision empowers the Board to levy fees "at such rate not exceeding two per cent. of the value of such tobacco as the Central Government may, from time to time, by notification in the Official Gazette, specify".

[15]Tobacco Board Act 1975, s. 8(2)(a), read with Rule 33-A, Tobacco Board Rules, 1976.

[16]Tobacco Board, production-policy page, tobaccoboard.commerce.gov.in, accessed 11 September 2026. The Board's page states that it "lays down production Policy and fixes crop size … taking into consideration various factors specified in clause (a) of sub section (2) of section 8 of Tobacco Board Act, 1975".

[17]Tobacco Board Act 1975, s. 13. The grower's registration ties him to the platforms authorised in his district. The AP and Karnataka platform networks operate on separate auction calendars.

[18]Tobacco Board, Annual Reports 2019-20 to 2023-24; the Board reports prices on a crop-season per-state basis and a financial-year two-state combined basis, which produce different numbers for the same period.

[19]Tobacco Board, Annual Report 2023-24, printed p. 73.

[20]Tobacco Board, Annual Report 2023-24, printed pp. 69-70.

[21]Tobacco Board, Annual Report 2023-24, printed p. 70, ten-year chart. Karnataka season averages: Rs 107.49 (2014-15), Rs 142.28 (2018-19), Rs 124.06 (2019-20), Rs 119.87 (2020-21); Annual Report 2022-23, printed p. 72, ten-year chart, for Rs 129.18 (2013-14).

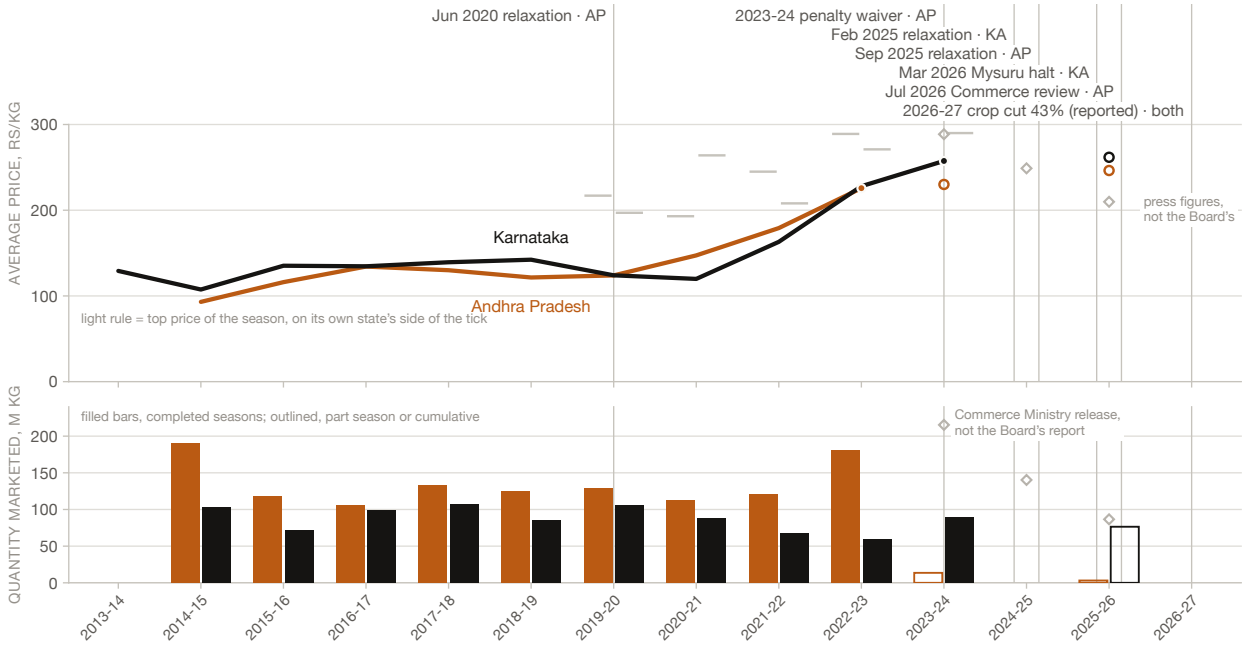
[22]"Market Conditions for FCV Tobacco Auction Improving, Says Andhra Minister", *The Hans India*, 6 September 2026. AP 2025-26: 86.59 mkg at Rs 209.83 at the 132-day mark, season incomplete, against an average of Rs 248.86 for 2024-25 as the same report gives it. Tobacco Board, Annual Report 2023-24, printed p. 73, ten-year chart: the largest single-season fall in the Board's own AP series is 6.5 per cent, from Rs 130.00 (2017-18) to Rs 121.53 (2018-19).

[23]Tobacco Board, Annual Report 2020-21, PDF p. 58; Annual Report 2023-24, printed p. 70. AP 2019-20: 128.65 mkg at Rs 123.95; Karnataka 2019-20: 106.18 mkg at Rs 124.06.

[24]PIB, release PRID 2089182, Ministry of Commerce and Industry, 1 January 2025: AP 2023-24 season (29 February to 14 October 2024, 178 auction days), 215.35 mkg marketed at an average of Rs 288.65 and a top price of Rs 411; also reported in "Tobacco Exports Marked a Record Rs

and it is the grower at the trough whose position we take to the Competition Act.[28,29] Exhibit 8 sets out the series for both states.

EXHIBIT 8 **What the Grower Was Paid: FCV Auction Prices and Volumes, 2013-14 to 2025-26**



Source: Tobacco Board, Annual Reports 2022-23 and 2023-24, ten-year auction charts; Board auction statistics pages (2025-26, cumulative); the Commerce Ministry's release of 1 January 2025 for Andhra Pradesh 2023-24; press reports for the points marked as press figures. Average price paid to growers and quantity marketed at the flue-cured Virginia auctions. Both states are aligned on the hyphenated crop year, not the Board's single-year chart labels, and 2025-26 is a part season.

Who Buys

It is the Board's company-wise buyer charts, published from 2019-20 to 2023-24, that supply the structural finding.[30] The annexure lists ITC Limited and Godfrey Phillips India as the only two Manufacturers, with every subsequent entry falling under Exporters or Dealers.[31,32,33,34,35,36,37,38,39,40] Thus the Manufacturers'

12,005 Crores in FY2024", *The Tribune* (ANI), 1 January 2025. Tobacco Board, Annual Report 2023-24 gives only the part-season position, 13.60 mkg at Rs 230.06 as on 31 March 2024.

[25] Tobacco Board, Annual Report 2023-24, printed pp. 72-73. The Board's Annual Report 2024-25 is not publicly available.

[26] Tobacco Board, Annual Report 2024-25, not available on the Board's website (tobaccoboard.commerce.gov.in) as at 11 September 2026; its absence there is not evidence that it was not published.

[27] Tobacco Board, "FCV Tobacco Auctions - Karnataka, 2025 Auctions", tobaccoboard.commerce.gov.in, accessed 11 September 2026, Grand Total row. Cumulative to the 148th auction day, 28 April 2026.

[28] Tobacco Board, Annual Reports 2019-20 to 2023-24, p. 10 of each and Annual Report 2023-24, printed p. 73.

[29] PIB, "Tobacco Processing and Value-Addition Infrastructure", release PRID 2152559, Lok Sabha written reply, 5 August 2025. PIB figures are two-state crop-season averages, a different basis from both the crop-season-per-state and the financial-year-combined columns.

[30] Tobacco Board, Annual Reports 2019-20 to 2023-24, company-wise buyer annexure. The Board publishes no Herfindahl-Hirschman Index and the residual "Others" category prevents one from being computed.

[31] Tobacco Board, Annual Report 2020-21, PDF p. 60; Annual Report 2021-22, PDF p. 62; Annual Report 2022-23, PDF p. 72; Annual Report 2023-24, printed p. 68. ITC share in AP: 45% on 58.26 mkg (2019-20), 60% on 68.11 mkg (2020-21), 47% on 56.32 mkg (2021-22), 43% on 78.58 mkg (2022-23).

[32] Tobacco Board, Annual Reports 2020-21 to 2023-24, same pages as n. 31. GPI share in AP: 7% (2019-20), 8% (2020-21), 9% (2021-22), 9% (2022-23).

[33] Tobacco Board, Annual Reports 2019-20 to 2023-24, company-wise buyer annexure. Polisetty Somasundaram: 12% (2019-20), 10% (2020-21), 14% (2021-22), 11% (2022-23) in AP.

[34] Tobacco Board, Annual Report 2020-21, PDF p. 60. APMARKFED at 10% (12.93 mkg), AP 2019-20 only.

[35] Tobacco Board, Annual Reports 2019-20 to 2023-24, company-wise buyer annexure. Alliance One Industries India Pvt. Ltd.: 3% (2019-20), 4% (2020-21), 7% (2021-22), 8% (2022-23) in AP.

[36] Tobacco Board, Annual Reports 2019-20 to 2023-24, company-wise buyer annexure. Named buyers across AP seasons include Premier Tobacco Packers Pvt. Ltd. (4-7%), Deccan Tobacco Exports Pvt. Ltd. (2-5%), Mittapalli Agro Products Pvt. Ltd. (1-2%), Bommidala (3% in 2022-23), Pragathi Tobacco Traders India Pvt. Ltd. (2-3%).

[37] Tobacco Board, Annual Report 2019-20, PDF p. 63; Annual Report 2020-21, PDF p. 62; Annual Report 2021-22, PDF p. 64; Annual Report 2022-23, PDF p. 74; Annual Report 2023-24, printed p. 71. ITC share in Karnataka: 48% (2019-20, partial), 47% (2020-21), 43% (2021-22), 38% (2022-23), 34% (2023-24).

share of 40 to 68 per cent is the combined share of the only two firms buying for domestic cigarette manufacture.[41] The balance leaves the domestic manufacturing chain entirely.

This is so because registration is wider than participation. The Board's tables show 35 registered Manufacturers in 2022 and 27 in 2023, but only two appear in the buyer charts in any recorded season.[42] If the dominant manufacturer were suppressing prices, the category average Manufacturers pay would sit persistently below the others, but in the most recent official season it does not.[43,44]

Hence the structure is clear, as is the complication. However, the prices Manufacturers pay do not in every season sit below what the rest of the field pays, and ITC's own share has been declining in both states.

Distress, Relief, Halt

Within a decade of broad price appreciation, the Central Government has exercised Section 30(1) of the Tobacco Board Act every year since at least 2020 to relax the operation of Section 10(1) and permit the excess crop to be sold at the Board's platforms, pairing each relaxation with a Section 20A purchase authorisation.[45,46,47,48,49,50] The charge the grower pays for that absolution oscillates from nil to five per cent within a single calendar year.[51,52,53,54] The rate is a variable set against each season's market rather than a settled policy.

The Karnataka auctions stalled twice in early 2026, on neither occasion by any authority's order.[55] Notification No. 03/2025-Central Excise of 31 December 2025 drove buyers away by imposing eighteen per cent excise on unmanufactured tobacco, until the Ministry of Finance reversed it on 1 February 2026.[56,57] When prices then fell from about Rs 320 to about Rs 250, the regulator could not reopen a market it had not closed.[58]

At Mysuru on 2 March 2026, Mysuru-Kodagu MP Yaduveer Krishnadatta Chamaraja Wadiyar "noted that the participation of foreign companies is essential to break the monopoly of ITC".[59,60] The Board's

[38]Tobacco Board, Annual Reports 2019-20 to 2023-24, same pages as n. 37. GPI share in Karnataka: 9% (2019-20), 8% (2020-21), 10% (2021-22), 10% (2022-23), 7% (2023-24).

[39]Tobacco Board, Annual Reports 2019-20 to 2023-24, company-wise buyer annexure. Recurring Karnataka buyers include Deccan Tobacco Exports (9-13%), Polisetty Somasundaram (7-14%), Pragathi Tobacco Traders (1-4%).

[40]Tobacco Board, Annual Report 2021-22, PDF p. 73; Annual Report 2022-23, PDF p. 82.

[41]Tobacco Board, Annual Reports 2019-20 to 2023-24, company-wise buyer annexure. Manufacturers' share by season-state pair: AP 2019-20 52%, AP 2020-21 68%, AP 2021-22 56%, AP 2022-23 52%; Karnataka 2020-21 55%, Karnataka 2021-22 53%, Karnataka 2022-23 48%, Karnataka 2023-24 40%.

[42]Tobacco Board, Annual Report 2022-23, PDF p. 84, registration table, category "Manufacturers of Virginia Tobacco".

[43]Tobacco Board, Annual Report 2020-21, PDF p. 59. In AP 2019-20, Manufacturers paid Rs 140.02 per kg, Exporters Rs 118.01 and Dealers Rs 84.38.

[44]Tobacco Board, Annual Report 2023-24, printed p. 70. In Karnataka 2023-24, the most recent season in the Board's published figures, Manufacturers paid Rs 260.53 per kg, Exporters Rs 255.17 and Dealers Rs 255.91. In AP 2022-23 (printed p. 67) Manufacturers paid Rs 223.46, below Exporters (Rs 225.70) and Dealers (Rs 241.48).

[45]Tobacco Board Act 1975, s. 30(1).

[46]Tobacco Board Act 1975, s. 30(1) (relaxation) and s. 20A (purchase authorisation).

[47]Tobacco Board Act 1975, s. 30(3). Every such notification is a parliamentary-laid instrument, since s. 30(3) requires it to be laid before each House of Parliament for thirty days.

[48]S.O. 2121(E) and S.O. 2122(E), 26 June 2020 (relaxation of s. 10(1) read with s. 14A(1), Tobacco Board Act 1975, in Andhra Pradesh for 2019-20). Tobacco Board, Annual Report 2020-21, printed p. 58. Service charges of five per cent and Rs 2 per kg on excess up to ten per cent of the quota, and ten per cent plus the same fee above that and for unregistered growers.

[49]S.O. 4437(E) and S.O. 4438(E), 25 October 2021, Gazette of India Extraordinary Part II Section 3 Sub-section (ii), F. No. 5/3/2019-EP(Agri-VI)/Pt. Both states covered in a single instrument.

[50]PIB, release PRID 2089182, Ministry of Commerce and Industry, 1 January 2025. In the 2023-24 AP season, 38,751 registered growers benefited from a penalty waiver for the sale of 76.84 million kg of excess tobacco, put at Rs 184 crore of savings.

[51]Tobacco Board, Annual Reports 2022-23 and 2023-24, relaxation notification summaries. Across 2022-23 and 2023-24 the Board states that it "has levied only 1% normal service charges and not levied any contributions".

[52]S.O. 858(E) and S.O. 859(E), 17 February 2025, Gazette of India Extraordinary Part II Section 3 Sub-section (ii), CG-DL 261108 (relaxation of s. 10(1) read with s. 14A(1), Tobacco Board Act 1975, in Karnataka for 2024-25). The s. 20A companion authorised purchase "on the payment of normal applicable service charges under the said Act", imposing no contribution at all on the face of the instrument.

[53]S.O. 4064(E) and S.O. 4065(E), 4 September 2025, CG-DL 265986 (relaxation of s. 10(1) read with s. 14A(1), Tobacco Board Act 1975, in Andhra Pradesh for 2024-25). A graduated four-tier contribution schedule, running from one per cent of sale proceeds to Rs 1 per kg plus five per cent for unregistered growers.

[54]S.O. 5895(E) and S.O. 5896(E), 19 December 2025, CG-DL 268708 (relaxation of s. 10(1) read with s. 14A(1), Tobacco Board Act 1975, in Karnataka for 2025-26). Same graduated schedule applied to Karnataka.

[55]No Board order, circular or official statement suspending the auctions exists; the stoppages were buyer-initiated.

[56]Notification No. 03/2025-Central Excise, G.S.R. 955(E), 31 December 2025.

[57]Notification No. 04/2026-Central Excise, G.S.R. 91(E), 1 February 2026.

[58]*Deccan Herald*, 13 March 2026.

[59]"'Ensure Higher Prices for Tobacco Farmers': H D Kumaraswamy to Board, Traders", *Deccan Herald*, 2 March 2026. Meeting convened by Union Minister H D Kumaraswamy.

Chairman responded that no bar prevents foreign companies from buying leaf for export, which is accurate, since foreign capital already bids through Indian subsidiaries.[61,62,63,64] However, the bar is on becoming a manufacturer-buyer, which requires an industrial licence the 1999 embargo does not grant and an investment route the 2010 note closes. By August 2026 the authorised FCV crop for 2026-27 had been cut, on the reported figures, from 242 to 137 million kg nationally, or 43 per cent.[65,66,67]

Dominance Under the Competition Act

The question is not whether ITC is large, which is obvious, but whether its position at the FCV auction constitutes dominance within the meaning of Section 4 of the Competition Act 2002, and if so, what competition law can do about it.[68] The product market is the purchase of auctioned FCV leaf, since no substitute performs the same function for the manufacturer-buyer, and the geographic market is arguably each state's platform network, since Section 13 ties the grower to the platforms authorised in his registration.[69,70]

On the Section 19(4) factors, market share at 34 to 60 per cent singly is the most immediate indicator, but factors (b) and (d) press harder, since they set the balance sheet of a diversified conglomerate against a smallholder whose outside option the statute itself forecloses under factor (f).[71,72] Factors (g) and (h) are the hinge, since factor (g) asks whether a dominant position was acquired as a result of any statute, which is the work the Board's registration scheme does, and the 2010 note and the 1999 embargo are the regulatory barriers factor (h) names in the Act's own words.[73] Hence the Board's own published record is consistent with dominance on every factor the Act supplies.

However, seeing the case and curing it are not the same exercise.

The buyer-side procurement stoppages of early 2026 can be argued under Section 4(2)(c) as denial of market access, but nothing on the record evidences co-ordination, below-cost purchasing, discrimination between growers or any unfair condition, and price movement is equally consistent with crop size, the quota overhang and export demand.[74,75] ITC's recorded peak of 60 per cent in the 2020-21 AP season was the very season in which the average rose from Rs 123.95 to Rs 147.30, which cuts against a simple buyer-power story.[76] The recommendation earns its credibility from this candour.

Accordingly, dominance is arguable on the Board's own record.[77] Abuse is not shown and is not asserted. That no office has looked is itself a finding about institutional attention.

[60] *Deccan Herald*, 2 March 2026. Reported speech of Mysuru-Kodagu MP Yaduveer Krishnadatta Chamaraja Wadiyar.
[61] PIB issued no release on the Mysuru meeting of 2 March 2026 or the Delhi delegation of 13 March 2026. The coverage ran on the IANS wire; the meeting was chaired by the Steel Minister, not by Commerce.
[62] *Deccan Herald*, 2 March 2026. Reported speech of Tobacco Board Chairman Yashwanth Kumar Chidipothu: no bar prevents foreign companies from buying leaf for export, though no such foreign company is currently participating in the Indian auctions.
[63] *Deccan Herald*, 2 March 2026. Reported speech of Board Chairman Yashwanth Kumar Chidipothu. Chapter 11 addresses the distinction between buying leaf for export and becoming a manufacturer-buyer.
[64] Tobacco Board, Annual Reports 2019-20 to 2023-24, company-wise buyer annexure. Alliance One Industries India Pvt. Ltd.: 3% (AP 2019-20), 4% (AP 2020-21), 7% (AP 2021-22), 8% (AP 2022-23).
[65] FAIFA, press release, Hyderabad, 10 August 2026, p. 1 (advocacy); "Market Conditions for FCV Tobacco Auction Improving, Says Andhra Minister", *The Hans India*, 6 September 2026; corroborated for AP by the state Agriculture Minister via *Telangana Today* (IANS), 17 July 2026.
[66] Tobacco Board, production-policy page, tobaccoboard.commerce.gov.in, accessed 11 September 2026: 2025-26 crop sizes, AP 142 mkg, Karnataka 100 mkg.
[67] AP 2026-27 announced by state Agriculture Minister Kinjarapu Atchannaidu, 17 July 2026 (*Telangana Today*, IANS); Karnataka 2026-27 reported by *Deccan Herald*, 22 April 2026, sourced to a Board meeting in Guntur with tobacco purchasing companies. The Board's own crop-size decision has not been published, and the Board publishes no minutes.
[68] Competition Act, 2002 (12 of 2003), s. 4, Explanation (a).
[69] Competition Act 2002, ss. 19(5) to (7).
[70] Tobacco Board Act 1975, s. 13, read with the relevant-market definition at Competition Act 2002, s. 2(r).
[71] Competition Act 2002, s. 19(4)(a). Tobacco Board, Annual Reports 2019-20 to 2023-24, company-wise buyer annexure.
[72] Competition Act 2002, s. 19(4)(f), read inversely as the seller's dependence on the buyer. Tobacco Board Act 1975, s. 13.
[73] Competition Act 2002, ss. 19(4)(g) and 19(4)(h).
[74] Competition Act 2002, ss. 4(2)(a) and 4(2)(c).
[75] The record on which dominance is argued is the Board's own published buyer-share data. No published source evidences co-ordination, below-cost purchasing or any unfair condition under s. 4(2).
[76] Tobacco Board, Annual Report 2021-22, PDF p. 62 (ITC at 60% of AP crop in 2020-21); Annual Report 2020-21, PDF p. 58 and Annual Report 2022-23, PDF p. 71 (AP season average Rs 123.95 in 2019-20, rising to Rs 147.30 in 2020-21).
[77] *Maa Metakani Rice Industries v. State of Odisha and Odisha State Civil Supplies Corporation Ltd.*, Case No. 16 of 2019, Competition Commission of India, order under s. 26(1) of 1 November 2019. The Commission formed a prima facie view that the corporation was dominant as a purchaser and directed an investigation into its delayed payments as an unfair condition under s. 4(2)(a)(i); the final order was passed on 5 August 2021. Neither the Commission nor the Board has, so far as the record establishes, ever examined FCV leaf buying.

However, no order under Sections 27 or 28 can introduce a manufacturer-buyer where investment law prohibits the entry that would create one.[78]

A State Construction

Since ITC's position at the leaf auction predates both instruments, the dominance was not created by the 2010 note or the 1999 embargo.[79] Entry is the textbook remedy for a market in which two firms take two-fifths to two-thirds of the crop, but the 1999 embargo, the 2010 note and the Tobacco Board Act each close a route to entry into the manufacturer-buyer class.[80,81,82] Hence no instrument offers the grower a new bidder, and the class taking 40 to 68 per cent of the crop is the class whose membership the law has frozen. It is pertinent that when the Department proposed in 2016 to close the licensing route entirely, the proposal stalled on concerns raised by, among others, tobacco farmers' associations, and that Parliament had been asked in 2015 whether foreign buyers would be admitted to tobacco purchases, the same ask the Mysuru-Kodagu MP made in March 2026.[83]

The Recommendation

We recommend a Competition Commission market study into FCV leaf buying, so that the question of dominance is resolved on the Commission's own record rather than inferred from a policy study. Its terms of reference should reach the conduct of the incumbent manufacturer-buyers themselves, including whether the bidding and the procurement stoppages of 2026 reflect any co-ordination, and the integration of leaf buying with cigarette manufacture and wholesale distribution within the same groups, since a buyer that also controls the factory and the distributor can shape the leaf market from both ends. If the Commission finds that a dominant position has been abused, Section 27 supplies its orders to cease and desist and its penalties, and Section 28 empowers it to direct the division of a dominant enterprise so that the abuse cannot recur.[84] Section 49(1) of the Competition Act permits the Central Government, "in formulating a policy on competition", to seek the Commission's opinion within sixty days, and this route fits the ask because it situates the inquiry within a policy review, though three further statutory routes are available.[85,86,87,88]

The strongest objection is that competition law can address buyer power without deleting the investment prohibition.[89] Most of this is conceded. The Commission can act under Section 4, and the Board has conduct powers of its own. However, only entry dissolves a dominant position, and entry into the manufacturer-buyer class is what the law forbids. Hence what we recommend is a contestable auction, not a price rise.

[78]Competition Act 2002, ss. 27 and 28.

[79]Press Note No. 2 (2010 Series), 10 May 2010; DPIIT, Industrial Licensing Services, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026; Tobacco Board Act 1975, ss. 10, 13 and 13A. Each forecloses a route to entry into the manufacturer-buyer class.

[80]DPIIT, Industrial Licensing Services, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026: compulsory industrial licensing, item "Cigars and cigarettes of tobacco and manufactured tobacco substitutes"; no fresh licence issued since 1999 on health grounds.

[81]Press Note No. 2 (2010 Series), 10 May 2010.

[82]Tobacco Board Act 1975, ss. 13 and 13A.

[83]"DPIIT Working on Proposal to Further Tighten FDI Rules in Tobacco Sector", *Business Standard*, 28 July 2024; "Cigarette Stocks Feel FDI Heat, Godfrey Phillips Tanks 17%", *Business Standard*, 26 April 2016; Lok Sabha, Unstarred Question No. 844, 24 July 2015; Rajya Sabha, Unstarred Question No. 185, 22 July 2015.

[84]Competition Act, 2002 (12 of 2003), ss. 27 and 28(1). Section 28(1) empowers the Commission to "direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position".

[85]Competition Act 2002, s. 19(1)(b). Permits a reference by the Central Government or a statutory authority.

[86]Competition Act 2002, s. 21, first proviso. Permits any statutory authority to make a suo motu reference on any issue related to promoting the objectives of the Act.

[87]Competition Act 2002, s. 49(1).

[88]Competition Act 2002, s. 18. The Commission's market studies in e-commerce, pharmaceutical distribution, telecom and artificial intelligence rest on the s. 18 duty (e-commerce 2020; telecom 2021; pharmaceutical distribution 2021; artificial intelligence 2025).

[89]Annex B, objection 7.1, "Competition law can address buyer power without FDI deletion", and the study's answer.

06

Agricultural Economics of Tobacco Cultivation

06

Agricultural Economics of Tobacco Cultivation

The Tobacco Board Act, 1975 is a rationing scheme for a market of administered scarcity.[1] Section 10 makes growing conditional on a Board certificate, granted with regard to "the demand for virginia tobacco in India and abroad, and the suitability of the land".[2] Section 13 forbids sale anywhere but a registered auction platform.[3] The crop grows where little else will pay on the rainfed light soils and in the Prakasam rabi slot.[4] However, that agronomic claim does not hold across the entire belt, as the study's own record shows.[5] Where alternatives can net more while the grower remains, the explanation lies not in the soil but in the institutions the state itself constructed around the crop.

Since the alternative-crop programmes beside the Act are unevaluated after eleven years and the Board has no statutory function of diversification at all, value addition on the grower's own crop is the one welfare path the Act leaves open.[6] It is precisely the path the investment prohibition closes.

The Ground

The Board's auction system operates in Andhra Pradesh and Karnataka, which together grow ninety-nine per cent of India's FCV tobacco.[7] The ideal FCV surface is sand to sandy loam, acidic, low in organic matter, because rich soil produces a heavier leaf the export market does not want.[8,9] In the Prakasam rabi slot, the land carries no kharif crop, so tobacco occupies the only season, raised on conserved moisture from 393 mm of north-east monsoon rainfall.[10,11] This is the slot in which the agronomic claim holds without qualification, since no crop of comparable value presents itself on a rabi fallow on acidic sandy loam.[12]

The claim fails, however, on the southern black soils, which are Vertisols of high fertility, the opposite of the profile the crop prefers.[13] On-farm trials between 2015 and 2018 record FCV tobacco last of seven crops on benefit-cost ratio, and below chickpea, blackgram and maize on net returns.[14,15] In Karnataka,

[1]Tobacco Board Act, 1975 (4 of 1975), s. 10.

[2]Tobacco Board Act 1975, s. 10(2).

[3]Tobacco Board Act 1975, s. 13.

[4]ICAR-NIRCA, "Soils & Climate", nirca.org.in, accessed 11 September 2026, "Ideal Soil Characteristics"; ICAR-NIRCA, "Tobacco in Indian Economy", nirca.org.in, accessed 11 September 2026, opening paragraph. ICAR specifies the ideal FCV soil as acidic, low in nutrients and organic matter, with "Low fertility preferred", and describes tobacco as a crop that "can be grown on soils where other crops cannot be cultivated profitably".

[5]G. Ramesh and others, "Evaluation of Viable Alternative Crops for FCV Tobacco in Southern Black Soils of Prakasam District of Andhra Pradesh, India" (2020) 9(8) *International Journal of Current Microbiology and Applied Sciences* 3949, Table 3. Chickpea Rs 61,750/ha (B:C 1:2.52); FCV tobacco Rs 30,133/ha (B:C 1:1.17). The trial's tobacco yield of 2,000 kg/ha exceeds the average of about 1,500 kg/ha that the Board's soil-zone page gives for the southern black soils.

[6]Tobacco Board Act 1975, s. 8(2)(a)-(j). All promotional; no diversification function.

[7]H.C. Yogesh and S.K. Srivastava, "Constraints Faced by the Flue-Cured Virginia Tobacco Growers in Andhra Pradesh and Karnataka" (2018) 6(3) *Current Agriculture Research Journal* 430, abstract.

[8]Tobacco Board, "Soil Types & Characteristics", tobaccoboard.commerce.gov.in, accessed 11 September 2026, zone descriptions. The Andhra belt runs from Prakasam, with Ongole at its head, through Eluru and East Godavari to Guntur, across five soil regions producing distinct styles for different markets. The Karnataka belt sits around Mysuru and runs through Hassan, Shimoga and Davangere, on the light soils that cover roughly 85,000 hectares of FCV tobacco.

[9]ICAR-NIRCA, "Soils & Climate", nirca.org.in, accessed 11 September 2026, "Ideal Soil Characteristics" and "Light Soils". The full soil profile specifies sand to sandy loam, acidic, well-drained, low in organic matter and nutrients.

[10]ICAR-CRIDA, Agriculture Contingency Plan for District Prakasam, Table 1.7 "Major Field Crops cultivated". ICAR-CRIDA's district contingency plan records tobacco at 63.4 thousand hectares, entered under rabi-rainfed only, in a cropping system listed as "Fallow-FCV Tobacco (Rabi)". The land carries no kharif crop.

[11]ICAR-CRIDA, Contingency Plan for Prakasam, cropping-system tables. Normal rabi-season (Oct-Dec) rainfall 393 mm; contingency substitute "Foxtail millet, Bengalgram".

[12]Yogesh and Srivastava (2018), Table 3. AP rainfall I (77.25), Karnataka labour I (73.15), rainfall II (72.95); finance VIII in both (23.65 AP; 27.61 Karnataka). Growers in both belts rank "inadequate and untimely rainfall" as the first or second constraint in a Garrett ranking of 120 respondents, while "inadequate availability of finance" comes last, at rank VIII of VIII, because institutions serve "tobacco growers in a better way".

[13]ICAR-NIRCA, "Soils & Climate", nirca.org.in, accessed 11 September 2026, "Black Soils (Vertisols)".

[14]Ramesh and others (2020), Tables 2 and 3. Chickpea at Rs 61,750 per hectare net with a benefit-cost ratio of 1:2.52, blackgram at Rs 60,792, maize at Rs 32,958, and FCV tobacco at Rs 30,133 with a benefit-cost of 1:1.17, the lowest benefit-cost ratio of the seven crops tested.

[15]S. Kasturi Krishna and others, "Agronomic and Economic Evaluation of Alternative Cropping Systems for FCV Tobacco (*Nicotiana tabacum*) on Vertisols of Andhra Pradesh" (2010) 55(4) *Indian Journal of Agronomy* 270. ICAR-CTRI's Vertisol trial at Rajahmundry, running 2002 to 2005, concludes that "fallow-tobacco is most profitable", although its Table 6 records redgram's net benefit-cost ratio (1.79) above fallow-tobacco's (0.99) in the third year, 2004-05; fallow-tobacco still led on net returns.

per-rupee-invested returns rank tobacco below plantation crops and jowar, which reverses the per-acre picture.[16,17]

Hence the agronomic claim holds for the rainfed light soils and the Prakasam rabi slot, where the soil physics and the water regime genuinely narrow the choice, and does not hold on the southern black soils, where something else will pay while the grower stays because the institutions hold him there.

The Diversification Record

A national scheme for moving tobacco growers to other crops has existed since 2015-16, when the Crop Diversification Programme was extended to ten tobacco-growing states.[18] The central share for the tobacco arm was cut by seventy-eight per cent after two years.[19,20] The scheme has never had cost norms of its own.[21,22] Thus the programme has existed for eleven years without any evaluation, audit or impact assessment of its tobacco arm traced in any official, academic or press source.[23]

It is not a coincidence that the Board's own expenditure makes the contrast exhibit-grade. In 2022-23 the Board spent Rs 0.71 lakh on crop diversification and Rs 234.62 lakh on improving yield and quality of tobacco, while raising the crop by fifteen million kg in the same annual report.[24,25,26] Exhibit 9 sets the two lines of spending side by side. Hence the body charged with the crop's welfare spent, in that year, Rs 0.71 lakh to move growers off tobacco and raised the crop by fifteen million kg in the same breath.[27]

EXHIBIT 9 **What the Board Spent on Leaving Tobacco, and What It Spent on Tobacco**

Rs 0.71 lakh on moving growers off tobacco, against Rs 411.64 lakh on growing it better, in 2022-23: a ratio of about one to five hundred and eighty. Both figures are in the same report, and crop diversification is not a line in its expenditure table at all.

HEAD	RS LAKH	YEAR	SOURCE AND PAGE
TOBACCO BOARD EXPENDITURE, 2022-23			
Crop diversification programmes conducted by the Tobacco Board	0.71	2022-23	Tobacco Board, Annual Report 2022-23, p. 24, section XI: Promotion of alternative crops to tobacco. An amount of Rs 0.71 lakh was spent by the Board towards conducting crop diversification programmes (Rs 71,000)
Extension and developmental schemes, TOTAL	411.64	2022-23	Tobacco Board, Annual Report 2022-23, p. 55, summary table; also stated in the overview at p. 8. Crop diversification does not appear as a line in that table at all
Improving Yield and Quality of Tobacco	234.62	2022-23	Tobacco Board, Annual Report 2022-23, p. 55; narrative at p. 38
Improvement of Curing Practices	111.55	2022-23	Tobacco Board, Annual Report 2022-23, p. 55; narrative at p. 42
Elimination of NTRMs and Product Integrity	17.46	2022-23	Tobacco Board, Annual Report 2022-23, p. 55; narrative at p. 44
Programmes for training of farmers and technical staff	15.62	2022-23	Tobacco Board, Annual Report 2022-23, p. 55; detail at p. 57
On Farm Tests and Experimental Trials	14.81	2022-23	Tobacco Board, Annual Report 2022-23, p. 55
Model Project Area	10.00	2022-23	Tobacco Board, Annual Report 2022-23, p. 55
Research Project, CIAE, Bhopal	5.31	2022-23	Tobacco Board, Annual Report 2022-23, p. 55
Post Harvest Product Management	1.97	2022-23	Tobacco Board, Annual Report 2022-23, p. 55; detail at p. 57
Farm mechanization	0.30	2022-23	Tobacco Board, Annual Report 2022-23, p. 55
Marigold seedlings supplied in Andhra Pradesh alone (a sub-line of Improving Yield and Quality)	6.83	2022-23	Tobacco Board, Annual Report 2022-23, p. 40, and the scheme table at p. 56, where the combined AP and Karnataka figure is 8.75. The Andhra Pradesh figure alone is roughly ten times the diversification spend
LOANS, A DIFFERENT BASIS: NOT SCHEME EXPENDITURE			

[16]Nayanatara S. Nayak, "Alternatives to Flue Cured Virginia Tobacco Cultivation: Preliminary Observations from a Tobacco Growing Region in India" (2015) 3(1) *Current Agriculture Research Journal* 26. Reference period 2009-10, Karnataka; ginger Rs 24,670/acre net, tobacco Rs 18,396; ginger outlay Rs 50,830 against tobacco's Rs 31,532. Per acre at 2009-10 prices, only ginger beats tobacco on net returns, Rs 24,670 against Rs 18,396, but at 1.6 times the cash outlay.

[17]Nayak (2015), Table 5, per-rupee-invested returns. Plantation Rs 2.91; jowar Rs 2.67; chilly Rs 2.01; paddy Rs 1.62; tobacco Rs 1.58; ginger Rs 1.48. The chapter owes the reader both rankings rather than the one that suits its argument.

[18]PIB, "Tobacco Farming", 2 January 2019, para 1; PIB, "Crop Diversification Programmes", Lok Sabha written reply, 10 February 2026, para 1.

[19]PIB, 2 January 2019, table at para 2. Central-share allocations for all ten states: Rs 2,500 lakh (2015-16), Rs 3,000 lakh (2016-17), Rs 667 lakh (2017-18 and 2018-19). Andhra Pradesh's share fell from Rs 9.45 crore to Rs 2.10 crore.

[20]PIB, 2 January 2019, table at para 2. AP Rs 787 lakh to Rs 210.10 lakh; Karnataka Rs 600 lakh to Rs 160.08 lakh. Karnataka's share fell from Rs 7.20 crore to Rs 1.60 crore.

[21]PIB, 10 February 2026, Annexure II, final row. The tobacco arm's entry in the February 2026 Lok Sabha reply provides that states "may take up suitable activities/interventions for replacing the tobacco to alternate crops/cropping system as per the cost norms approved under any Centrally Sponsored Scheme/State Scheme". Substantially the same formulation appears in the Government's own 2019 statement.

[22]PIB, 2 January 2019, para 3.

[23]No evaluation, audit or impact assessment of the CDP tobacco arm has been found in any official, academic or press source.

[24]Tobacco Board, Annual Report 2022-23, p. 24, section XI "Promotion of alternative crops to tobacco". This consisted of grower awareness meetings at named places across both belts with CTRI and the state agriculture departments.

[25]Tobacco Board, Annual Report 2022-23, pp. 8, 55. Extension and development total Rs 411.64 lakh; "Improving Yield & Quality of Tobacco" Rs 234.62 lakh; curing improvement Rs 111.55 lakh.

[26]Tobacco Board, Annual Report 2022-23, p. 8. Crop size for 2022-23 fixed at 242 million kg, "which is more than 15 million kg when compared to previous year of 227 million kg".

[27]PIB, "Government of India Approves Interest Free Loan to FCV Tobacco Growers in Andhra Pradesh", 26 February 2024; Tobacco Board, Annual Report 2022-23, p. 64. When the belts were hit by Cyclone Michaung in December 2023, the Board's response was Rs 10,000 interest-free loans per grower from its welfare fund; in 2022-23 alone it sanctioned Rs 10.882 crore in crop-damage loans to 10,882 Ongole growers.

HEAD	RS LAKH	YEAR	SOURCE AND PAGE
Interest-free crop damage loans sanctioned to 10,882 Ongole growers after Cyclone Mandous (December 2022)	1088.20	2022-23	Tobacco Board, Annual Report 2022-23, p. 23, restated at p. 64: Rs 10.882 crore, given here in lakh so that the column is on one unit. The Board's response to distress in the belt is support for the tobacco crop
CROP DIVERSIFICATION PROGRAMME: CENTRAL SHARE TO STATE GOVERNMENTS, NOT BOARD MONEY			
Crop Diversification Programme, tobacco arm: central share, all ten states	2500.00	2015-16	PIB, "Tobacco Farming", 2 January 2019, table in para 2
Crop Diversification Programme, tobacco arm: central share, all ten states	3000.00	2016-17	PIB, "Tobacco Farming", 2 January 2019, table in para 2
Crop Diversification Programme, tobacco arm: central share, all ten states	667.00	2017-18	PIB, "Tobacco Farming", 2 January 2019, table in para 2. The total is the sum of the ten State figures; secondary accounts of Rajya Sabha USQ 1785 of 4 August 2023, whose answer has not been traced, give the same Rs 667 lakh for 2017-18 and 2018-19
Crop Diversification Programme, tobacco arm: central share, all ten states	667.00	2018-19	PIB, "Tobacco Farming", 2 January 2019, table in para 2
Crop Diversification Programme: Andhra Pradesh	787.00	2015-16	PIB, "Tobacco Farming", 2 January 2019, table in para 2
Crop Diversification Programme: Andhra Pradesh	945.00	2016-17	PIB, "Tobacco Farming", 2 January 2019, table in para 2
Crop Diversification Programme: Andhra Pradesh	210.10	2017-18	PIB, "Tobacco Farming", 2 January 2019, table in para 2
Crop Diversification Programme: Andhra Pradesh	210.10	2018-19	PIB, "Tobacco Farming", 2 January 2019, table in para 2
Crop Diversification Programme: Karnataka	600.00	2015-16	PIB, "Tobacco Farming", 2 January 2019, table in para 2
Crop Diversification Programme: Karnataka	720.00	2016-17	PIB, "Tobacco Farming", 2 January 2019, table in para 2
Crop Diversification Programme: Karnataka	160.08	2017-18	PIB, "Tobacco Farming", 2 January 2019, table in para 2
Crop Diversification Programme: Karnataka	160.08	2018-19	PIB, "Tobacco Farming", 2 January 2019, table in para 2
Crop Diversification Programme: Gujarat	754.00	2015-16	PIB, "Tobacco Farming", 2 January 2019, table in para 2
Crop Diversification Programme: Gujarat	905.00	2016-17	PIB, "Tobacco Farming", 2 January 2019, table in para 2
Crop Diversification Programme: Gujarat	201.23	2017-18	PIB, "Tobacco Farming", 2 January 2019, table in para 2
Crop Diversification Programme: Gujarat	201.23	2018-19	PIB, "Tobacco Farming", 2 January 2019, table in para 2
THE NEGATIVE FINDING			
Crop Diversification Programme, tobacco arm: cost norms of its own	None	2019 and 2026 guidelines	PIB, Crop Diversification Programmes, Annexure II, final row, whose entire tobacco entry reads that tobacco growing States may take up suitable activities/interventions for replacing the tobacco to alternate crops/cropping system as per the cost norms approved under any Centrally Sponsored Scheme/State Scheme, against detailed per-hectare norms for the paddy arm (pulses Rs 10,000/ha, groundnut Rs 14,000/ha, soybean Rs 10,000/ha, sunflower Rs 9,000/ha, agro-forestry Rs 10,000/ha); substantially the same formulation appears in the earlier PIB release. No evaluation of the tobacco arm has been found after eleven years

Source: Tobacco Board, Annual Report 2022-23, its expenditure tables and scheme narratives; Crop Diversification Programme allocations from the Government's own releases. All Board figures are for 2022-23 alone. The Programme rows are a central allocation to States, not Board money.

The Board's current crop-development report contains neither the word "diversification" nor the phrase "alternative crop".[28] ICAR's own All India Network Project on Tobacco, in its one section on alternative cropping systems, records its Shivamogga station's finding that "No single crop cultivation can equate the income generated by tobacco."[29,30,31] Naturally, a programme that borrows its cost norms and a research network whose economics are a decade old cannot be said to have found the alternatives they were charged with finding.

Willingness to shift is lowest where the institutions are strongest, at twenty-nine per cent of village groups in Karnataka's FCV belt against seventy-one in its bidi belt.[32,33,34] India's 2025 FCTC implementation report ticks "Yes" to all eleven Article 17 mechanisms while leaving every description blank, answers "Yes" to subsidising growing and "No" to researching alternatives, so that the self-reported record is one of subsidy

[28]Tobacco Board, "Crop Development Activities", tobaccoboard.commerce.gov.in, accessed 11 September 2026, section II. The words "diversification" and "alternative crop" do not appear on the page.

[29]ICAR-NIRCA, All India Network Project on Tobacco, Annual Report 2024-25 (366 pages, none of which uses the word "diversification").

[30]ICAR-NIRCA, AINP Annual Report 2024-25, p. 50, section XII "Alternative Cropping Systems", Shivamogga. The Shivamogga station also reports paired-row hybrid cotton and chilli and French bean as the highest-returning alternative system.

[31]ICAR-NIRCA, AINP Annual Report 2024-25, p. 50, Nandyal entry. Maize-chickpea Rs 1,00,833/ha net (2012-13); maize-sunflower Rs 69,813/ha (2013-14). The only substitute-system economics the network offers are from the Nandyal station, reference years 2012-13 and 2013-14, figures still carried forward unchanged in the 2024-25 report.

[32]Nayanatara S. Nayak and others, "Challenges in Shifting from Tobacco: Perceptions of Tobacco Growers from the Major Tobacco Growing States in India" (May 2020) *Journal of Sustainable Health India*, s. 3.4, p. 6. 71% of village groups willing to shift in bidi belt; 29% in FCV belt. FCV villages with 90 per cent irrigation in Hassan and 75 per cent in Mysuru were still unwilling.

[33]Nayak and others (2020), s. 3.1, pp. 4-5. In Andhra Pradesh (Kurnool and Prakasam), growers reported that about 5 per cent had diversified, and those who wished to leave were "not aware of any other economically beneficial crops that can replace tobacco".

[34]Nayak and others (2020), s. 3.1, pp. 4-5 (Prakasam district). Farmers "had tried cotton between 1980 and 1990. But, turned back to tobacco in the 1990s due to failure of cotton." That reversion predates the CDP by two decades.

[35]India, Implementation Report under the WHO FCTC (2025 reporting cycle), items 16.2.3 and 16.2.4, pp. 61-63. India ticks "Yes" to all eleven alternative-livelihood mechanisms under Article 17 and leaves every description field, every file upload and every webpage URL blank.

[36]India, FCTC Implementation Report 2025, item 16.2.5.1, p. 63.

[37]India, FCTC Implementation Report 2025, item 19.3.1.8, p. 78.

[38]India, FCTC Implementation Report 2025, pp. 64-66; India, Implementation Report under the WHO FCTC (2023 reporting cycle), p. 71. Article 18 answers on protection of health and the environment in tobacco cultivation, which were both "Yes" in 2023, flipped to "No" and "No" in 2025, with no explanation offered in either cycle.

without research.[35,36,37] The ticks are a checkbox instrument, and the blanks say more than the ticks.[38,39] The one documented Karnataka scale-up has no follow-up.[40,41,42]

Therefore, the record does not support a claim that the diversification programmes have moved any measurable quantity of land, because no official source reports a measured quantity on a consistent basis after eleven years.

The Statute as Machinery

Section 8(2) sets out the Board's functions, every one of which is promotional, from regulating production to purchasing tobacco when expedient.[43] No clause provides for diversification, for reducing the area under tobacco, or for moving any grower off the crop. Section 10(1) provides that no person shall grow virginia tobacco except under a Board-issued certificate.[44] Section 10(2) ties the grant to demand and soil suitability.[45] What the statute rations is therefore the right to grow.

Section 11B requires a licence for the construction of a curing barn, which the Act defines as an asset whose only purpose is flue curing.[46] Section 13 provides that no grower shall sell virginia tobacco except at a Board-registered auction platform.[47] Section 13A confines every registered dealer and exporter to those same platforms, save for purchases from another registered dealer or from a registered grower or curer.[48]

Hence the seller is compelled to the auction and the buyer is confined to it.

Section 14A authorises the Board to levy fees of up to two per cent from the transaction it mandates, so that the Board funds itself from the very transaction it compels.[49] However, the crop-size ceiling does not bind in practice, because in 2023-24 a penalty waiver in Andhra Pradesh alone covered 76.84 million kg of excess leaf.[50,51]

The statute confesses in its reliefs. When the crop exceeds the ceiling, the Government relaxes the operation of Section 10(1), read with Section 14A(1), under Section 30(1) and authorises purchase under Section 20A, a pair of notifications issued at least nine times since June 2020, in every season the record

[39]FCTC/COP6(11), Policy Options and Recommendations on Economically Sustainable Alternatives to Tobacco Growing (in relation to Articles 17 and 18 of the WHO FCTC), 18 October 2014, s. 4.4, p. 15. The Convention's policy options, adopted by COP6 in 2014, ask tobacco-growing countries not to incentivise increases in acreage; public financing should be discontinued "in accordance with national law and policies, taking into account possible adverse impact on tobacco growers".

[40]Prabhakara Prabhakara and others, "Elimination of Tobacco Growing Is Possible: A Case Study from Karnataka India" (2018) 16(Suppl 1) *Tobacco Induced Diseases* A397, Results and Methods. Co-authored by State Anti Tobacco Cell and Karnataka Agriculture Department. Tobacco-control-aligned source. The authors report a thousand growers stopped tobacco farming voluntarily and that the Government scaled the intervention from 250 hectares to 4,500, covering four further blocks in three tobacco-growing districts.

[41]"Tobacco Farmers Join Forces to Fight Cancer, Grow Alternative Crops in Hunsur", *The Hans India*, 30 May 2022. A separate philanthropic project in the same block ran to fifty farmers on fifty acres, one acre each, privately funded, against roughly 85,000 hectares of FCV in the Karnataka light soils.

[42]Prabhakara and others (2018), Background. Karnataka registered growers 18,751 to 41,737 (an increase of 122.6 per cent); area 29,852 ha to 80,516 ha (an increase of 169.7 per cent), 2001-2016.

[43]Tobacco Board Act 1975, s. 8(2)(a)-(j). Clauses (a) through (j) listed; none relates to diversification. The need for rotation of crops enters only as a factor, at clause (a)(v), to which the Board has regard in regulating production. The functions include "regulating the production and curing of virginia tobacco" having regard to demand and soil, "keeping a constant watch on the virginia tobacco market, both in India and abroad, and ensuring that the growers get a fair and remunerative price", "development of new markets outside India", and "purchasing virginia tobacco from growers when the same is considered necessary or expedient for protecting the interests of the growers".

[44]Tobacco Board Act 1975, s. 10(1). Full text: "No person shall grow virginia tobacco except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the rules made under this Act."

[45]Tobacco Board Act 1975, s. 10(2).

[46]Tobacco Board Act 1975, s. 11B, including the Explanation. The Act defines "barn" as "a building or structure with a roof of zinc sheets or tiles having flue pipes, furnace and tiers used for flue curing of tobacco leaves".

[47]Tobacco Board Act 1975, s. 13.

[48]Tobacco Board Act 1975, s. 13A.

[49]Tobacco Board Act 1975, ss. 14A(1) and (2).

[50]Tobacco Board, "FCV Tobacco Auctions - Karnataka, 2025 Auctions", tobaccoboard.commerce.gov.in, accessed 11 September 2026; Tobacco Board, "FCV Tobacco Auctions - AP, 2025 Auctions", tobaccoboard.commerce.gov.in, accessed 11 September 2026. "Quantity Authorized (M.Kgs.)" column on every platform.

[51]PIB, "Tobacco Board Focuses on Sustainability and Growth of the Industry; Exports Reach 12,005 Crores in 2023-24", release PRID 2089182, Ministry of Commerce and Industry, 1 January 2025. AP 2023-24: 215.35 m.kg by 43,021 growers at Rs 288.65; plus 76.84 m.kg excess by 38,751 growers under penalty waiver.

[52]Tobacco Board Act 1975, ss. 30(1) and 20A. The Central Government issues a pair of notifications, the first under s. 30(1) relaxing the operation of s. 10(1) read with s. 14A(1) so that excess or unregistered tobacco may be sold, the second under s. 20A authorising its purchase and fixing any contribution schedule.

[53]S.O. 4437(E) and S.O. 4438(E), 25 October 2021, Gazette of India Extraordinary Part II Section 3 Sub-section (ii), F. No. 5/3/2019-EP(Agri-VI)/Pt; S.O. 858(E) and S.O. 859(E), 17 February 2025 (Karnataka, no levy); S.O. 4064(E) and S.O. 4065(E), 4 September 2025 (AP); S.O. 5895(E) and S.O. 5896(E), 19 December 2025 (Karnataka).

traces.[52,53,54] Accordingly, the Act's own emergency machinery admits that its crop-size assumptions no longer hold.[55]

The Lock-in

If exit is foreclosed by the soil in some zones, it is foreclosed by the institutions in all of them.[56]

The curing barn is the central sunk cost. FCV tobacco, unlike every alternative crop in the belts, requires flue curing in a licensed barn whose capital serves no other purpose.[57] Hence the grower who has built or inherited a barn must grow tobacco to recover his investment, because the asset cannot be turned to any alternative use.

The Board's market-making function supplies the rest of the lock. The Board acts as a source for informed market and assured linkages with financial institutions, while the buying companies supply inputs, credit and advance-declared prices.[58] Tobacco gives a guaranteed market and ready cash, which no alternative crop in either belt can match.[59]

Credit is not a constraint on growing tobacco because the institutional apparatus supplies it to tobacco.[60]

There is a subtler lock that the diversification literature overlooks. A large proportion of FCV growers are tenants, and new entrants are generally marginal farmers relying on household labour.[61] A tenant cannot plant sandalwood or mango on land he does not hold, which is why the tree crops that would provide a durable exit require an ownership stake the tenant does not have. Hence the grower who would leave is caught between a tenancy that forecloses tree crops and a department that has no standing in the belt, because "the department of agriculture had no role in FCV tobacco cultivation".[62]

A lock-in built by statute, by the barn licence of Section 11B, the auction compulsion of Section 13, the credit the Board facilitates and the advance-declared price the companies offer, can be reopened by the authority that built it. A lock-in written by geology cannot.

The Leaf-Demand Paradox

It must be conceded that new-generation products do not carry the same quantum of Indian FCV leaf as the combustible cigarette.[63] The per-unit gap is real, since the heated stick carries roughly half the tobacco mass of the comparator cigarette, and less than half its leaf, but the risk concentrates in the leafless categories, vapour and pouches, which take demand out of agriculture altogether.[64,65] Exhibit 10 sets out the leaf content by product category.

EXHIBIT 10 **How Much Leaf Is in a Unit, and Who Says So**

Three of the ten rows have no figure, and two are zero. The provenance column stands beside every figure.

[54]Tobacco Board, "Penalties For Violation", tobaccoboard.commerce.gov.in, accessed 11 September 2026. The Board's penalties page concedes that offending leaf "will be allowed for sale in auctions subject to levy of penalties every year".

[55]Tobacco Board, Annual Report 2022-23, pp. 23, 64.

[56]Nayak and others (2020), ss. 3.1, 4.

[57]Nayanatara S. Nayak, "Tobacco Curing and Fuel Efficiency in Karnataka, India", SANDEE Working Paper No. 77-13, January 2013 (n=610). "A minimum amount of fuel is required… no matter how much tobacco is cured. Thus, owners of small farms are at a disadvantage." Subsidy for Venturi furnaces and barn insulation for farmers under 2.5 ha, "though this subsidy has since been discontinued."

[58]Nayak and others (2020), s. 3.1, p. 4. The Board "acts as an important trigger being a source for informed market and assured linkages with financial institutions", and the buying companies supply "inputs, credit and technical support" and "declared rates in advance".

[59]Nayak and others (2020), s. 3.1, p. 4. Tobacco is "non-perishable and can be easily stored" and gives "a guaranteed market and ready cash".

[60]Yogesh and Srivastava (2018), Table 3 and Discussion. Finance rank VIII (23.65 AP; 27.61 Karnataka). It is not a coincidence that finance ranks last among the grower's constraints, because the institutional apparatus supplies credit to tobacco.

[61]Nayak and others (2020), s. 3.1, p. 4.

[62]Nayak and others (2020), s. 3.1, p. 4.

[63]G. Lang and others, "Non-targeted Analytical Comparison of a Heated Tobacco Product Aerosol against Mainstream Cigarette Smoke" (2024) 416(6) *Analytical and Bioanalytical Chemistry* 1349, Methods. **Industry (PMI).** Heated stick 306 mg sheet, 17.7% w/w glycerol; comparator cigarette 603 mg cut filler. The view that heated products consume reconstituted sheet processed from lower-grade leaf finds no support in the only technical evidence located on the blend; the industry paper reports the sheet was made from tobacco "consisting predominantly of flue-cured tobacco (> 60%), Oriental tobacco, and a small fraction of air-cured type tobaccos (< 10%)", and that "the same blended tobacco" went into both the sheet and the comparator cigarette. Reconstitution is a format, not a grade specification.

[64]H.M. Al-Otaibi and M.A. Althobiani, "Nicotine Pouches: A Narrative Review of the Existing Literature" (2025) 13 *Frontiers in Public Health* 1641308. Vapour products: no leaf in-product. Pouches: cellulose matrix infused with nicotine, no tobacco leaf.

[65]Lang and others (2024), Methods. **Industry (PMI).** Sheet from blend "consisting predominantly of flue-cured tobacco (> 60%), Oriental tobacco, and a small fraction of air-cured type tobaccos (< 10%)"; "the same blended tobacco" as comparator.

PRODUCT	TOBACCO PER UNIT, G	LEAF TYPE	PROVENANCE	SOURCE
Cigarette (United States, post-1980 average)	0.771	American blend: domestic quality grades blended with lower-priced imported leaf; blending technology permitted more use of lower quality leaf	official (Congressional Research Service)	Congressional Research Service, CRS Report RL30947, U.S. Tobacco Production, Consumption, and Export Trends. Stated in the source as 1.7 lb per 1,000 pieces
Cigarette (United States, earlier twentieth century)	1.22	American blend	official (Congressional Research Service)	Congressional Research Service, CRS Report RL30947, U.S. Tobacco Production, Consumption, and Export Trends. Stated as 2.7 lb per 1,000 pieces, a 37 per cent reduction to the post-1980 figure. Carried so that the per-stick coefficient is seen to be a moving number
Cigarette (India)	No figure	Flue-cured Virginia predominantly; Indian stick lengths and filter mix differ from the United States	none	No Indian leaf-per-cigarette figure exists in the public record, and every estimate of leaf demand turns on it. A gravimetric measurement or a manufacturer's disclosure would settle it
Cigarette (industry comparator, like-for-like with the heated stick below)	0.603	The same blend as the heated sheet beside it: predominantly flue-cured (over 60 per cent), Oriental, and a small fraction of air-cured types (under 10 per cent); 1.7 per cent added glycerol. Stated as cut filler per item	industry (Philip Morris International authorship)	Lang and others (2024) 416(6) Analytical and Bioanalytical Chemistry 1349. An industry-authored figure
Heated-tobacco stick (THS 2.2 / IQOS)	0.306	Reconstituted tobacco sheet made from finely ground tobacco of the same blend: the paper reports a sheet made from tobacco consisting predominantly of flue-cured tobacco (over 60 per cent), Oriental tobacco, and a small fraction of air-cured type tobaccos (under 10 per cent), and that the same blended tobacco went into both the sheet and the comparator cigarette. The leaf fraction is materially lower than 306 mg: the sheet is 17.7 per cent w/w glycerol, plus guar gum and cellulose fibres. No Indian leaf-per-stick figure exists	industry (Philip Morris International authorship)	Lang and others (2024) 416(6) Analytical and Bioanalytical Chemistry 1349. The ratio is not a leaf ratio: 306 mg against 603 mg is about 0.51, and against the CRS coefficient about 0.40, but the 306 mg includes roughly a fifth non-leaf aerosol former and binder while the 603 mg does not. The true leaf ratio is lower than 0.51 and cannot be computed from the published data
Heated-tobacco stick (independent measurement)	0.30	Average weight of the tobacco plug in IQOS sticks bought in nine countries between 2017 and 2020; like the industry figure, it includes the sheet's glycerol. Nicotine density per gram of filler is comparable to cigarettes: IQOS 15.7 to 17.1 mg/g against reference cigarettes 15.9 to 19.7 mg/g	academic	Leigh and others (2024) 12(3) Toxics 180, for the plug weight; Upadhyay and others (2023) 11(8) Toxics 667, reporting Bekki and others, for the nicotine densities. Upadhyay et al. record that most of the studies used for this review article lacked information on the mass of tobacco
Vapour product / electronic cigarette	0 in the product	No leaf in the product. Leaf demand arises only upstream, through nicotine extraction. Nicotine is tobacco-derived or synthetic, the same compound, indistinguishable by standard analysis: only carbon-14 accelerator mass spectrometry separates them, tobacco-derived at 100 per cent carbon-14 and synthetic at 35 to 38 per cent. Tobacco-derived nicotine is described as cheaper and more abundant, but synthetic prices are falling	contract laboratory (Enthalpy Analytical, whose clients include tobacco manufacturers, and Consilium Sciences)	Cheetham and others (2022) 17(4) PLoS One e0267049
Oral nicotine pouch	0 in the product	No tobacco leaf. A cellulose matrix infused with nicotine, derived either from tobacco leaves or synthetically created, the same fork as above. Nicotine per pouch varies very widely between assays: 0.89 to 6.73 mg across 37 samples (Stanfill et al.) and 1.79 to 47.5 mg, median 9.48, across 46 samples (Malloch et al.)	academic (a named peer reviewer is affiliated to JTI SA: disclosed)	Al-Otaibi and Althobiani (2025) 13 Frontiers in Public Health 1641308, reporting Stanfill and others and Malloch and others
Snus (Swedish, GothiaTek standard)	No figure	Air-cured or sun-cured leaf only, that is, not flue-cured Virginia: curing is achieved without artificial sources of heat and humidity. Fire-cured tobacco was phased out during the 1990s	industry (Swedish Match)	Rutqvist and others (2011) 8 Harm Reduction Journal 11, on the GothiaTek standard. The paper gives no dry-leaf mass per portion. Finished snus has a water content of around 45 to 60 per cent, so any wet portion weight materially overstates dry leaf, and one cannot be converted into the other
Extraction feedstock (leaf consumed per unit of nicotine)	No figure	The extraction leaf type and grade for India could not be documented from any official source	official, for the one adjacent datum only	No published figure has been found. Adjacent datum: tobacco refuse was 11.54 per cent of India's unmanufactured export volume in 2022-23, and the Board does not say what it was bought for

Source: a Congressional Research Service paper for the United States coefficients, an industry like-for-like study for the cigarette and heated-stick pair, and other sources for the rest, each labelled in the provenance column. No Indian leaf-per-cigarette figure exists in the public record. The heated-stick ratio is not a leaf ratio.

Japan, the one observed case, answers the adjustment question directly.[66,67] Where a monopsony buyer with a statutory purchase obligation faced a shrinking combustible market, the adjustment fell on area, down thirty-four per cent, while the purchase price was held unchanged.[68]

[66]K.M. Cummings and others, "Transformation of the Tobacco Product Market in Japan, 2011-2023" (2026) 35(1) *Tobacco Control* e058734 (online 29 October 2024). Combustible-cigarette sales fell from 195.3 billion sticks in 2011 to 92.2 billion in 2023, a decline of 52.7 per cent, while combined stick sales, combustible and heated together, fell only to 148.7 billion.

[67]Japan Tobacco Inc., press release, 29 July 2021; Japan Tobacco Inc., press release, 11 November 2021. **Industry (JT).** The Council set the 2022 cultivation area at 3,889 hectares, down 34.0 per cent, while holding the purchase price unchanged at ¥1,924.15 per kilogram.

[68]Japan Tobacco Inc., press release, 29 July 2021. JT names "the fall in the adult population and the aging of society, as well as tighter smoking-related regulations", and "rapid changes in the market over the past few years, such as the expansion and intensifying competition of the heated tobacco and the value-segment cigarette categories." The 34 per cent area reduction is therefore not an effect attributable to heated tobacco alone.

No Indian leaf-per-stick coefficient exists in the public record, since no manufacturer discloses one and no public laboratory has weighed one, so that any estimate of how much leaf demand a shift to new products would remove is a range whose width is set by that one missing number.[69] Hence this chapter states the direction of the effect and declines to put a number on it. The bidi workforce is a separate question, which this chapter does not address, governed by the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, not by the FCV auction system.[70]

The combustible cigarette market and the export leg persist under any plausible path of substitution, since India's exports of tobacco and tobacco products grew by 44 per cent in volume between 2019-20 and 2023-24.[71] The near-term instrument that would move the grower's price is the entry of buyers to an auction where two companies constitute the entire "Manufacturers" class.[72] Value addition on the grower's own crop is the only welfare path the Act leaves open, which is precisely the path the 2010 note closes.

However, the grower who cannot leave tobacco is asked to accept, without any published explanation, that the same Government which built the apparatus around his crop treats him differently from every other farmer in the country. The sugarcane grower and the mango grower each sells into a value chain open to full foreign investment.[73] The tobacco grower alone is barred from the chain built on his own crop. That difference has never been justified.

[69]Jasper Womach, "U.S. Tobacco Production, Consumption, and Export Trends", CRS Report RL30947, Congressional Research Service, 3 June 2003, Figure 17. US post-1980 average 0.771 g/stick. No Indian figure in the public record.

[70]Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (32 of 1966). The Act governs the employment of bidi workers, whose position lies outside this study.

[71]PIB, 1 January 2025 (release PRID 2089182); Tobacco Board, Annual Report 2022-23, p. 86. Exports 218.84 m.kg (2019-20) to 315.51 m.kg (2023-24), +44%. FCV 52.65% of volume, 68.71% of value of unmanufactured tobacco exports (2022-23). India's tobacco and tobacco-product exports have grown 44 per cent in volume between 2019-20 and 2023-24, and FCV alone accounted for more than half the volume and more than two-thirds the value of unmanufactured tobacco exports in 2022-23.

[72]Tobacco Board, Annual Report 2022-23, p. 80. The buyer-class breakdown at the Board's auction platforms shows only two entries under "Manufacturers".

[73]Consolidated FDI Policy Circular of 2020, DPIIT, paras 5.2.1 and 5.2.5.1 (agriculture 100 per cent automatic; food processing 100 per cent automatic).

07

Constitutional Parity and the Classification Question

07

Constitutional Parity and the Classification Question

Forward integration is the Government of India's settled agricultural policy, confirmed in the current consolidation of the FDI circular.[1] Food processing admits full foreign investment in manufacture under the automatic route.[2] The plantation crops stand open.[3] The fruit grower is walked by the scheme into the juice factory, and the ministries publish the results as achievements. However, the tobacco grower alone is barred by the same Government from the value chain built on his own crop.[4]

The difference has never once been justified in a published document.

This chapter puts the classification to the rational-nexus discipline that equality doctrine applies to any differentiation between similarly situated persons, wherein the classification must be founded on an intelligible differentia bearing a rational relation to a stated object.[5] It does not assert a violation of Article 14 but applies the discipline as a test of policy reason, because an instrument that fails the rational-nexus test as a matter of law will not pass it as a matter of policy either. The differentia is not in dispute. What the record lacks is the nexus, and the parity argument, which is the report's moral centre, is that the absence of a nexus leaves the grower's exclusion without a stated reason.

Forward Integration as Settled Policy

The Consolidated FDI Policy Circular of 2020, which remains the base consolidation in force, sets out the entries.[6] Paragraph 5.2.2.1 admits 100 per cent FDI under the automatic route in tea, coffee, rubber, cardamom, palm oil and olive oil plantations.[7,8] Hence a tea plantation in Assam or a coffee estate in Coorg may be wholly owned by a foreign investor without prior Government approval. Paragraph 5.2.1 extends the same automatic route to floriculture, horticulture, seeds, animal husbandry and allied sectors, with no health-based qualification in any entry.[9]

EXHIBIT 11 **One Policy Document, Fourteen Entries, One Prohibition**

CROP OR SECTOR	FDI ENTRY: PARAGRAPH, ROUTE, CAP	SCHEME SUPPORT
Tea, including tea plantations	Para 5.2.2.1. Automatic route. 100 per cent	Commodity Board schemes for this crop not surveyed
Coffee plantations	Para 5.2.2.1. Automatic route. 100 per cent	Commodity Board schemes for this crop not surveyed
Rubber plantations	Para 5.2.2.1. Automatic route. 100 per cent	Commodity Board schemes for this crop not surveyed
Cardamom plantations	Para 5.2.2.1. Automatic route. 100 per cent	Commodity Board schemes for this crop not surveyed
Palm oil tree plantations	Para 5.2.2.1. Automatic route. 100 per cent	Commodity Board schemes for this crop not surveyed
Olive oil tree plantations	Para 5.2.2.1. Automatic route. 100 per cent	Commodity Board schemes for this crop not surveyed
Any other plantation sector or activity	Para 5.2.2.1. Not allowed: FDI is not allowed in any other plantation sector/activity	Not surveyed
Floriculture, horticulture, and cultivation of vegetables and mushrooms under controlled conditions	Para 5.2.1. Automatic route. 100 per cent	MIDH and allied schemes not surveyed
Development and production of seeds and planting material	Para 5.2.1. Automatic route. 100 per cent	Not surveyed
Animal husbandry, pisciculture, aquaculture and apiculture	Para 5.2.1. Automatic route. 100 per cent	Not surveyed
Services related to agro and allied sectors	Para 5.2.1. Automatic route. 100 per cent	Not surveyed

[1] Consolidated FDI Policy Circular of 2020, DPIIT, paras 5.2.1, 5.2.2.1 and 5.2.5.1, pp. 30, 31 and 34; Production Linked Incentive Scheme for Food Processing Industry, Ministry of Food Processing Industries, Guidelines 2021, para 1.1, p. 3.

[2] Consolidated FDI Policy Circular of 2020, DPIIT, para 5.2.5.1, p. 34.

[3] Consolidated FDI Policy Circular of 2020, para 5.2.2.1, p. 31.

[4] Consolidated FDI Policy Circular of 2020, para 5.1(g), p. 28.

[5] *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75; [1952] SCR 284 (Das J.), SCR pp. 334-335.

[6] Consolidated FDI Policy Circular of 2020. The Circular of 2020 remains the base consolidation; subsequent press notes leave the tobacco entry unchanged.

[7] Consolidated FDI Policy Circular of 2020, para 5.2.2.1, p. 31.

[8] Consolidated FDI Policy Circular of 2020, para 5.2.2.2, p. 31. Paragraph 5.2.2.2 requires State approval for any change in land use, but the entry itself is unconditional on the foreign-ownership side.

[9] Consolidated FDI Policy Circular of 2020, para 5.2.1, p. 30. The full entry lists: "a) Floriculture, Horticulture, and Cultivation of Vegetables & Mushrooms under controlled conditions; b) Development and Production of seeds and planting material; c) Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture, Apiculture; and d) Services related to agro and allied sectors". Exhibit 11 carries the crop-by-crop parity comparison.

CROP OR SECTOR	FDI ENTRY: PARAGRAPH, ROUTE, CAP	SCHEME SUPPORT
Food products manufacturing (processed fruits and vegetables, marine products, ready to cook and ready to eat, mozzarella)	Para 5.2.5.1. Automatic route. 100 per cent. Food processing has no entry of its own: foreign investment in manufacturing sector is under automatic route	Production Linked Incentive Scheme for the Food Processing Industry, Rs 10,900 crore, 2021-22 to 2026-27. Para 1.1: the objective of the scheme is to support the creation of global food manufacturing champions; promote Indian brands of food products; increase employment opportunities for off-farm jobs, ensure remunerative prices of farm produce and higher income to farmers
Retail trading of food products manufactured or produced in India	Para 5.2.5.2. Government approval route. 100 per cent	Same scheme. The trading limb is the one qualification on the phrase full foreign investment: it is true of food manufacture and not of food trading
Flue-cured Virginia tobacco: manufacturing of cigars, cheroots, cigarillos and cigarettes	Para 5.1(g). Prohibited. No route and no cap, because there is no permitted entry	Tobacco Board Act 1975: registration of growers under s. 10, sale at registered auction platforms under s. 13, and the s. 30(1) and s. 20A relief pairs. Crop Diversification Programme, tobacco arm: central share Rs 6.67 crore a year across ten states in 2017-18 and 2018-19, of which Andhra Pradesh and Karnataka took Rs 3.70 crore combined, against Rs 25 crore in 2015-16 and Rs 30 crore in 2016-17; the tobacco arm has no cost norms of its own in either the 2019 or the 2026 guidelines

Source: Consolidated FDI Policy Circular of 2020, paragraph by paragraph, with the food-processing incentive scheme guidelines of 2021. All fourteen entries are in one instrument, which is the point. The bar reaches the buyer's product, not anything the grower does. Eleven scheme cells record schemes that this study did not survey.

Food manufacture falls under the general manufacturing entry at paragraph 5.2.5.1, which admits 100 per cent FDI under the automatic route,[10] while retail trading of food products is separately open under the Government route.[11] Since manufacture is the step at which the farmer's crop becomes a product, the door that matters to the grower stands open. The Production Linked Incentive Scheme for Food Processing Industry, with an outlay of Rs 10,900 crore running from 2021-22 to 2026-27, states its objective as ensuring "remunerative prices of farm produce and higher income to farmers".[12,13] The scheme pays for forward integration in the grower's name.

Accordingly, the Government invites foreign capital into the processing of every agricultural crop. Every crop stands on the same footing, with one exception.

The Excluded Entry

Under the heading "FDI is prohibited in", paragraph 5.1(g) of the same Circular bars "Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes".[14,15] Hence between the sovereignty of the atom and the regulation of gambling sits one consumer good, alone among the agricultural commodities of a continental economy. The bar reaches manufacture alone.[16] It does not reach the smokeless and bidi segments where India's consumption burden actually sits, as Chapter 1 recorded.[17] The bar arrived a decade after the last fresh licence, adding nothing to capacity control, because no fresh industrial licence for cigarette manufacture had issued "on health grounds since 1999".[18]

The question, then, is not whether tobacco is different from tea but whether the different treatment can state its reason.

[10]Consolidated FDI Policy Circular of 2020, para 5.2.5.1, p. 34. The Circular states that "foreign investment in 'manufacturing' sector is under automatic route"; no separate food-processing entry exists.

[11]Consolidated FDI Policy Circular of 2020, para 5.2.5.2, p. 34. The automatic route requires no prior Government approval; the Government route does. The retail trading of "food products manufactured and/or produced in India" at paragraph 5.2.5.2 admits 100 per cent FDI under the Government approval route.

[12]Production Linked Incentive Scheme for Food Processing Industry, Guidelines 2021, para 1.1, p. 3. The scheme's stated objective reads in full: "The objective of the scheme is to support the creation of global food manufacturing champions; promote Indian brands of food products; increase employment opportunities for off-farm jobs, ensure remunerative prices of farm produce and higher income to farmers."

[13]The scheme runs from 2021-22 to 2026-27 and was current as of September 2026.

[14]Consolidated FDI Policy Circular of 2020, para 5.1(g), p. 28. The entry was inserted as para 5.1(j) by Press Note 2 of 2010, appeared as para 6.1(g) in the 2015 consolidation and is para 5.1(g) in the Circular of 2020.

[15]Consolidated FDI Policy Circular of 2020, paras 5.1(a) to 5.1(h), p. 28. The prohibited list's other entries are lottery and betting, chit funds and Nidhi companies, trading in transferable development rights, real estate business, atomic energy, and the core of railway operations.

[16]Consolidated FDI Policy Circular of 2020, para 5.1, closing sentence, p. 28; "DPIIT Working on Proposal to Further Tighten FDI Rules in Tobacco Sector", *Business Standard*, 28 July 2024. Technology collaboration, licensing, franchise, trademark and management contracts remain lawful under the Circular. Wholesale trading is open. The dominant manufacturer already carries a grandfathered foreign shareholding. DPIIT has twice proposed closing the collaboration route, in 2016 and again in 2024, and has twice stopped short.

[17]Consolidated FDI Policy Circular of 2020, para 5.1(g), p. 28. The bar at para 5.1(g) is confined to "Manufacturing of cigars, cheroots, cigarillos and cigarettes"; it does not reach bidi, smokeless or chewing tobacco. The smokeless and bidi segments carry the greater consumption burden, as Chapter 1 recorded.

[18]DPIIT, *Industrial Licensing Services*, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026: "[Fresh Licenses are not being issued for manufacture of this item on health grounds since 1999]". The 2010 press note thus added nothing to the control of new capacity; its entire marginal effect fell on who may own the capacity that already existed. See further Chapter 3.

The Rational-Nexus Discipline

The two conditions for permissible classification were stated by Das J. in *State of West Bengal v. Anwar Ali Sarkar*, wherein a classification must be "founded on an intelligible differentia" bearing "a rational relation to the object sought to be achieved", and the differentia and the object must be connected by a nexus.[19,20] The differentia is the crop.

The object, taken at its highest, is public health. Of the three sentences in the only published statement of reasons for the 2010 prohibition, a release of the Cabinet Committee on Economic Affairs dated 8 April 2010, only the second is operative, claiming consistency with "the administrative decision not to grant industrial licence for cigarette manufacturing".[21,22] Hence Press Note 2 of 2010, the operative instrument that carried the bar into the Circular, states no reasons of its own.[23]

Thus what is missing is the nexus. A bar on the passport of the investor's capital does not regulate the contents of the cigarette, the marketing of the product, the age of the buyer, or the place of consumption. It regulates who owns the factory. Naturally, neither consumption nor capacity responded to the bar, as Chapters 1 and 3 recorded.[24,25] Though sixteen Parliamentary answers between 2010 and 2017 restated the bar's scope, only the first, in April 2010, repeated the Cabinet's stated ground, and none stated a mechanism. Hence the mechanism connecting the differentia to the object has never been articulated in any published instrument.

Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar answers the question whether reasons must exist somewhere undisclosed. Das C.J. restated at proposition (f) that "the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation".[26] This is the load-bearing principle. The FDI entry presents exactly the situation *Dalmia* contemplated, because a classification whose only stated ground is consistency with an earlier instrument, itself resting on no published assessment, supplies no surrounding circumstance from which a nexus can be inferred. Bhagwati J. in *E.P. Royappa v. State of Tamil Nadu* gave the principle its widest expression, holding that "equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch".[27]

The parity argument does not deny that tobacco is different from tea or coffee. However, the comparator is not the leaf but the rule. Every other grower's crop may be processed by foreign-owned capacity, and the tobacco grower's may not, yet the reason for the difference is what the record does not supply. If the bar on foreign capital could state the mechanism by which it serves public health, the parity claim would have an answer. It has none.

[19] *Anwar Ali Sarkar*, AIR 1952 SC 75 (Das J.), SCR pp. 334-335.

[20] *Anwar Ali Sarkar*, AIR 1952 SC 75 (Das J.), SCR pp. 334-335. Das J. continued: "The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them."

[21] Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010. The first sentence of the release's statement of reasons speaks of "the Government's commitment towards proliferation of anti-smoking regime in the country"; the third speaks of aligning "the FDI policy with the existing legislation on Tobacco control to a greater extent". Only the second sentence is operative.

[22] DPIIT, *Industrial Licensing Services*, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026. The DPIIT licensing page description reads "[Fresh Licenses are not being issued for manufacture of this item on health grounds since 1999]".

[23] Press Note No. 2 (2010 Series), Department of Industrial Policy and Promotion, 10 May 2010.

[24] Economic Advisory Council to the Prime Minister, Working Paper EAC-PM/WP/42/2026, "Rise in Tobacco Consumption and Policy Implications" (Shamika Ravi and Partha Protim Barman), February 2026. The EAC-PM working paper on tobacco, the Government's latest economic paper on the sector, does not mention FDI.

[25] Lok Sabha, Unstarred Question No. 3840, 19 April 2010; Rajya Sabha, Unstarred Question No. 1841, 3 August 2016; Lok Sabha, Unstarred Question No. 54, 17 July 2017. Sixteen questions pairing tobacco with FDI were answered between 2010 and 2017. The answers restate the scope of the bar; only the first adds that the decision "is expected to enhance public accountability by way of the Government's commitment towards proliferation of anti-smoking regime in the country", and none states a mechanism. On consumption, see Chapter 1; on capacity control, see Chapter 3.

[26] *Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar*, AIR 1958 SC 538; [1959] SCR 279 (Das C.J.), SCR pp. 296-298, proposition (f). The full text of proposition (f) reads: "while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

[27] *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3; [1974] 2 SCR 348 (Bhagwati J.).

The Reply, and the Answer

R.K. Garg v. Union of India held that "laws relating to economic activities should be viewed with greater latitude than laws touching civil rights", with "play in the joints" for the legislature to experiment.[28] Article 47 of the Constitution obliges the State to regard public health as among its primary duties, and in *Health for Millions Trust* the Supreme Court stated itself "inclined to think that health of a citizen has primacy".[29] However, *Dalmia*'s proposition (f) answers precisely the Government that claims latitude excuses the gap, for where nothing on the face of the instrument supplies a basis for the classification, the presumption of constitutionality cannot fill the vacuum with hypothetical reasons.

Latitude presupposes a direction.

Without a stated mechanism connecting the bar on capital to the reduction of consumption, there is no direction in which latitude can operate. *Godawat Pan Masala Products v. Union of India* held that a restriction under Article 19(6) "has to be commensurate with the danger posed" and that the impugned prohibition failed because "there is no demonstrated danger to the public health".[30,31] If a restriction must be commensurate with the danger it addresses, then a restriction that has never stated the mechanism by which it addresses the danger cannot claim commensurability. COTPA was "not enacted to prohibit consumption of cigarettes and other tobacco products" but to regulate it (Karnataka High Court, quashing the 85 per cent warning rules, stayed by the Supreme Court on 8 January 2018).[32,33] Hence tobacco is not res extra commercium, and the bar cannot claim the shelter of a commodity placed outside trade.

The proportionality enquiry itself, as *Modern Dental College and Research Centre v. State of Madhya Pradesh* and *Anuradha Bhasin v. Union of India* elaborate, presupposes a stated aim and a demonstrated connection between the restriction and that aim, so that the reviewing authority has something to weigh.[34,35] Therefore the proportionality objection answers itself, for there is nothing to balance against the grower's exclusion.

The Study Parliament Requested

Parliament's Standing Committee on Commerce, chaired by V. Vijayasai Reddy, submitted its 154th Report on 26 August 2020.[36] The Committee held that FDI "albeit in a regulated manner would stimulate the production and processing of Indian tobacco, thereby boosting its export" and recommended that "the Department to undertake a study to analyse the prospects of opening FDI investments in the tobacco sector at the earliest".[37,38] In this context the Committee, as the PRS summary reports it, set the tobacco entry beside the plantation entries, noting that 100 per cent FDI is allowed under the automatic route in coffee and tea.[39,40] The plantation entry that admits wholly foreign ownership in these sectors, all with

[28] *R.K. Garg v. Union of India*, AIR 1981 SC 2138; (1981) 4 SCC 675; [1982] 1 SCR 947.

[29] *Health for Millions Trust v. Union of India*, SLP (C) No. 37348 of 2017, Supreme Court, order of 8 January 2018 (Dipak Misra C.J., Khanwilkar and Chandrachud JJ.) (interim order, unreported).

[30] *Godawat Pan Masala Products I.P. Ltd. v. Union of India*, (2004) 7 SCC 68. *Godawat* is not a tobacco holding but a discipline applicable wherever a restriction on trade in a consumer product is sought to be justified on health grounds; the restriction could not "be wider than" the danger demonstrated.

[31] *Godawat Pan Masala Products I.P. Ltd. v. Union of India*, (2004) 7 SCC 68.

[32] *Karnataka Beedi Industry Association v. Union of India*, Karnataka High Court, W.P. No. 4470 of 2015 and connected matters, judgment of 15 December 2017, pp. 79-80, 491. The Court held that res extra commercium is confined to "such drugs or intoxicating drinks" and that COTPA was "not enacted to prohibit consumption of cigarettes and other tobacco products" but to regulate it.

[33] *Health for Millions Trust v. Union of India*, SLP (C) No. 37348 of 2017, Supreme Court, order of 8 January 2018. The stay was granted on 8 January 2018 and stands as of the date of this report.

[34] *Modern Dental College and Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353; *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

[35] *Modern Dental College and Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353; *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637. The proportionality test as elaborated by these authorities requires a stated aim, a rational connection, necessity and proportionality in the strict sense.

[36] Department-related Parliamentary Standing Committee on Commerce, 154th Report, "Export of Agricultural and Marine Products, Plantation Crops, Turmeric and Coir", Rajya Sabha, submitted 26 August 2020, presented 18 September 2020, as reported in "Parliamentary Panel Recommends Regulated FDI in Tobacco Sector", *The Tribune* (PTI), 26 August 2020, and PRS Legislative Research, Report Summary, 8 January 2021. The full report could not be obtained, and the quotations are drawn from the PTI dispatch; the PRS summary reports the recommendation in paraphrase.

[37] Department-related Parliamentary Standing Committee on Commerce, 154th Report, submitted 26 August 2020 (PTI dispatch; paraphrased in the PRS summary).

[38] Department-related Parliamentary Standing Committee on Commerce, 154th Report, submitted 26 August 2020 (PTI dispatch; paraphrased in the PRS summary). The Committee's recommendation, as quoted in the PTI dispatch.

[39] Department-related Parliamentary Standing Committee on Commerce, 154th Report, submitted 26 August 2020 (PRS summary). The PRS summary records the coffee and tea comparator in the same paragraph as the recommendation; the PTI dispatch carries no comparator.

[40] Department-related Parliamentary Standing Committee on Commerce, 154th Report, submitted 26 August 2020 (PRS summary and PTI dispatch). The Committee also recommended a Market Stabilisation Fund financed by "a 1% levy on the sale of cigarettes" and the extension of the

Indian incumbents of long standing, has produced no displacement that any Parliamentary record notes. Hence its ask was regulated FDI for export, not unconditional entry, and the question was modest.

No study answering the recommendation has been published.[41,42] The Commerce and Industry Minister stated in 2024 that liberalisation of FDI in tobacco manufacturing was not under consideration, as reported.[43,44]

Parliament asked for a study. None has been published.

Chapter 5 showed what the tobacco grower suffers, with a single dominant buyer at the auction, prices that swing from distress to record and back, and a Board that rations supply into a market the prohibition has closed to competing demand. This chapter has shown why that suffering persists. The exclusion is neither accidental nor the consequence of any published assessment. Two farmers grow two crops in one state, and the Government treats them in opposite ways, and in sixteen years no published instrument has stated why. The suffering is a policy choice.

Remission of Duties and Taxes on Exported Products (RoDTEP) scheme to tobacco, recommendations within the same forward-integration logic the policy entries embody.

[41] No study answering the 154th Report's recommendation has been published as at 11 September 2026.

[42] Sixteen parliamentary questions pairing tobacco with FDI were answered between 2010 and 2017. The last in the Rajya Sabha is Unstarred Question No. 1841 (3 August 2016); the last in the Lok Sabha is Unstarred Question No. 54 (17 July 2017). The online record carries no answer texts for the Rajya Sabha from 2021 or for the Lok Sabha from June 2024.

[43] "Government Won't Liberalise FDI in Tobacco Sector: Piyush Goyal", *ANI*, 10 July 2024.

[44] "Government Won't Liberalise FDI in Tobacco Sector: Piyush Goyal", *ANI*, 10 July 2024.

PART

IV

Products, Treaties and Taxation

08

Classification and Regulation of Novel Tobacco Products

08

Classification and Regulation of Novel Tobacco Products

Section 3(d) of the Prohibition of Electronic Cigarettes Act, 2019 defines the class it prohibits, but it does not classify. One definition sweeps a nicotine-free vapour device, a heated tobacco stick containing leaf and an e-hookah into a single undifferentiated class, while leaving the combustible cigarette, the bidi and chewing tobacco outside it.[1] Equality doctrine asks whether a classification bears a rational nexus to its stated object, yet here there is no classification to test. The products differ in mechanism, dose, delivery and risk, yet the statute draws no distinction among them. Prohibition let the regulatory questions go unanswered, leaving a market that pays no tax, checks no age, meets no standard and answers to no regulator.

This is so because the classification is itself the regulatory act, for to sort products by mechanism, dose, delivery and risk is already to have begun regulating, since every regulatory instrument in the world that is not a blanket prohibition begins by separating one product from another. PECA declined the sort, and by declining it refused the work. The Statement of Objects and Reasons records that three expert sub-groups constituted "to recommend measures to control the sale, supply, import, export, manufacturing and trade of e-cigarettes under the prevailing legislative framework" instead "recommended to prohibit Electronic Nicotine Delivery Systems".[2] The terms of reference were regulatory, yet the recommendation was prohibition, so the questions those terms demanded were never reached.

The public-health case for the prohibition deserves its strongest statement, and that statement is the ICMR's. Its white paper of May 2019 found that these products have a "net negative impact on public health" and recommended "complete prohibition on ENDS or e-cigarettes in India in the greater interest of protecting public health", and the Government acted on it within four months.[3] WHO's position is more conditional than either side of the Indian debate usually allows. It asks countries that ban e-cigarettes to strengthen implementation of the ban, and countries that permit them to ban flavours, limit nicotine and tax them, while holding that their commercialisation "has not been proven to have had a net benefit for public health" and that there is no evidence that heated tobacco products are less harmful than conventional ones.[4]

Hence neither body supplies what PECA lacks, which is a classification.

The white paper's comparative premise was, moreover, mistaken, since it described the United Kingdom as regulating e-cigarettes as medicines when the United Kingdom regulates them as consumer products.[5] What the two bodies do supply are the risks a regulatory statute must answer, youth uptake and dual use chief among them, and this chapter takes those risks up below.

[1]Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019 (Act 42 of 2019), s. 3(d). Combustible cigarettes are outside the definition because they are not electronic devices that heat a substance.
[2]PECA 2019, Statement of Objects and Reasons, p. 7. The Statement records that three expert sub-groups constituted "to recommend measures to control the sale, supply, import, export, manufacturing and trade of e-cigarettes under the prevailing legislative framework" instead "recommended to prohibit Electronic Nicotine Delivery Systems".
[3]Indian Council of Medical Research (Writing Committee: Chakma JK, Dhaliwal RS and Mehrotra R), "White Paper on Electronic Nicotine Delivery System" (2019) 149 *Indian Journal of Medical Research* 574, 577 and 581, doi 10.4103/ijmr.IJMR_957_19, released 31 May 2019; the Prohibition of Electronic Cigarettes Ordinance followed on 18 September 2019.
[4]WHO, "Urgent action needed to protect children and prevent the uptake of e-cigarettes", news release, 14 December 2023, paras 9 and 10; WHO, *Report on the global tobacco epidemic, 2025*, p. 104; WHO, *Heated tobacco products: information sheet*, 2nd edn, WHO/HEP/HPR/2020.2, p. 2.
[5]ICMR white paper (2019), pp. 576 and 580; Tobacco and Related Products Regulations 2016 (UK), Part 6, which governs electronic cigarettes as consumer products.
[6]PECA 2019, s. 3(d), p. 3. Verbatim text: "(d) 'electronic cigarette' means an electronic device that heats a substance, with or without nicotine and flavours, to create an aerosol for inhalation and includes all forms of Electronic Nicotine Delivery Systems, Heat Not Burn Products, e-Hookah and the like devices, by whatever name called and whatever shape, size or form it may have, but does not include any product licensed under the Drugs and Cosmetics Act, 1940 (23 of 1940). Explanation.—For the purposes of this clause, the expression 'substance' includes any natural or artificial substance or other matter, whether it is in a solid state or in liquid form or in the form of gas or vapour."

The Statute Read Closely

Section 3(d) provides the operative definition,[6] which, as can be seen, is device-centred rather than substance-centred, since it bites on "an electronic device that heats a substance" while the Explanation extends "substance" to solid, liquid, gas and vapour. The use of the words "with or without nicotine" is indicative of a sweep that does not distinguish a device delivering nicotine from one delivering nothing at all. The sole carve-out is a licensing route under the Drugs and Cosmetics Act, 1940, an exemption and not a classification. Therefore, heated tobacco products, which contain leaf tobacco, and nicotine-free aerosol generators, which contain neither tobacco nor nicotine, are one thing in law.[7]

Section 4 lays down the prohibition, reaching from production through distribution, with limb (i) extending to "any part thereof".[8] However, possession and personal use appear nowhere in Section 4,[9] a gap that matters all the more because no judgment finally determining PECA's validity has been located.[10,11] Hence the statute stands as enacted, neither upheld on its merits nor struck down.

Classification Regimes Abroad

The Philippines' Republic Act 11900 of 2022 separates vapour products, heated tobacco products and novel tobacco products, attaches to each a regulatory condition rather than a prohibition, and declares a balanced policy on express harm-reduction grounds.[12,13] The regulatory schedule, whose entries are set out in Exhibit 12, is instructive because every entry answers a question PECA never asked.[14] Hence each is a regulatory question answered. The European Union's Directive 2014/40/EU takes the alternative form of market access on conditions, with Article 20(3) capping nicotine concentration, limiting volumes and requiring child-proof devices, which is a regulatory specification that PECA declined to write.[15,16]

EXHIBIT 12 **How Nine Jurisdictions Classify Three Products**

JURISDICTION	INSTRUMENT	VAPOUR PRODUCTS	HEATED TOBACCO	ORAL NICOTINE
India	Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019 (Act 42 of 2019), ss. 3(d) and 4; COTPA 2003 s. 3(p) and the Schedule; Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations 2011, reg. 2.3.4	Prohibited. s. 3(d) defines an electronic cigarette as "an electronic device that heats a substance, with or without nicotine and flavours, to create an aerosol for inhalation and includes all forms of Electronic Nicotine Delivery Systems". s. 4 bars production, manufacture, import, export, transport, sale, distribution and advertisement, limb (i) reaching "any part thereof". The class is fixed by apparatus, so a nicotine-free device is inside it. Possession and personal use appear nowhere in s. 4	Prohibited, expressly. s. 3(d) names Heat Not Burn Products. A product containing leaf and a product containing none are one thing in law	Reached by no instrument written for it. A tobacco-free pouch is not an electronic device and heats nothing, so s. 3(d) does not reach it; each of the ten entries in the COTPA Schedule requires tobacco; and FSS reg. 2.3.4 bars nicotine only as an ingredient of food, which leaves open whether a pouch is food at all. Since early 2026 drug regulators have treated pouches as unapproved drugs under s. 3(b) of the Drugs and Cosmetics Act, 1940, a view the Health Ministry's advisory of 18 September 2026 adopted, but the Bombay High Court on 22 September 2026 left that classification open. No minimum age, standard or warning applies, and the Fourth Schedule prints no rate against tariff item 2404 91 00, "For oral application"
Philippines	Republic Act No. 11900, the Vaporized Nicotine and Non-Nico-	Regulated, on express harm-reduction grounds. s. 2 declares the policy "to enact	Regulated on the same terms. Heated Tobacco Products and	No instrument traced. The Act defines vapour products, devices,

[7]PECA 2019, s. 3(d).

[8]PECA 2019, s. 4, p. 4. Verbatim text: "On and from the date of commencement of this Act, no person shall, directly or indirectly,— (i) produce or manufacture or import or export or transport or sell or distribute electronic cigarettes, whether as a complete product or any part thereof; and (ii) advertise electronic cigarettes or take part in any advertisement that directly or indirectly promotes the use of electronic cigarettes."

[9]PECA 2019, s. 4. Section 5 separately bars an owner or occupier from knowingly permitting a place to be used for the storage of stock; neither section prohibits possession or personal use.

[10]No judgment finally determining PECA's validity has been located.

[11]Calcutta High Court, *Plume Vapour Private Ltd. v Union of India*, A.S.T. 40 of 2019, order of 1 October 2019 (stay of the Ordinance refused); Delhi High Court, order of 20 March 2019 (ENDS held not to be "drugs" under the Drugs and Cosmetics Act, 1940; order predates PECA).

[12]Republic Act 11900, Vaporized Nicotine and Non-Nicotine Products Regulation Act, 2022 (Philippines). Text as published by LawPhil, unofficial.

[13]RA 11900 (2022), s. 2.

[14]RA 11900 (2022), ss. 4-7, 9, 12, 14 and 19. Provisions include graphic health warnings covering 50 per cent of principal display surfaces (s. 4), child-resistant and tamper-resistant receptacles (s. 5), minimum purchase age of eighteen with proof-of-age verification duties on retailers (ss. 6-7), prohibition on sale, promotion or product demonstration within 100 metres of a school (s. 9), advertising confined to points of sale (ss. 12, 14), and manufacturer and importer registration with the Department of Trade and Industry (s. 19). Detail at Exhibit 12.

[15]Directive 2014/40/EU (Tobacco Products Directive), OJ L 127, 29 April 2014, art. 20, pp. L 127/25-28.

[16]Directive 2014/40/EU, arts. 20(2) and 20(3). Article 20(2) requires manufacturers and importers to notify competent authorities six months before placing a product on the market, with ingredients, emissions, toxicological data and nicotine dose and uptake data. Article 20(3) specifies: refill containers not exceeding 10 ml; cartridges or tanks not exceeding 2 ml; nicotine concentration not exceeding 20 mg/ml; devices child-proof, tamper-proof and leak-proof.

JURISDICTION	INSTRUMENT	VAPOUR PRODUCTS	HEATED TOBACCO	ORAL NICOTINE
	tine Products Regulation Act, lapsed into law 25 July 2022	a balanced policy whereby these novel consumer products are properly regulated using internationally accepted product standards", and lists reducing the harm caused by smoking among its purposes. s. 3 defines Vapor Products, Vapor Product Devices and Vapor Product Systems. The scheme: graphic warnings on 50 per cent of the principal display surfaces (s. 4); child-resistant and tamper-resistant receptacles (s. 5); minimum age 18 with proof-of-age duties on retailers (ss. 6 to 7); no sale, promotion or demonstration within 100 metres of a school (s. 9); point-of-sale signage and separation from products of interest to minors (ss. 10 to 11); advertising confined to points of sale (ss. 12, 14); use barred indoors except in Designated Vaping Areas (s. 15); registration with the Department of Trade and Industry (s. 19)	Novel Tobacco Products are separately defined at s. 3 and carried through the same scheme	systems, heated tobacco and novel tobacco products, with no limb for tobacco-free oral nicotine
European Union	Directive 2014/40/EU of 3 April 2014, OJ L 127, 29.4.2014, pp. 1 to 38: Art. 20 (electronic cigarettes), Art. 19 (novel tobacco products), Art. 17 (tobacco for oral use)	Regulated: market access on conditions, not prohibition. Art. 20(1) admits electronic cigarettes and refill containers that comply. Art. 20(2) requires manufacturers and importers to notify competent authorities six months before placing a product on the market, and afresh for each substantial modification, with ingredients, emissions, toxicological data, nicotine dose and uptake data. Art. 20(3) sets the ceilings: refill containers not exceeding 10 ml, cartridges or tanks not exceeding 2 ml, nicotine not in excess of 20 mg/ml, no Art. 7(6) additives, ingredients of high purity, consistent nicotine delivery, child-proof and tamper-proof devices protected against breakage and leakage. Art. 20(4) covers leaflet, labelling and health warnings. Products authorised as medicines or meeting the medical devices Directive are outside Art. 20	Regulated by notification. A heated tobacco product is a tobacco product outside the listed categories at Art. 2(14) and placed on the market after 19 May 2014, so it is a novel tobacco product, and Art. 19(1) requires a notification in electronic form six months before the intended placing on the market, with a detailed description, instructions for use and information on ingredients and emissions under Art. 5	Tobacco for oral use is prohibited by Art. 17, without prejudice to Art. 151 of the Act of Accession of Austria, Finland and Sweden, which is the Swedish snus derogation recited at recital 32. That provision reaches tobacco, so it does not reach a tobacco-free nicotine pouch, which falls outside the Directive and is left to national law
Japan	Tobacco Business Act (Act 68 of 1984), Arts. 2(iii) and 38(2); Ministry of Health, Labour and Welfare notice of 2010 under the Pharmaceutical Affairs Act, now the Pharmaceutical and Medical Devices Act (Act 145 of 1960)	Handled as a pharmaceutical, not as tobacco. MHLW treats nicotine-containing electronic cigarettes as unapproved pharmaceuticals under the PMD Act, approval being required and none ever granted. Nicotine-free devices fall outside both routes. WHO records "None" for general bans on ENDS and Japan appears in neither of the two lists in WHO's *Report on the global tobacco epidemic, 2025*, p. 106	Inside the tobacco statute. Art. 2(iii) defines manufactured tobacco as a thing manufactured with leaf tobacco as the whole or part of its raw material into a state fit for smoking, chewing or snuffing, so heated tobacco is within it; Art. 38 deems substitutes to be manufactured tobacco but expressly excludes pharmaceuticals and quasi-pharmaceuticals under Arts. 2(1) and 2(2) of the PMD Act. Regulated and taxed by the Ministry of Finance. That split, one product to Health and the other to Finance, is the comparator	No specific instrument traced
Maldives	Tobacco Control Act, Law No. 15/2010, as amended by Law No. 23/2024 (first amendment, ratified 13 November 2024) and Law No. 6/2025 (second amendment, ratified 22 May 2025); Tobacco Control Regulation 2025	Prohibited by primary instrument. New Art. 10-1(a): "It is prohibited to import electronic cigarettes and similar vaping devices and products designed for use with such devices into the Maldives", with a fine under Art. 10-1(b) of MVR 50,000 plus MVR 10,000 per device. New Art. 10-2(a) to (c) prohibits selling, distributing free of charge and using. Split commencement under s. 41: sale, free distribution and use from 15 November 2024, import from 15 December 2024. The second amendment adds possession, seizure and disposal (Arts. 10-2(c), 10-3, 29-2, 29-3) and the Regulation carries the confiscation procedure at Art. 57	Expressly carved out. The definition of electronic cigarettes and similar vaping devices provides that it does not include heated tobacco products and tobacco heating products, which are separately defined and continue to be handled as tobacco products. The Maldivian ban is a vape ban, not a ban on all novel nicotine products	No specific instrument traced
Bangladesh	Smoking and Tobacco Products Usage (Control) Act, 2005 (Act 11 of 2005) as amended by the Amendment Act, 2026 (Act No. 91 of 2026), gazetted and in force 10 April 2026; S.R.O. 426-Law/2024 of 31 December 2024 under the Imports and Exports (Control) Act 1950	Import prohibited by subordinate instrument; manufacture and sale not prohibited by statute. S.R.O. 426 adds to Annex-1 Part B of the Import Policy Order 2021 to 2024 a new serial, "(27) E-Cigarette/Electronic Nicotine Delivery System related all products". A directive of the Office of the Chief Adviser of 18 May 2025 withholds permission to establish manufacturing factories and creates no offence. ENDS survive in the Act at exactly two points, both in the advertising and packaging provisions inserted into s. 5 of the 2005 Act	Not prohibited. Ordinance No. 80 of 2025 of 30 December 2025 did rewrite s. 2(c) to include e-cigarettes, heated tobacco products and nicotine pouches and inserted s. 6c prohibiting them, but s. 15(1) of Act 91 of 2026 repealed that Ordinance and s. 3(c) re-substituted the definition of tobacco product without the ENDS limb	Not prohibited, on the same repeal. Nicotine pouches were named in the repealed Ordinance and are absent from the definition in force
Nepal	Tobacco Product (Control and Regulation) Act, 2068 (2011), which is silent; Tobacco Product Control and Regulatory Directive, 2014, cl. 28(3), made under Rule 23 of the 2011 Regulation	Prohibition asserted by subordinate instrument, ambiguous on its face and judicially contested: in June 2025 the Patan High Court reportedly directed the Government not to obstruct imports or sales while a traders' writ is heard. Clause 28(3): "It is prohibited to manufacture, import, sell, distribute electronic cigarettes in public places and inside public transportations for consumption; and also prohibited to promote and advertise	No specific instrument traced	No specific instrument traced

JURISDICTION	INSTRUMENT	VAPOUR PRODUCTS	HEATED TOBACCO	ORAL NICOTINE
		through the media". The locative qualifier leaves the reach of the manufacture and import limbs genuinely unclear, since neither happens in a public place. Clause 28(1) separately bars single-unit and retail sale of "cigarette, bidi, cigar and electronic cigarettes". The parent Act's definition at s. 2(a) has no ENDS limb		
Bhutan	Tobacco Control Act of Bhutan 2010, consolidated to the 2012, 2014 and 2021 amendments, which is the law in force	Silent, absolutely. The English consolidated text nowhere uses the words "electronic", "e-cigarette", "vape" or "nicotine". WHO records "None" for general bans on ENDS and Bhutan appears in neither of the two lists in WHO's *Report on the global tobacco epidemic, 2025*, p. 106	Arguably inside the definition, and no more than arguably. s. 60(j) defines tobacco and tobacco product as "any raw material or any material prepared from the whole or part of the tobacco plant … leaf or stalk of the same, to be smoked, sniffed, sucked or chewed". That definition is plant-derived, so it cannot reach nicotine e-liquid or a device, though heated tobacco arguably falls inside it. Standing beside it, s. 11(a) survives the 2021 amendment: "No person in the country shall: a) Cultivate, harvest or manufacture tobacco or tobacco products"	Outside s. 60(j), which is plant-derived, and no other instrument addressing it was traced
Pakistan	Prohibition of Smoking and Protection of Non-smokers Health Ordinance, 2002 (Ordinance LXXIV of 2002), in force 30 June 2003 by S.R.O. 652(I)/2003	No federal primary instrument. s. 2(i) defines smoking as "smoking of tobacco in any form whether in the form of cigarette, cigar or otherwise with the aid of a pipe, wrapper or any other instrument". The definition requires tobacco, so it reaches neither nicotine e-liquid nor a device. The decisive evidence is an official negative: the Tobacco Control Cell of the Ministry of National Health Services publishes a complete chronology of legislation from 1890 to 22 January 2019, and the chronology nowhere mentions e-cigarettes, electronic nicotine delivery systems or vapes	No federal instrument traced	No federal instrument traced

Source: the tobacco and nicotine statutes of each jurisdiction, cited section by section. How each classifies vapour, heated tobacco and oral nicotine. An empty cell means no instrument reaches the class and never means permission; three comparator texts are unofficial translations.

Japan's position is the most instructive for India, because the Tobacco Business Act classifies heated tobacco as a manufactured tobacco product while the pharmaceutical route effectively bars nicotine e-cigarettes.[17,18] The result is a heated-tobacco market at 48.4 per cent of combined volume by FY2025 with no nicotine e-cigarette market at all, a bifurcation that follows from the two definitions.[19]

India's neighbourhood offers no settled model, and the one neighbour that classifies does so by prohibition. The Maldives banned the import, sale, distribution and use of vaping devices from late 2024 but wrote heated tobacco out of the definition, so that heated tobacco remains a tobacco product there.[20] Bangladesh wrote e-cigarettes, heated tobacco and nicotine pouches into its tobacco law by an ordinance of 30 December 2025 and prohibited them, only for Parliament to repeal that ordinance a little over three months later, on 10 April 2026, leaving untouched an import ban made by statutory order in December 2024.[21] Nepal asserts a prohibition through a 2014 directive whose words tie it, ambiguously, to public places, though in June 2025, on a writ by traders, the Patan High Court reportedly directed the Government not to obstruct the import or sale of e-cigarettes.[22] Bhutan's Tobacco Control Act and Pakistan's federal law

[17]Tobacco Business Act (Japan, 1984), art. 2(iii).

[18]Tobacco Business Act (Japan), art. 38; Pharmaceutical and Medical Devices Act (Japan), arts. 2(1) and 2(2). MHLW classifies nicotine-containing e-liquid as an unapproved pharmaceutical product. Article 38 deems substitutes to be manufactured tobacco but expressly excludes products classified under arts. 2(1) and 2(2) of the Pharmaceutical and Medical Devices Act. Since nicotine-containing e-liquid is classified as an unapproved pharmaceutical product and no approval has ever been granted, nicotine e-cigarettes are effectively barred through the pharmaceutical route.

[19]Tobacco Institute of Japan (TIOJ), cigarette sales by fiscal year and heated tobacco sales by fiscal year, published 29 May 2026 (industry source). FY2025 figures: cigarettes 782 hundred million sticks; heated tobacco 734 hundred million sticks.

[20]Law No. 23/2024 (First Amendment to Law No. 15/2010, Tobacco Control Act), Maldives, arts. 10-1 and 10-2; in force from 15 November 2024 (sale and use) and 15 December 2024 (import). The definition expressly excludes heated tobacco products.

[21]Smoking and Tobacco Products Use (Control) (Amendment) Act, 2026 (Act 91 of 2026), Bangladesh, s. 15(1) (repeal of Ordinance 80 of 2025) and s. 3(c) (re-substituted definition without the ENDS limb); in force 10 April 2026. Import prohibition: S.R.O. 426-Law/2024, serial (27), added to the Import Policy Order 2021-2024.

[22]Tobacco Product Control and Regulatory Directive, 2014 (Nepal), cl. 28(3). The locative qualifier makes the reach of the manufacture and import limbs genuinely ambiguous. In June 2025 the Patan High Court, on a writ by vape traders against the Ministries of Finance and Health, customs and the commerce department, reportedly directed the Government not to obstruct the import or sale of vapes. One report describes the order as interim, and another records the writ as still pending in October 2025: "Patan High Court snuffs out govt's e-cigarette ban attempt", *Republica*, 28 June 2025; *Singhadarbar*, 27 June 2025 (in Nepali); "Government Not Allowed to Ban Import and Sale of Electronic Cigarettes (Vapes)", *Bajarko Chirfar*, 27 June 2025; *Swasthya Khabar*, 16 October 2025 (in Nepali).

say nothing about these products at all.[23,24] Exhibit 12 sets out each regime. Hence India's prohibition by primary statute of every inhalable product, heated tobacco included, has no counterpart among its neighbours, and it follows neither the Philippine model of regulation nor the European one of market access on conditions.

Relative Risk

The FDA granted General Snus a modified risk tobacco product order in 2019, authorising a reduced-risk claim, and renewed it in 2024.[25,26] The Cochrane review, updated in August 2026, finds at high certainty that nicotine e-cigarettes increase quit rates compared with nicotine replacement therapy, translating to approximately four additional quitters per 100,[27,28] while England's evidence update finds that vaping poses "only a small fraction of the risks of smoking", adding that this does not mean vaping is risk-free, particularly for people who have never smoked.[29]

The evidence on where the harm of tobacco lies points the same way. The FDA states that it is the toxic mix of chemicals in tobacco smoke, not nicotine, that causes the serious health effects of tobacco use, and its Commissioner wrote in 2017 that nicotine, "though not benign, is not directly responsible for the tobacco-caused cancer, lung disease, and heart disease".[30] Public Health England put vaping at around 95 per cent less harmful than smoking in 2015, an estimate drawn from an expert panel whose authors conceded a lack of hard evidence, and in 2018 it judged that heated tobacco "may be considerably less harmful than tobacco cigarettes and more harmful than e-cigarettes".[31] The International Agency for Research on Cancer identifies the polycyclic aromatic hydrocarbons in tobacco smoke as carcinogens "formed during the incomplete combustion of organic material such as tobacco".[32] However, the same Agency classes smokeless tobacco as carcinogenic to humans, because its tobacco-specific nitrosamines are formed in curing and processing, before anything is burnt, so that in India, where chewed tobacco dominates consumption, the proposition that combustion is the problem holds for smoking and not for tobacco as a whole.[33] WHO, whose agency supplies that science, does not draw the harm-reduction conclusion from it, as the positions set out above make clear.

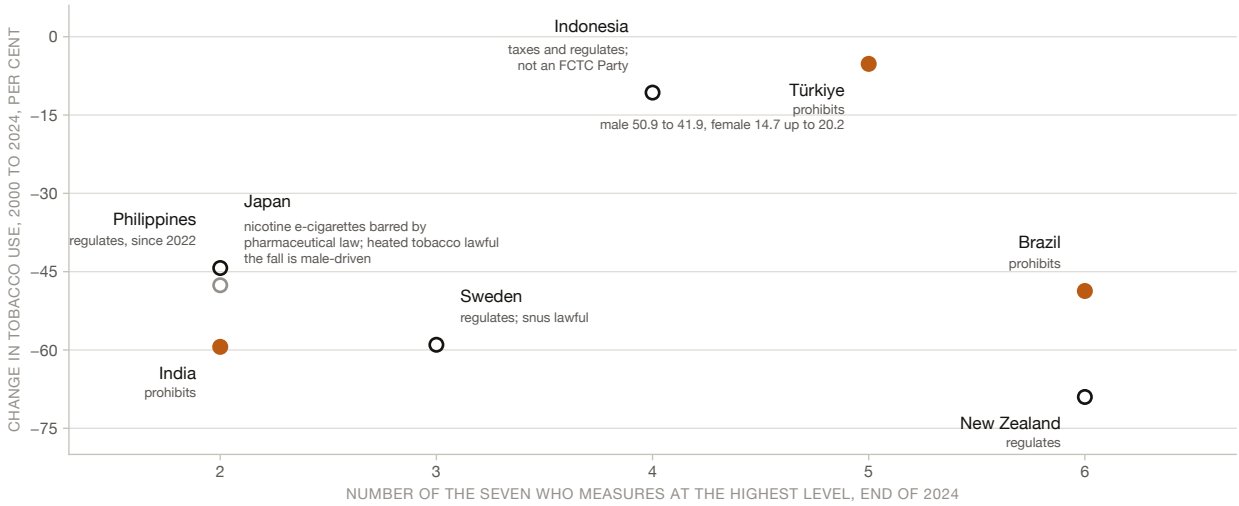
Control Scores Against Consumption

Exhibit 13 sets the number of WHO's seven MPOWER measures that each country had at the highest level by the end of 2024 against the change in its age-standardised tobacco use since 2000, both drawn from the

[23]Tobacco Control Act of Bhutan, 2010 (consolidated to 2021). The Act nowhere uses the words "electronic", "e-cigarette", "vape" or "nicotine".
[24]Prohibition of Smoking and Protection of Non-smokers Health Ordinance, 2002 (Ordinance LXXIV of 2002), Pakistan, s. 2(i). The Tobacco Control Cell's chronology carries no entry on ENDS. Health has been a provincial subject since the Eighteenth Amendment; provincial instruments are outside this note.
[25]FDA, Modified Risk Tobacco Product Order (Risk Modification), General Snus, 22 October 2019, under 21 U.S.C. § 387k(g)(1), pp. 1-2. The authorised claim: "Using General Snus instead of cigarettes puts you at a lower risk of mouth cancer, heart disease, lung cancer, stroke, emphysema, and chronic bronchitis." Renewed 7 November 2024, extending to 2032.
[26]FDA, General Snus Modified Risk Order, renewal of 7 November 2024, extending to 2032.
[27]Lindson N and others, "Electronic cigarettes for smoking cessation" (2026) *Cochrane Database of Systematic Reviews*, CD010216.pub11 (searched to 1 January 2026, published 26 August 2026). 80 RCTs, 29,861 participants; RR 1.61, 95% CI 1.23 to 2.12, I^2 = 55%, 11 studies, 4,114 participants for the NRT comparison.
[28]Lindson and others (2026), structured abstract: "The included studies tested regulated nicotine-containing EC; illicit products and/or products containing other active substances (e.g. tetrahydrocannabinol (THC)) may have different harm profiles."
[29]McNeill A and others, *Nicotine vaping in England: an evidence update including health risks and perceptions, 2022* (OHID 2022) ch. 16, pp. 75-76. Chapter 16 restates the "small fraction" formulation and finds that the earlier estimate of at least 95 per cent less harmful "remains broadly accurate, at least over short term and medium term periods", adding that "this does not mean vaping is risk-free, particularly for people who have never smoked." No further OHID or PHE update has been published since then.
[30]US Food and Drug Administration, "Nicotine Is Why Tobacco Products Are Addictive", fda.gov, accessed 7 October 2026; Scott Gottlieb and Mitchell Zeller, "A Nicotine-Focused Framework for Public Health" (2017) 377 *New England Journal of Medicine* 1111, 1112, doi 10.1056/NEJMp1707409.
[31]Public Health England, "E-cigarettes around 95% less harmful than tobacco estimates landmark review", press release, 19 August 2015, reporting A. McNeill and others, *E-cigarettes: an evidence update* (Public Health England, 2015), whose estimate draws on D. Nutt and others (2014), a multi-criteria decision analysis funded by Eurosswiss Health with an author linked to a tobacco company, whose authors acknowledged a lack of hard evidence; Public Health England, *Evidence review of e-cigarettes and heated tobacco products 2018* (2018), p. 24.
[32]International Agency for Research on Cancer, *Tobacco Smoke and Involuntary Smoking*, IARC Monographs vol. 83 (2004), p. 80 (and p. 1187, tobacco smoking carcinogenic to humans, Group 1); IARC Monographs vol. 100E (2012), p. 167.
[33]International Agency for Research on Cancer, *Smokeless Tobacco and Some Tobacco-specific N-Nitrosamines*, IARC Monographs vol. 89 (2007), p. 370; IARC Monographs vol. 100E (2012), pp. 268 and 309 (smokeless tobacco carcinogenic to humans, Group 1). IARC has not classified nicotine itself.

same estimation round.[34] The count records policy at the end of the period and not when each measure was adopted, and the prevalence series is modelled rather than surveyed, two caveats that apply to every figure in this section.

EXHIBIT 13 **Tobacco Control Scores Against Tobacco Use: Eight Countries, 2000 to 2024**



The horizontal axis counts how many of the seven measures in WHO's country profiles (monitoring, smoke-free laws, help to quit, health warnings, mass-media campaigns, advertising bans and taxation) a country had at WHO's highest level at the end of 2024. The count is the study's own, since WHO publishes no composite, and it records policy at the end of the period rather than when each measure was adopted. Indonesia's count includes health warnings, which WHO records as adopted but not yet implemented at the end of 2024. The countries were chosen for what they illustrate, so this is a display of cases and not a test: no trend line, no regression.

India's fall runs from a modelled 2000 value to a projected 2024 value; the last national survey in WHO's series is NFHS-5 (2019-21), and the two adult tobacco surveys recorded 34.6 per cent (2009-10) and 28.6 per cent (2016-17). Norway is omitted because WHO's series for it counts smoking only and leaves out snus. Bhutan is not plotted.

Source: WHO, *Report on the global tobacco epidemic, 2025*, country profiles and Annex 1; prevalence from the WHO Global Health Observatory age-standardised series for current tobacco use, aged 15 and over. The count on the horizontal axis is the study's own and is explained on the chart. Eight countries are not a sample: this is a display of cases, not a test.

Japan's curve fell from 33.4 per cent in 2000 to 17.5 in 2024 while heated tobacco reached almost half of combined volume.[35] Sweden's fell to 20.3 per cent with snus the main substitute,[36] and New Zealand's from 30.0 to 9.3 per cent, with daily vaping at 11.7 exceeding daily smoking at 6.8.[37] Norway is left out of the exhibit, because WHO's series for it counts smoking alone and so omits the snus that some 16 per cent of Norwegian adults use daily, which makes its figure incomparable with the rest.[38] The two South-East Asian comparators diverge as sharply as any pair in the set, since the Philippines, which regulates vapour and heated tobacco products, fell from 35.7 to 19.9 per cent, while Indonesia, which taxes and regulates them but has never joined the Convention, moved only from 34.7 to 31.0.[39]

Türkiye, which scores at the highest level on every MPOWER measure except monitoring and mass-media campaigns, is the lone economy of that standing that prohibits ENDS and has not bent its curve, since the

[34] WHO Global Health Observatory, age-standardised tobacco-use prevalence series (same estimation round as the *WHO global report on trends in prevalence of tobacco use 2000-2024*, 6 October 2025); WHO, *Report on the global tobacco epidemic, 2025*, data as at 31 December 2024. Exhibit 13.

[35] WHO Global Health Observatory, prevalence series (Japan, 33.4 to 17.5 per cent); TIOJ, cigarette and heated tobacco sales by fiscal year (industry source); WHO, *Report on the global tobacco epidemic, 2025*, ENDS appendix (Japan: no ENDS measure).

[36] WHO Global Health Observatory, prevalence series (Sweden, 49.5 to 20.3 per cent); Folkhälsomyndigheten (Public Health Agency of Sweden), National Public Health Survey, tobacco and nicotine product use data through 2024, accessed 11 September 2026 (daily smoking 5.4 per cent in 2024).

[37] WHO Global Health Observatory, prevalence series (New Zealand, 30.0 to 9.3 per cent); New Zealand Ministry of Health, "Trends in smoking and vaping: New Zealand Health Survey 2024/25" (daily smoking 6.8 per cent, daily vaping 11.7 per cent).

[38] WHO Global Health Observatory, prevalence series (Norway, 45.3 to 12.9 per cent); Statistisk sentralbyrå (Statistics Norway), tobacco use statistics, 2025 (daily smoking 7 per cent, daily snus 16 per cent); WHO, *Report on the global tobacco epidemic, 2025*, ENDS appendix (Norway: ban on sale and import of ENDS only). WHO models no separate smokeless component for Norway, so its tobacco-use series counts smoking only; Norway is therefore omitted from Exhibit 13.

[39] WHO Global Health Observatory, indicator M_Est_tob_curr_std, accessed 7 October 2026: the Philippines 35.7 per cent in 2000 and 19.9 in 2024; Indonesia 34.7 and 31.0. WHO, *Report on the global tobacco epidemic, 2025*, Annex 1, and country profiles for the Philippines and Indonesia, p. 1 (MPOWER levels at 31 December 2024). Republic Act No. 11900 (Philippines), 2022, ss. 6 and 21; Law No. 17 of 2023 on Health (Indonesia), arts. 149-152, and Government Regulation No. 28 of 2024, arts. 429-449; UN Treaty Collection, Chapter IX-4, status as at 7 October 2026 (Indonesia neither a signatory nor a Party to the WHO FCTC).

prevalence series runs 32.8 to 31.1 despite the highest tax share in the set.[40] Brazil also prohibits ENDS, yet its modelled prevalence fell by 48.7 per cent and the WHO classifies Brazil as "On track", although that series ends with Brazil's 2019 national survey and so cannot register what its capital-cities survey has recorded since, a fall that levelled off after 2019.[41]

Hence neither prohibition nor regulation of ENDS sorts countries by outcome, since the prohibitionist regimes sit at opposite ends of the prevalence column and so do the regulating ones. India's modelled trajectory is "On track",[42] which is the WHO's own assessment and which the chapter concedes, with one qualification about what is being measured. The series runs from a modelled value for 2000 to a projected one for 2024, its most recent survey being the National Family Health Survey (NFHS-5) of 2019-21. If the two adult tobacco surveys are read on their own, they record a smaller fall, from 34.6 per cent in 2009-10 to 28.6 per cent in 2016-17, and Chapter 1's household-expenditure record points the other way.[43]

Oral Nicotine Products

A tobacco-free nicotine pouch is not an electronic device and heats nothing, so Section 3(d) of PECA does not reach it. COTPA's definition in Section 3(p) requires tobacco in every Schedule entry, so a pouch carrying synthesised nicotine but no tobacco leaf answers to none,[44,45] while Regulation 2.3.4 provides only that "Tobacco and nicotine shall not be used as ingredients in any food products," which leaves open whether a pouch held between gum and lip is a "food product" at all.[46,47] No statute names the pouch, and no notification under Section 3(b)(ii) of the Drugs and Cosmetics Act, 1940 has brought it within the definition of a drug.

The drug regulators have nonetheless stepped into the gap. Nicotine gum and lozenges of up to 2 mg have long been regulated as drugs,[48] and in 2026 the regulators began to treat recreational pouches the same way. Tamil Nadu moved against sellers in February, and on 2 April the CDSCO's office at Mumbai's air cargo complex held that the pouches sold at an airport duty-free shop needed registration and an import licence, and asked Customs to stop the sale. When the Health Ministry advised every State on 18 September that a pouch "qualifies as a drug under Section 3(b)", whose unlicensed sale contravenes Section 18(c), the Drugs Technical Advisory Board had already recommended that "no new nicotine formulation be approved henceforth".[49] However, the Bombay High Court declined four days later to settle the classification. In *Mumbai Travel Retail Ltd v Union of India* the Court held that sale at a duty-free counter enjoys no immunity from domestic law, but that a pouch marketed purely for recreation "may not automatically come under the purview of Section 3(b)(i) merely because nicotine has physiological effects", its status

[40] WHO Global Health Observatory, prevalence series (Türkiye, 32.8 to 31.1 per cent); WHO, *Report on the global tobacco epidemic, 2025* (tax share 81.5 per cent); *WHO global report on trends in prevalence of tobacco use 2000-2024*, Table A1.7, pp. 108-109 ("Unlikely to experience a significant change in prevalence").

[41] WHO Global Health Observatory, prevalence series (Brazil, 23.2 to 11.9 per cent, −48.7 per cent); *WHO global report on trends in prevalence of tobacco use 2000-2024*, Table A1.7, p. 105 ("On track"). ENDS prohibition: WHO, *Report on the global tobacco epidemic, 2025*, ENDS appendix. The WHO series for Brazil rests on surveys up to the Pesquisa Nacional de Saúde of 2019. Brazil's own telephone survey of adults in the state capitals and the Federal District recorded current smoking at 15.7 per cent in 2006, 10.7 in 2014, 9.2 in 2023 and 11.5 in 2024, the last after most interviews had moved to mobile phones, and the Ministry of Health and INCA read 2019 to 2024 as stable rather than rising: Brasil, Ministério da Saúde, *Vigitel Brasil 2006-2024* (Brasília, 2025), pp. 18-19, 22-23, 100, 102-103; INCA, "Prevalência do tabagismo", updated 3 July 2026.

[42] WHO Global Health Observatory, prevalence series (India, 38.5 per cent in 2010 to 21.9 per cent in 2025, "On track to achieve a 30% relative reduction. More reliable"); *WHO global report on trends in prevalence of tobacco use 2000-2024*, Table A1.7, p. 107.

[43] *WHO global report on trends in prevalence of tobacco use 2000-2024*, Table A1.6 (most recent survey in the set for India, 2019-21); Global Adult Tobacco Survey, GATS 2 India 2016-17, Ministry of Health and Family Welfare, MPOWER table, printed p. xli (current tobacco use 34.6 per cent in 2009-10 and 28.6 per cent in 2016-17). Chapter 1 sets out the household-expenditure record.

[44] Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (Act 34 of 2003), s. 3(p), p. 3; Schedule, p. 10.

[45] COTPA 2003, s. 30.

[46] Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011, gazette p. 12 (PDF p. 3), reg. 2.3.4.

[47] FSSAI, Food Safety and Standards Compendium, Version IX, 9 September 2022. Reg. 2.3.4 appears unamended.

[48] Drugs Rules, 1945, Schedule K, entry 33 ("Nicotine gum [and Lozenges] containing upto 2 mg. of nicotine"), inserted by G.S.R. 549(E), 16 July 2003, and amended by G.S.R. 101(E), 18 February 2011.

[49] Ministry of Health and Family Welfare, Tobacco Control Division, "Advisory on Oral Nicotine Pouches", F. No. T-20018/10/2026-SAS-1, 18 September 2026, paras 4 to 6, citing action under the Drugs and Cosmetics Act in Andhra Pradesh, Tamil Nadu, Haryana and Himachal Pradesh, and s. 26A of that Act, reg. 2.3.4 of the FSS Regulations, State notifications under the poisons law and s. 77 of the Juvenile Justice (Care and Protection of Children) Act, 2015; *Mumbai Travel Retail Ltd v Union of India*, Writ Petition No. 3079 of 2026, Bombay High Court, judgment of 22 September 2026, paras 5 and 45 (the communication of 2 April 2026 from the Assistant Drugs Controller (I), CDSCO, Air Cargo Complex, Mumbai); Drugs Technical Advisory Board, minutes of the 94th meeting, 27 August 2026, Agenda 8, p. 6; the Tamil Nadu action as reported in *DT Next*, 18 February 2026.

depending "on the composition of the product and its intended use", and it kept that question open for the CDSCO to decide.[50]

Hence the oral product is governed today by an advisory and a contested reading of a drug definition, and by no instrument written for it. No nicotine ceiling, no pH limit, no flavour restriction, no health warning and no minimum purchase age applies to it, and the only consequence the drug route can deliver is prohibition by enforcement, since a drug that is neither approved nor licensed cannot lawfully be sold at all.[51]

The tariff tells the same story from the other side. The Central Excise (Amendment) Act, 2025 carries heading 2404 for products containing tobacco, nicotine or their substitutes, and fixes a rate of 100 per cent for heated tobacco at tariff item 2404 11 00, a product PECA prohibits, while printing no rate against tariff item 2404 91 00, "For oral application", or against the nicotine lines beside it.[52,53,54] Imports of oral nicotine products remain free under the import policy, subject to the domestic law that the Bombay High Court applied.[55]

Hence the oral category presents the opposite defect from the inhalable one.

PECA banned the category it would not classify, and the category it left out is now being suppressed, case by case, through a definition that was never written for it.

The Socio-Economic Case for Regulation over Prohibition

The scale of what is at stake is on the public record, even though no Indian estimate of the gain from switching has ever been made. The economic cost of the diseases and deaths attributable to tobacco use among Indians aged 35 and over was INR 1,773.4 billion in 2017-18, about 1.04 per cent of GDP, and excise revenue recovered roughly one rupee in eight of it.[56] That cost is the burden a lower-risk product could reduce, and a tax on the same consumption has never come close to meeting it.

The switching literature explains how such a reduction would arise. Levy and others (2018) built a cohort simulation for the United States in which the harm of the replacing product is expressed as a share of the excess risk of cigarettes, with optimistic and pessimistic arms bracketing the result, while Petrović-van der Deen and others (2019) modelled the legalisation of vaping products in New Zealand.[57,58,59,60] On that structure any Indian gain turns on four quantities, which are the relative risk of the replacing product, the share of current users who switch completely, the residual who never switch, and initiation among people who would otherwise have used nothing.[61] None of the four has been measured in India, so an Indian figure can be had only by transfer, and the transfer that assumes least borrows the American model's proportional result rather than its American parameters. Levy's model, across two arms that move all four

[50] *Mumbai Travel Retail Ltd v Union of India*, Writ Petition No. 3079 of 2026 with Writ Petition (L) No. 20740 of 2026, Bombay High Court (Suman Shyam and Advait M. Sethna JJ), judgment of 22 September 2026, 2026:BHC-OS:20816-DB, paras 27, 41, 46 and 50 to 52.

[51] Drugs and Cosmetics Act, 1940 (23 of 1940), ss. 3(b), 18(c) and 27(b)(ii); *Mumbai Travel Retail Ltd v Union of India*, Bombay High Court, 22 September 2026, para 46 (no notification under s. 3(b)(ii) or (iv) covers the pouches).

[52] Central Excise (Amendment) Act, 2025 (Act 34 of 2025), s. 2 (substituting the Table in Section IV of the Fourth Schedule), gazette p. 2.

[53] Central Excise (Amendment) Act, 2025, Fourth Schedule, heading 2404, gazette pp. 4-5.

[54] Central Excise (Amendment) Act, 2025, Fourth Schedule, gazette p. 5: tariff items 2404 11 00 and 2404 19 00 at 100 per cent; tariff items 2404 12 00, 2404 91 00 ("For oral application"), 2404 92 00 and 2404 99 00 carry dots in the rate column and no rate.

[55] Directorate General of Foreign Trade, Notification No. 54/2015-2020, 9 February 2022, Annexure II, p. 7 (ITC(HS) 2404 91 00, "Free"); Foreign Trade Policy 2023, paras 2.01(b) and 2.03.

[56] Rijo M. John and others, "Economic Costs of Diseases and Deaths Attributable to Tobacco Use in India, 2017–2018" (2021) 23 *Nicotine & Tobacco Research* 294, abstract and Table 6, doi 10.1093/ntr/ntaa154 (WHO-funded). Base year 2017-18; the recovery ratio is computed on excise alone and is set out in Chapter 10.

[57] Levy DT and others, "Potential deaths averted in USA by replacing cigarettes with e-cigarettes" (2018) 27 *Tobacco Control* 18.

[58] Levy and others (2018), pp. 21-22. Optimistic scenario (5% excess risk, 5% residual, 100% initiation, 100% cessation); Pessimistic scenario (40% excess risk, 10% residual, 150% initiation, 50% cessation). Four features of the model transfer to an Indian exercise: (1) an explicit counterfactual arm; (2) Optimistic and Pessimistic scenarios in which parameters move together; (3) the harm parameter expressed as a share of cigarette excess risk, which is portable where local epidemiology is thin; (4) a residual population who never switch.

[59] Levy and others (2018), p. 23.

[60] Petrović-van der Deen F and others, "Potential Country-Level Health and Cost Impacts of Legalizing Domestic Sale of Vaporized Nicotine Products" (2019) 30 *Epidemiology* 396. Multistate life table across sixteen tobacco-related diseases; 236,000 QALYs gained (95% UI 27,000 to 457,000); NZ$3.4 billion in health-system cost savings at 0% discount rate, with the interval running through the null at the upper and lower ends of the age distribution.

[61] Levy and others (2018); Petrović-van der Deen and others (2019). The four parameters follow from the model structure in these two studies.

quantities together, cuts the life-years lost to cigarettes by between 8.4 and 34.9 per cent.[62] Applied to the INR 1,309.2 billion of the Indian cost that smoking carries, 74 per cent of the whole, those proportions put the annual gain at between INR 110 billion and INR 457 billion at 2017-18 values, roughly Rs 11,000 crore to Rs 45,700 crore, or between 0.06 and 0.27 per cent of GDP.[63]

The band is a scenario, not a forecast, and its limits run deeper in India than in the countries where those models were built, since both address cigarettes, while Indian consumption is dominated by bidis and smokeless tobacco, for which no lower-risk substitute has been modelled at all.[64,65] It therefore assumes that Indian smokers, bidi smokers among them, would switch as Levy's American smokers do, and it leaves out the 26 per cent of the cost that smokeless tobacco carries. Accordingly, the case for regulation over prohibition rests not on the band but on the classification defect, the regulatory void and the comparative record that this chapter sets out, and the band measures what is at stake if that case is right.

The illicit-market consequence follows from the statute, not from an estimate, since heated tobacco, which PECA prohibits, still carries a tariff rate under heading 2404.[66] No official estimate of illicit market share exists, because the Directorate of Revenue Intelligence publishes seizures only,[67] while the post-ban literature draws on convenience samples with an I^2 of 99.7 per cent and no pre-ban comparison.[68,69] Therefore the chapter says the market persists and is unmeasured, and no more.

The Youth Objection

The American series cuts both ways. Its peak, when 27.5 per cent of high school students reported current e-cigarette use in 2019, is what a market with freely sold flavoured cartridges and a federal minimum age of eighteen produced. Its fall to 7.1 per cent by 2025, with the overall figure at 5.2 per cent, followed the federal minimum age of twenty-one enacted in December 2019 and the FDA's enforcement against flavoured cartridges from February 2020, although the CDC does not attribute the fall to either measure.[70,71] Exhibit 14 sets out the series. However, three methodological caveats constrain the series, and only two year-on-year declines are reported as statistically significant.[72] The NYTS is a repeated cross-section and establishes no causal attribution, as New Zealand's own Ministry says of its survey.[73]

Two facts cut against the chapter, and they deserve more than a concession. In New Zealand daily vaping among Year 10 students rose from 3.1 per cent in 2019 to 10.1 per cent in 2022, and in the 15-to-24 age group the rise in daily vaping has exceeded the fall in smoking.[74,75] In Sweden 14 per cent of pupils in school year 9 and 27 per cent in the second year of upper-secondary school used snus in 2025, mostly in

[62]Levy and others (2018), Table 1, p. 20. Against 248.6 million life-years lost in the Status Quo from 2016 to 2100, the Pessimistic Scenario saves 20.8 million (8.4 per cent) and the Optimistic Scenario 86.7 million (34.9 per cent); premature deaths fall by 6.3 and 25.2 per cent. Life-years are used because premature mortality accounts for 75 per cent of the Indian cost estimate and is valued as the earnings of the years lost.

[63]John and others (2021), Table 4 (smoking-attributable cost INR 1,309.2 billion, 74 per cent; smokeless INR 464.2 billion, 26 per cent). The band is INR 1,309.2 billion multiplied by 8.4 and 34.9 per cent, and the GDP shares follow from the paper's 1.04 per cent for the whole cost. The calculation applies proportions from a cumulative projection for 2016 to 2100 to a single year's cost, and assumes that the cost of smoking falls in proportion to the life-years lost.

[64]Levy and others (2018), p. 19. Relative risks "derived from the first two American Cancer Society Cancer Prevention Studies". The CPS cohort backbone would need Indian cohort data or an explicit transfer assumption for any Indian application.

[65]Levy and others (2018), p. 23.

[66]Central Excise (Amendment) Act, 2025, Fourth Schedule, tariff item 2404 11 00.

[67]Directorate of Revenue Intelligence, Smuggling in India Report 2024-25, December 2025.

[68]Kuthe SM and others, "Electronic Cigarettes (ENDS or ENNDS) Smoking in Asian Countries After Complete Vaping Ban: A Systematic Review and Meta-Analysis" (2026) 61 *Substance Use & Misuse* 793, doi 10.1080/10826084.2025.2577277. 22 articles, mostly from Thailand; pooled prevalence 16 per cent (I^2 = 99.7 per cent), India 14 per cent; no pre-ban comparison. Authors' conclusion: "remains prevalent, albeit at lower levels".

[69]Global Adult Tobacco Survey, GATS 2 India 2016-17 (Second Round), Ministry of Health and Family Welfare (with TISS, WHO and US CDC), Table 4.41, printed p. 83 (PDF p. 129). Current e-cigarette use 0.02 per cent of adults.

[70]FDA, Results from the Annual National Youth Tobacco Survey (content current as of 23 June 2026). NYTS current e-cigarette use, high school: 2019, 27.5%; 2020, 19.6%; 2021, 11.3%; 2022, 14.1%; 2023, 10.0%; 2024, 7.8%; 2025, 7.1%. Overall 2024, 5.9%; 2025, 5.2%. Users 2019, 4.11 million high school and 1.24 million middle school (CDC, MMWR); 2025, 1.44 million.

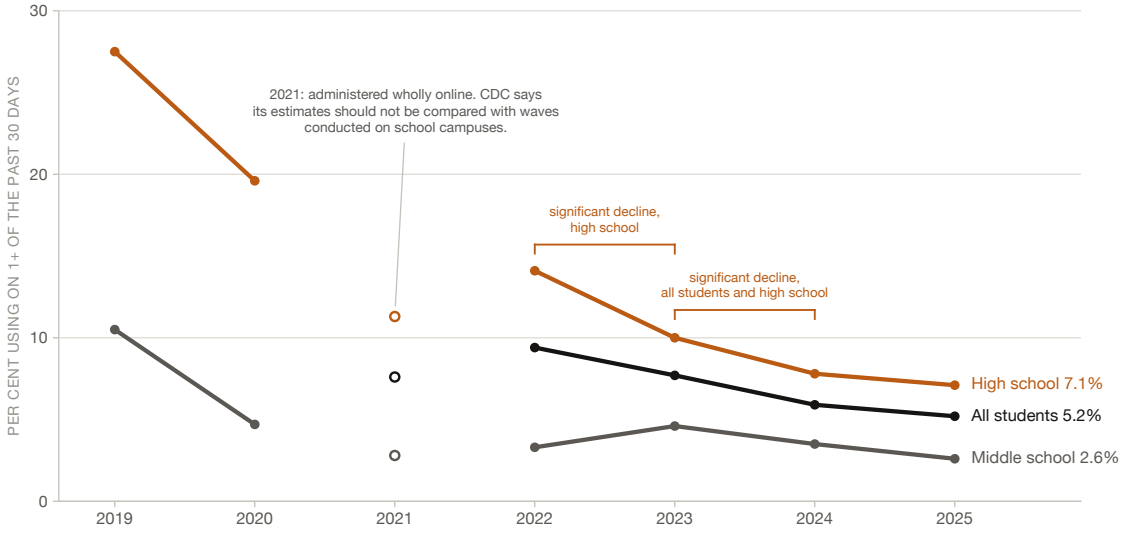
[71]Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, div. N, s. 603 (minimum age of twenty-one, signed 20 December 2019); FDA, Enforcement Priorities for Electronic Nicotine Delivery Systems and Other Deemed Products on the Market Without Premarket Authorization, 85 Fed. Reg. 720 (7 January 2020), enforced from 6 February 2020. The 2020 survey's fieldwork straddled that date.

[72]FDA, NYTS, caveats section. 2021 online administration, 44.6% response, MMWR states estimates not comparable; 2022 carries CDC's own warning that comparison with earlier waves is limited; statistically significant year-on-year declines at $p<0.05$ reported for high school in 2022-2023 and for all students and high school in 2023-2024.

[73]New Zealand Ministry of Health, Health Survey 2024/25. The Ministry states: "cannot show cause and effect. For example, the survey can show that increases in vaping mirror decreases in smoking in some groups, but it does not mean the increase in vaping caused the decrease in smoking or vice versa."

[74]New Zealand Ministry of Health, Health Survey 2024/25, ages 15-17 and 18-24.

EXHIBIT 14 **What Happened to American Youth Vaping, 2019 to 2025**



No combined percentage is published for 2019 or 2020, so the all-students line begins in 2021 and is never drawn to zero. Overall response rate 44.6 per cent in 2021, 45.2 in 2022, 30.5 in 2023 and 33.4 in 2024, and not stated in the 2019, 2020 or 2025 reports. CDC's own limitation paragraph says the lower rate raises standard errors and cuts the power to detect a real difference, which cuts both ways.

Source: National Youth Tobacco Survey, from CDC's MMWR reports for 2019 to 2024 and the FDA's 2025 results. Current e-cigarette use, meaning use on one or more of the past thirty days. 2021 was administered wholly online and is drawn as a break: CDC says its estimates should not be compared with the waves conducted on school campuses.

the form of white nicotine pouches, the rise having been sharpest among girls, while nicotine-pouch use among women aged 16 to 29 rose to 15 per cent.[76,77] Youth uptake is a real regulatory problem, and the chapter concedes it.

What matters for India is what the two countries did next, because each responded inside a classification regime. Since September 2023 New Zealand has kept new specialist vape shops at least 300 metres from schools and marae, confined flavour names to generic descriptions and capped nicotine at 28.5 mg/ml in salt form and 20 mg/ml otherwise, and from June 2025 it banned disposable vapes outright.[78] Daily vaping among Year 10 students has since fallen, to 7.1 per cent in 2025. Sweden set an age limit of eighteen for tobacco-free nicotine products from August 2022, with duties of notification and self-monitoring on sellers, and the rise in pupils' snus use stopped in 2025, although a cap on nicotine in pouches was still in preparation in 2026.[79] Neither response is open to India, because PECA classifies nothing to which an age, a cap or a flavour rule could attach.

However, the concession does not rescue the prohibition. If a product neither contains tobacco nor is an electronic device, it falls through every statute written for such products, so the instruments addressing youth uptake exist only inside a classification regime. Every instrument that the youth objection says has failed abroad is one PECA does not contain, because PECA has no regulatory instrument at all.[80] Hence the objection argues for a stronger classification regime, not for prohibition.

[75] ASH New Zealand, Year 10 Snapshot surveys, 2019, 2022 and 2025 (daily vaping 3.1, 10.1 and 7.1 per cent); Smokefree Environments and Regulated Products Amendment Regulations 2023 (SL 2023/201), in force 21 September 2023; Smokefree Environments and Regulated Products Amendment Act (No 2) 2024 (2024 No 53), banning disposable vapes from 17 June 2025.

[76] Folkhälsomyndigheten (Public Health Agency of Sweden), National Public Health Survey, 2024 (daily nicotine-pouch use among women aged 16-29, 10% in 2022 to 15% in 2024).

[77] Centralförbundet för alkohol- och narkotikaupplysning (CAN), *CAN:s nationella skolundersökning 2025*, CAN Rapport 239 (December 2025), pp. 27-28; Lag (2022:1257) om tobaksfria nikotinprodukter, in force 1 August 2022; SOU 2024:23, *En trygg uppväxt utan nikotin, alkohol och lustgas*, proposing a cap on nicotine in pouches, still in preparation in July 2026.

[78] SL 2023/201; Smokefree Environments and Regulated Products Amendment Act (No 2) 2024; ASH New Zealand, Year 10 Snapshot 2025.

[79] Lag (2022:1257) om tobaksfria nikotinprodukter; CAN, *CAN:s nationella skolundersökning 2025*, pp. 27-28; SOU 2024:23.

[80] Annex B, objection 6 (youth uptake). The objection that a regulated market will expand total nicotine use is addressed in this chapter under "Dual Use and the Worst Case" and in Chapter 12 under "The Product, the Buyer and the Track".

Dual Use and the Worst Case

A regulated market carries two risks that its advocates tend to understate, and this chapter states them at their worst. The first is dual use. In England the share of vapers who also smoked fell from 91.9 per cent in 2012 to 49.8 per cent in 2020, which still left half of all vapers smoking, and the evidence update records some evidence that dual use "could lead to increased risk compared with smoking only".[81] The evidence on what dual use does to health is thin in both directions. The National Academies found no available evidence on whether it changes disease outcomes, while the 2026 Cochrane review found most measured toxicants lower in dual users than in exclusive smokers, though on a single direct comparison, and recorded concurrent use more than four times as often in its e-cigarette arms as under behavioural support or no support.[82] WHO holds dual use to be "at least as dangerous and likely more dangerous" than smoking alone.[83]

The second is initiation. The worst case for India is a market in which pods and pouches reach adolescents who would never have smoked, in which those who switch keep their bidi or khaini alongside the new product, and in which the illicit trade that PECA already sustains carries on beside the licensed one. Each element of that case has been observed somewhere, in American schools in 2019, among English dual users and in the snus use of Swedish girls.

Hence a statute that replaces PECA must be judged against the worst case and not the best, and Instrument A3 is drafted to that standard. It sets the minimum age at twenty-one, verifies age at the counter and on delivery, makes the brand owner presumptively liable for any sale to a minor, and cancels for good the licence of a product marketed at minors, while it requires the regulator to report every year on youth use, on dual use with combustible and smokeless tobacco, and on how far users of the new products formerly used either, so that dual use is measured from the first year rather than discovered in the tenth.[84] If those reports show initiation outrunning switching, the licence is the instrument that can be tightened, which a prohibition that cannot see the market it forbids is not.

What Replaces PECA

A licensing and standards statute does what PECA refused, which is to classify before it regulates, so that each instrument answers to its product category rather than to a blanket judgment of the class. A BIS product standard sets the ceiling on nicotine concentration, hence distinguishing the high-dose pod from the low-concentration refill the Cochrane trials tested, while the age duty does what no instrument does today, since no minimum age applies to the illicit inhalable market or to the oral one.[85] Section 9 of the Bill sets that age at twenty-one, requires verification at the counter and again on delivery, and presumes the brand owner liable for any sale to a minor, with penalties that end in the cancellation of every licence.[86] Marketing controls confine advertising to a price list at the point of sale, the instrument absent when the American epidemic occurred. Accordingly, a rate graduated by risk for each class replaces the position in which a prohibited product carries a tariff rate of 100 per cent while the oral line carries none, with the rates given effect through the excise and GST laws rather than by the Bill itself, and with licence fees, penalties and a share of the duty credited to a fund for cessation and cancer care.[87] Surveillance is built into the licence, because the regulator that issues one can revoke it while the regulator that issues none has no instrument of revocation.

The coherence argument of Objection 4 in Annex B can formally be resolved downwards by extending prohibition to combustibles. However, the downward resolution is unavailable on the Convention's own

[81] A. McNeill and others, *Nicotine vaping in England: an evidence update including health risks and perceptions, 2022* (Office for Health Improvement and Disparities, 2022), pp. 292 and 949.

[82] National Academies of Sciences, Engineering, and Medicine, *Public Health Consequences of E-Cigarettes* (2018), doi 10.17226/24952, Conclusion 18-3; N. Lindson and others, "Electronic cigarettes for smoking cessation" (2026) *Cochrane Database of Systematic Reviews*, CD010216.pub11, Analysis 9.25 (concurrent use against behavioural support or no support, RR 4.45, 95 per cent CI 3.54 to 5.61) and Discussion, "Summary of main results" (toxicants); J. Hartmann-Boyce and others, "Biomarkers of potential harm in people switching from smoking tobacco to exclusive e-cigarette use, dual use or abstinence" (2023) 118 *Addiction* 539 (a single study comparing dual use with smoking alone).

[83] WHO, *Technical note on call to action on electronic cigarettes* (December 2023), p. 4.

[84] Instrument A3, ss. 9, 15(2), 17(4) and 19A.

[85] PECA 2019, s. 3(d); COTPA 2003, ss. 3(p) and 6. No instrument sets a minimum age for tobacco-free oral nicotine products.

[86] Instrument A3, ss. 9 and 19A.

[87] Central Excise (Amendment) Act, 2025, Fourth Schedule, heading 2404; Instrument A3, ss. 13 and 13A.

terms, since Article 1(d) defines tobacco control to include harm reduction and the Conference of the Parties has left new products to national law.[88] It is also unavailable on India's record, because, as we have seen, consumption rose through two decades of escalating taxation. If the instruments that do have a mechanism have not delivered the objective, an instrument with no mechanism at all cannot borrow their justification. Oral products are inside the same statute, since the gap between PECA, COTPA and the FSS Regulations is now filled only by an advisory and a contested reading of the drug definition, so that the licensing scheme closes it from within a single new instrument, with its own standard, age threshold and tariff line, and with a provision settling that a licensed pouch sold without therapeutic claims is not a drug.

Close

A state that can neither suppress the market it prohibited nor regulate the products that sit outside every statute it has is a state that has chosen the worst of both positions, because PECA prohibits without classifying, the tariff rates a product that PECA forbids, and oral nicotine sits in the Fourth Schedule without a rate while drug regulators suppress it under a definition no court has yet applied to it. The classification regimes that the Philippines, the European Union and Japan have built are not perfect, and regulation carries its own costs. However, an instrument that can be adjusted answers to evidence in a way that a blanket prohibition cannot.

[88]WHO Framework Convention on Tobacco Control, 21 May 2003, 2302 UNTS 166, art. 1(d); FCTC/COP6(9), 2014; FCTC/COP7(9), 2016; FCTC/COP8(22), 2018. COP10 adopted no standalone decision on novel products. COP11 (Geneva, November 2025) adopted no decision on how Parties should regulate novel products, beyond inviting them to consider regulatory options for product components that increase environmental harm, and its decision on United Nations premises calls for a ban on the use and sale there of tobacco products, heated tobacco and novel nicotine products: Pan American Health Organization, "Global tobacco control conference concludes with decisions on environment and liability", news release, 24 November 2025, accessed 15 October 2026.

09

India’s Obligations under the FCTC

09

India's Obligations under the FCTC

The Convention neither requires India's bar on foreign investment in cigarette manufacture nor forbids it.[1] Article 2.1 permits a Party to go beyond what the Convention asks, so the capital bar is lawful under the treaty even when it is unjustified on domestic reason.[2] Hence this report alleges no breach of the Convention, the Protocol, GATT or TBT. What it records is an asymmetry visible on India's own filing to the Conference of the Parties, eighty-nine pages dated 17 July 2025.[3] India has over-implemented where the Convention asks nothing, while under-implementing where the Convention actually operates. That is a finding about effectiveness and coherence, not about violation.

What India Told the Convention It Had Done

India's 2025 filing to the Convention, covering 2023 to 2025, records genuine compliance in two areas the chapter concedes in full.[4] A blank in the filing is not a reported "No", because the Party chose not to answer that question.[5,6] Under Article 11, COTPA Section 7 mandates pictorial and textual warnings covering 85 per cent of the principal display areas on both front and back, a requirement that the rules notified on 3 December 2024 restate.[7] Under Article 14, the cessation network has grown past 2,000 centres, with cessation support fully covered by national health insurance.[8] These are real measures, earned by sustained effort.[9]

However, the gaps in the Convention's core regulatory instruments are starker still. India has built three testing laboratories within the WHO TobLabNet without setting any limit on what those tests find or requiring any manufacturer to disclose what its products contain.[10,11,12,13,14] The provision that would have compelled disclosure, COTPA Section 7(5), has not been commenced in the twenty-three years since it was enacted, which means that no consumer knows what the products contain because no manufacturer has ever been required to say.[15] Under Article 15, India reports no unit-level markings on any tobacco packaging, the entire tracking grid left blank, after holding the Presidency of the Meeting of the Parties to the Protocol.[16,17,18,19,20]

Hence the pattern. India has enacted instruments that go beyond anything the Convention asks, the capital bar and PECA, while leaving undone what the Convention does ask in its own operative articles.[21] It has

[1] WHO Framework Convention on Tobacco Control, 21 May 2003, 2302 UNTS 166, art. 2.1. The Convention contains no provision on foreign direct investment in tobacco manufacture.
[2] WHO FCTC, art. 2.1.
[3] India, Implementation Report under the WHO Framework Convention on Tobacco Control (2025 reporting cycle), 17 July 2025, p. 1.
[4] India, 2025 FCTC Report, p. 2.
[5] India, 2025 FCTC Report, pp. 23–24, 24–27, 40, 51; the per-emission grid at pp. 23–24, the flavour grids at pp. 24–27, the unique-identifier grid at p. 51 and the "all TAPS" question at p. 40 are unanswered.
[6] India, 2025 FCTC Report; the 2025 instrument asks no question about designated smoking areas or point-of-sale advertising.
[7] India, 2025 FCTC Report, p. 32. Coverage of 85 per cent of the front and back of the pack dates from the Cigarettes and other Tobacco Products (Packaging and Labelling) Amendment Rules, 2014, G.S.R. 727(E), 15 October 2014, in force 1 April 2016.
[8] India, 2025 FCTC Report, pp. 42–48.
[9] India, 2025 FCTC Report, pp. 49, 85. The filing also answers "No" to whether India has developed and disseminated a national tobacco cessation strategy; India itself lists the release of a National Strategic Action Plan for Tobacco Cessation (2025 to 2030) as a forward priority.
[10] India, 2025 FCTC Report, pp. 21–22.
[11] India, 2025 FCTC Report, p. 23. The question is "For each of the following tobacco products, do you regulate emissions (e.g. set maximum limits)?"; answers at q. 7.3.1.
[12] India, 2025 FCTC Report, p. 24, q. 7.3.3.1.
[13] India, 2025 FCTC Report, p. 28.
[14] India, 2025 FCTC Report, pp. 28–29. The Article 10 section answers both of its disclosure-to-government questions in the negative and leaves the two public-disclosure questions blank; no law is uploaded for it and no webpage is cited.
[15] Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (Act 34 of 2003), s. 7(5). The Act came into force in stages from 1 May 2004; S.O. 1955(E) of 16 November 2007 brought s. 7(1)–(4) into force on 1 December 2007 but not s. 7(5), which has never been commenced.
[16] India, 2025 FCTC Report, p. 50, q. 14.2.1.1.
[17] India, 2025 FCTC Report, p. 51, q. 14.2.2.4 (left blank).
[18] India, 2025 FCTC Report, pp. 50, 85.
[19] India, 2025 FCTC Report, p. 80.
[20] India, 2025 FCTC Report, p. 80.
[21] India, 2025 FCTC Report, p. 3. The entry under Art. 2.1 cites PECA 2019 as the first instance.

built testing laboratories but enacted no limit, joined the Protocol but affixed no marking. The 85 per cent warnings and the cessation centres are genuine compliance, and Exhibit 15 sets the article-by-article ledger out in full, with the statutory rows on smoking areas[22,23,24,25,26] and point-of-sale advertising[27,28] sourced to COTPA Sections 4 and 5(2) rather than to the filing, and the advertising record[29,30,31] set beside the Article 13 guidelines. However, the Convention's own instruments remain incomplete even as its vocabulary has been invoked to justify going further.

EXHIBIT 15 What India Told the Convention It Had Done, 2025

The full ledger, article by article, as filed. The last three rows carry questions the 2025 instrument does not ask at all, so that the absence is visible rather than inferred from a missing row.

ARTICLE	REPORTED IMPLEMENTED	REPORTED NOT IMPLEMENTED OR PLANNED	PAGE
Art. 2 (relationship to other agreements; forward-looking measures)	Forward-looking measures beyond the Convention: Yes. PECA 2019 banning e-cigarettes and heated tobacco products; enforcement directives to States; capacity building for police and customs; a 2024 online violations reporting portal; Tobacco-Free Youth Campaign 2023 and 2.0; tobacco-free village SOPs; National Tobacco Regulator Forum and Scientific Support Group	Nothing recorded as not done	p. 3
	"Under the Prohibition of Electronic Cigarettes Act (PECA), 2019, India banned e-cigarettes, heated tobacco products and like devices."		
Art. 5 (general obligations)	Significant change Yes. Focal point, multisectoral coordinating mechanism, functional and including civil society; comprehensive national laws, most recently amended 2023; enforcement mechanisms for Arts. 6, 8, 11, 13, 15 and 16; government expenditure 3,557.4, currency given as Indian rupee, unit not stated (2024)	Coordinating mechanism financed: No. No funding from licence fees, product registration fees, earmarked tobacco taxes or other industry fees. Whether the plan is costed and whether it is fully funded: blank	pp. 4 to 8
	"Is your national multisectoral coordinating mechanism for tobacco control financed? No (p. 6)"		
Art. 5.3 (protection from industry interference)	Significant change Yes. Interference Index score down from 69 (2019) to 58 (2023); 24 States and UTs and 50 plus districts have issued Art. 5.3 notifications; conflict of interest measures adopted including disclosure policy, code of conduct, gift ban and a ban on industry nominees in COP delegations; industry must report production, market share, revenues and CSR; penalties for false information	Interactions necessary for regulation since the last report: No. Revolving door policies No; declaration of prior industry employment No; divestment No; ban on government financial interest No; ban on political contributions No. Registration and disclosure of industry entities, affiliates and lobbyists all No. Industry monitoring database, whistleblower protection, complaint procedures and Art. 5.3 liability measures all No. Application to the ENDS industry: blank	pp. 11 to 17
	"Monitoring the tobacco industry, such as through a database on tobacco industry monitoring: No (p. 17)"		
Art. 6 (price and tax)	Has tax and, where appropriate, price policies aimed at reducing consumption: Yes. Webpage cited is the CBIC GST rates page	Significant change since the last report: No. Both free-text description boxes empty. No upload	p. 18
	"Has there been any significant change in the implementation of Article 6 in your country since the submission of your previous report? No"		
Art. 8 (protection from tobacco smoke)	Significant change Yes. Tobacco-Free Youth Campaign 2023 and 2.0 (2024); Tobacco-Free Educational Institutions and Tobacco-Free Villages; enforcement of COTPA ss. 4 and 6 and of PECA; advisories to States on inspections and penalties; law uploaded (COTPA s. 4)	Subnational free-text box empty. The 2025 instrument asks no question about designated smoking areas, hotels or restaurants	pp. 19 to 20
	"priority has been given to promoting the declaration of Tobacco-Free Educational Institutions (ToFEI) and the establishment of Tobacco-Free Villages"		
Art. 9 (contents regulation)	Significant change Yes. Three National Tobacco Testing Laboratories operational and a fourth approved, all in WHO TobLabNet; Scientific Support Group and National Tobacco Regulators Forum; hosted the 7th Global Tobacco Regulators Forum (2023). Testing and measuring of emissions and of contents required for smokeless, cigarettes and waterpipe: Yes, in a government-approved laboratory	Regulation of emissions, for example maximum limits: No for smokeless, cigarettes, waterpipe and other smoked products. Do you regulate the contents of tobacco products: No. Heated tobacco and rolling tobacco rows blank throughout; the entire per-emission grid blank; all menthol, flavour and attractiveness grids blank	pp. 21 to 27
	"Do you regulate the contents of tobacco products? No (p. 24)"		
Art. 10 (disclosures)	Nothing reported as implemented. Both disclosure-to-government questions are answered No	Disclosure of emissions to governmental authorities: No. Disclosure of contents to governmental authorities: No. Public disclosure sub-questions blank. Significant change: No. No law uploaded, no webpage URL	pp. 28 to 29
	"Do you require manufacturers or importers of tobacco products to disclose information about the emissions of tobacco products to governmental authorities? No (p. 28)"		
ENDS and ENNDS (standalone section on contents and disclosures)	Nothing reported as implemented	Every question answered Not on national legal market: testing of emissions, testing of contents, disclosure of emissions and disclosure of contents, for both ENDS and ENNDS. No law uploaded	pp. 30 to 31
	"Not on national legal market"		
Art. 11 (packaging and labelling)	Significant change Yes. COTPA s. 7 warnings covering 85 per cent of the principal display areas; new rules notified 3 December 2024 requiring warnings on both front and back at 85 per cent, rotated every	Subnational box empty	pp. 32 to 33

[22]India, 2025 FCTC Report (the instrument asks no question about designated smoking areas).
[23]COTPA 2003, s. 4, proviso.
[24]Prohibition of Smoking in Public Places Rules, 2008, G.S.R. 417(E), 30 May 2008, r. 2(e).
[25]Prohibition of Smoking in Public Places Rules, 2008, r. 4(4).
[26]Prohibition of Smoking in Public Places (Amendment) Rules, 2017, G.S.R. 500(E), 23 May 2017, substituting r. 4(3).
[27]COTPA 2003, s. 5(2), proviso cl. (b). The proviso exempts from the advertising prohibition any "advertisement of cigarettes or any other tobacco product which is displayed at the entrance or inside a warehouse or a shop where cigarettes and any other tobacco products are offered for distribution or sale".
[28]Guidelines for Implementation of Article 13 of the WHO Framework Convention on Tobacco Control (adopted FCTC/COP3(12), November 2008; as amended), paras 12–13. "Display of tobacco products at points of sale in itself constitutes advertising and promotion"; the guidelines recommend "a total ban on any display and on the visibility of tobacco products at points of sale".
[29]India, 2025 FCTC Report, p. 40. India has extended the Tobacco-Free Films and Television Rules to OTT platforms, which it describes as a world first.
[30]India, 2025 FCTC Report, p. 41, q. 12.3.1.2; WHO FCTC, art. 13.2. Out-flowing advertising and promotion originating from India's territory is reported as "No" against the Article's express requirement of a ban on cross-border advertising "originating from its territory".
[31]India, 2025 FCTC Report, p. 40, q. 12.2.1.2 (left blank). The question whether India restricts all forms of tobacco advertising, promotion and sponsorship is unanswered.

ARTICLE	REPORTED IMPLEMENTED	REPORTED NOT IMPLEMENTED OR PLANNED	PAGE
	twelve months; enforcement focus and advisories on inspections and penalties; law uploaded		
	"The new rules have been notified on 3rd December, 2024."		
Art. 12 (education, communication, training)	Significant change Yes. Tobacco-Free Youth Campaign 2023 and 2.0 (2024); 38 social media influencers; COTPA Amendment Rules 2023 extending the Tobacco-Free Films and TV Rules to OTT; campaigns on television, billboards, press, social media, websites and internet ads, research-guided, pre-tested, monitored and evaluated; training delivered to physicians, health workers, educators, media, decision makers and customs, fiscal and justice officials	Radio campaign: No. Campaigns adapted from other countries: No	pp. 34 to 39
	"38 social media influencers were used for amplifying the objectives of the tobacco free youth campaign 2.0 (p. 34)"		
Art. 13 (advertising, promotion, sponsorship)	Significant change Yes. Prohibition across television, radio, print and digital; Tobacco-Free Films and Television Rules 2012; COTPA Amendment Rules 2023 notified 31 May 2023 extending those rules to OTT, claimed as a world first; 2024 portal for reporting online violations; in-flowing cross-border advertising banned; law uploaded	Out-flowing cross-border advertising, promotion and sponsorship originating from India: No. Do you have restrictions on ALL tobacco advertising, promotion and sponsorship: blank. The instrument asks no question about point of sale advertising or product display	pp. 40 to 41
	"Out-flowing advertising, promotion and sponsorship (originating from your territory)? No (p. 41)"		
Art. 14 (cessation and dependence)	Significant change Yes. Operational Guidelines for Tobacco Cessation Centres released 31 May 2024; the National Medical Commission directed all medical colleges to set up centres; over 700 new centres, total now more than 2,000; national toll-free quitline with live operators; internet and SMS support; tobacco use recorded in all medical notes; NRT on the essential drugs list; cessation support fully covered by national health insurance in clinics, hospitals and community settings	Smartphone app and AI-based support: No. No nursing or pharmacy school teaches cessation. Cytisine not available; bupropion and varenicline neither on the essential drugs list nor insurance covered. National tobacco cessation strategy: No, with its release listed as a forward priority	pp. 42 to 49
	"Has your country developed and disseminated a national tobacco cessation strategy? No (p. 49)"		
Art. 15 (illicit trade)	Significant change Yes. A track and trace mechanism proposed by amendment to the CGST Act through a new s. 148A with penal provisions in s. 122B; four Finance Ministry officials sent to HMRC in 2024; seizures FY 2023-24 of 178,559,795 sticks worth Rs 308.34 crore and FY 2024-25 to February 2025 of 217,348,619 sticks worth Rs 452.78 crore; licensing required for manufacture, import, export, retail, wholesale, growing and transport; Party to the Protocol: Yes	Application of markings to units of tobacco packaging: No. The entire follow-up grid, including unique unit-level markings for tracking and tracing, is blank, and so is the legibility and language grid. Duty-free sales to international travellers allowed. Illicit market share recorded as 0 per cent for 2023. Aggregate seizure-data question and seizures table blank. No Art. 15 law uploaded	pp. 50 to 55
	"Do you require the application of any markings to units of tobacco packaging, including any outside packaging? No (p. 50); A new Section 148A is proposed to be inserted into the CGST Act (p. 50)"		
Art. 16 (sales to and by minors)	Significant change Yes. Enforcement of COTPA s. 6(a) and s. 6(b) and of Juvenile Justice Act s. 77; sales to minors prohibited, minimum age 18; point of sale age notice required; age verification in case of doubt; ban on directly accessible display such as open shelves; vending machines banned completely; free distribution prohibited; imitation tobacco products banned; sales by minors prohibited; law uploaded	Sale of single sticks of cigarettes: not banned. Minimum pack size blank. No penalties for the imitation-product prohibitions and none for small packets; single-stick penalty blank	pp. 56 to 60
	"Do you ban the sale of single sticks of cigarettes? No (p. 58)"		
Art. 17 (alternative livelihoods)	Tobacco growing, processing, manufacturing and small-scale home manufacture all occur: Yes. Programmes to promote alternatives to tobacco growing: Yes, through all eleven listed mechanisms. Programmes for tobacco workers: Yes	Significant change: No. Programmes for individual tobacco sellers: No. Tobacco growers are provided with government subsidies or public funds to support tobacco growing: Yes. The descriptive box on alternative-livelihood mechanisms is empty and nothing is uploaded	pp. 61 to 63
	"Are tobacco growers provided with government subsidies (or public funds) to support tobacco growing/cultivation? Yes (p. 63)"		
Art. 18 (environment and health of persons)	Significant change Yes. NICPR study on the environmental burden of tobacco product waste, quantifying plastic waste, 2.2 million trees a year for packaging paper, filter litter and aluminium foil; measures on health of persons in manufacturing; measures on environment and human health in relation to consumption; studies on social impact of growing and on product waste; study uploaded	Environmental protection in cultivation: No. Health of persons in relation to the environment in cultivation, for example green tobacco sickness: No. Environmental protection in manufacturing: No. No data on green tobacco sickness prevalence and no study of deforestation from cultivation	pp. 64 to 66
	"Have you implemented programmes or measures in your country that take into consideration the protection of the environment in tobacco cultivation? No (p. 64)"		
Art. 19 (liability)	Criminal liability measures Yes, within tobacco control legislation and in separate provisions; civil liability measures and remedies Yes, applying to manufacture, marketing and supply; enforcement mechanisms such as fines and injunctions Yes; NGOs and the public may support enforcement; 22 liability cases listed as actions since the last report, most of them dating from before the reporting period	Significant change: No. Legislation allowing recovery of tobacco-related health care costs: No. Class action procedures for tobacco-related claims: No. No action for reimbursement of medical or social costs. No assistance to other Parties in liability proceedings. The three new criminal codes are noted as not establishing tobacco-related offences	pp. 67 to 72
	"Legislation that allows recovery of tobacco-related health care costs: No; Class action procedures for tobacco-related claims: No (p. 68)"		
Art. 20 (research, surveillance, exchange)	Significant change Yes. Four GYTS rounds and two GATS rounds, with the next rounds in preparation and implementing agencies onboarded; all States and UTs have released fact sheets; national monitoring covers consumption, health consequences, smoke exposure, novel and emerging products, costs, mortality, pregnancy and cessation; research funded across the same range; SDG voluntary national review submitted	Monitoring of illicit trade in tobacco products: No. Research not funded on alternative crops, on illicit trade, on ENDS patterns and consequences, or on other policy impact. The voluntary review content grid is blank. Surveillance and research upload tables largely empty	pp. 73 to 79
	"Illicit trade in tobacco products: No (p. 74)"		
Art. 22 (scientific, technical and legal cooperation)	Significant change Yes. Hosted the 7th Global Tobacco Regulators Forum (2023); three laboratories in WHO TobLabNet; active in COP and MOP; India has served as President of the Meeting of the Parties to the Illicit Trade Protocol; financial and technical assistance both provided and received across civil society, international organisations, Knowledge Hubs, the Secretariat and WHO	Assistance to and from regional intergovernmental organisations, financial institutions and philanthropic organisations largely No	pp. 80 to 84
	"India has served as the President to the MOP elected by MOP2 of the Protocol to Eliminate Illicit Trade in Tobacco Products (ITP). (p. 80)"		
Priorities, constraints and needs	Twelve priorities, among them a comprehensive tracking and tracing system, a comprehensive national tax policy on all tobacco products, release of the National Strategic Action Plan for Tobacco Cessation 2025 to 2030, GATS-3 and GYTS-5, a youth campaign focused on novel products, strengthening the OTT Rules 2023 and comprehensive amendments to COTPA. Overcame constraints: Yes. Would benefit from technical assistance: Yes, in seven named areas	Constraints encountered: industry interference Yes; lack of or ineffective enforcement Yes; gaps in national legislation Yes; all other listed constraints No. Industry interference the main barrier: No. A tobacco company's 2024 approach to the Prime Minister on heated tobacco products is logged here, at p. 87, and not in the Art. 5.3 section, which answers No to interactions necessary for effective regulation	pp. 85 to 88
	"Develop and operationalize a comprehensive Tracking and Tracing (T&T) system to eliminate illicit trade in tobacco products. (p. 85)"		
Art. 21 (reporting)	No question asked	No Article 21 section exists in the 2025 instrument, since the obligation is discharged by filing the report itself	n/a
Smoking areas in hotels and restaurants	No question asked	The 2025 instrument contains no question. The words hotel, restaurant, designated smoking and smoking area appear nowhere in the 89 pages. The position in law is in COTPA s. 4 and its exemptions	n/a

ARTICLE	REPORTED IMPLEMENTED	REPORTED NOT IMPLEMENTED OR PLANNED	PAGE
Point of sale advertising and product display	No question asked	The Art. 13 section has no question on point of sale advertising or display. Point of sale appears twice, both under Art. 16 and both about minors: the age notice at p. 57 and its penalty at p. 58. The nearest measure is the open-shelf display ban, framed as a minors measure at p. 57. The position in law is in COTPA ss. 5 and 6	n/a
	"Do you ban the sale of tobacco products in any manner by which they are directly accessible, such as open store shelves? Yes (p. 57)"		

Source: India's 2025 implementation report to the WHO Framework Convention on Tobacco Control, 89 pp, reporting period 2023 to 2025. The Party's own account of what it has done, not a statement of Indian law. A blank in the report is not a No: large parts are unanswered, and the last three rows record questions the instrument does not ask.

Harm Reduction Inside the Definition

Article 1(d) defines "tobacco control" as "a range of supply, demand and harm reduction strategies that aim to improve the health of a population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke".[32] It is pertinent that harm reduction is not an incidental phrase in the definition. It is one of the three categories of strategy the Convention places inside the concept of tobacco control itself, because the drafters chose to include it alongside supply and demand rather than confine the concept to those two alone.

Article 2.1 sets a floor rather than a ceiling.[33,34,35,36] It licenses PECA, which goes beyond what the Convention requires, and it equally licenses a harm-reduction statute that exercises the Convention's own definition. The breach objection is accordingly disposed of in both directions.

The question is not which choice the Convention mandates but which one India's evidence supports, and Chapter 8 has answered it.

What the Conference Decided

Every Conference decision on electronic nicotine delivery systems has presented regulation and prohibition as co-equal alternatives referred to national law.[37,38,39] The Conference "invites" and "reminds" rather than requires, qualified each time by a reservation of the Parties' discretion, "as appropriate" in 2014, "as appropriate to their national laws and public health objectives" in 2016 and "as appropriate to their national laws" in 2018.[40] This is so because the Conference stated both paths and assigned neither. COP8(22) added a recognition that heated tobacco products are tobacco products subject to the Convention, which means they attract the obligations on contents, emissions, disclosure and packaging rather than fall outside them. If anything, that recognition supports regulation over prohibition, because a prohibition places a product outside the very regulatory framework the Convention provides. However, the Conference has not adopted a standalone decision on novel products at either COP10 or COP11, and the chain of product-specific decisions ends at COP8.[41,42]

Hence a Party's choice between regulation and prohibition of new-generation products is a choice made under national law, on national evidence, and not one the Convention resolves for it.

[32]WHO FCTC, art. 1(d).
[33]WHO FCTC, art. 2.1.
[34]WHO FCTC Convention Secretariat, "Forward-looking Tobacco Control Measures (in Relation to Article 2.1 of the WHO FCTC)", fctc.who.int, accessed 11 September 2026.
[35]FCTC/COP10(12), Decision of the Conference of the Parties, 10 February 2024.
[36]FCTC/COP11(5), Decision of the Conference of the Parties, Geneva, 17 November 2025.
[37]FCTC/COP6(9), Decision of the Conference of the Parties, 18 October 2014, para 3. The decision "INVITES Parties to consider prohibiting or regulating ENDS/ENNDS, including as tobacco products, medicinal products, consumer products, or other categories, as appropriate, taking into account a high level of protection for human health".
[38]FCTC/COP7(9), Decision of the Conference of the Parties, 12 November 2016, para 2. Adopted at Delhi; "INVITES Parties to consider applying regulatory measures … to prohibit or restrict the manufacture, importation, distribution, presentation, sale and use of ENDS/ENNDS, as appropriate to their national laws and public health objectives".
[39]FCTC/COP8(22), Decision of the Conference of the Parties, 6 October 2018, recital and para 5(g). Recognising that "heated tobacco products are tobacco products and are therefore subject to the provisions of the WHO FCTC"; asking Parties "to regulate, including restrict, or prohibit, as appropriate, the manufacture, importation … of novel and emerging tobacco products, as appropriate to their national laws".
[40]FCTC/COP6(9), para 3; FCTC/COP7(9), para 2; FCTC/COP8(22), para 5(g).
[41]FCTC/COP10(1)–(25), decisions of the Tenth Session of the Conference of the Parties, de minimis virtual session of 23–24 November 2023 and resumed session at Panama City, 5–10 February 2024 (no standalone decision on novel and emerging tobacco products adopted).
[42]FCTC/COP11(1)–(14), decisions of the Eleventh Session of the Conference of the Parties, Geneva, 17–22 November 2025 (fourteen decisions adopted, none on novel and emerging tobacco products).

Article 5.3 on Its Own Terms

Article 5.3 is a single sentence: "In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law."[43] The guidelines adopted under it are recommendations, and their own text says so.[44,45]

However, a looser reading is wrong. The sectoral guidance reaches economic ministries expressly, because the 2024 UNDP and Convention Secretariat series of thirteen sectoral briefs, ten of them addressed to ministries, includes one for ministries of trade and industry and one for ministries of finance.[46] What those briefs ask is coherence with the Convention's objectives, support for the advertising and packaging measures, implementation of the Protocol, and the exclusion of tobacco from trade and investment agreements wherever possible.[47] What neither the trade-and-industry brief nor the finance brief asks is for an economic ministry to control who may own manufacturing capacity. This is where the guidance stops. Article 5.3 governs how a government deals with the tobacco industry in setting its public health policies, and these two briefs ask economic ministries for coherence and carve-outs, never for an ownership bar.

The fact that bears hardest on this study is on page 87 of India's filing, which records that in 2024 the chief executive of a multinational tobacco company sought a meeting with the Prime Minister to discuss heated tobacco products, that the Ministry of Health strongly opposed the proposal, and that the Programme Division actively intervened.[48] The episode is not in the Article 5.3 section of the filing. At page 12, India answers "No" to whether it has had any interactions with the tobacco industry necessary for effective regulation, and it flags industry interference as a constraint while answering "No" to whether interference was the main barrier in the past two years.[49,50]

The concession is plain. A manufacturer asked for a meeting about its own product, whereas this report asks for something different in kind, a licensing and standards statute with age verification, product standards, marketing controls, risk-tiered taxation feeding a fund for cessation and cancer care, and surveillance, coupled to the completion of the harm-side ledger, on identical conditions for every company. This report, which takes no industry money and uses no industry model, proposes to leave tobacco control stronger than the status quo leaves it, because the coupling requires the commencement of a duty left uncommenced for two decades.

Therefore the question Article 5.3 puts to the government official who must read this study is whether these recommendations are the output of an independent assessment or industry-aligned advocacy arriving through a non-industry channel. If the coupling reads as health measures attached to a market opening, then the obligation bites and the scrutiny is warranted. If it reads as an assessment whose every capital recommendation is conditioned on the completion of unfinished health obligations that the government itself has reported as outstanding, then the assessment passes the Article 5.3 test on its own terms.

The Protocol and Section 148A

The Protocol requires unique, secure and non-removable identification markings on all unit packets of cigarettes within five years of entry into force for a Party.[51,52] India acceded on 5 June 2018, and the Protocol

[43] WHO FCTC, art. 5.3.

[44] Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control (adopted FCTC/COP3(7), November 2008), introductory para. "Without prejudice to the sovereign right of the Parties to determine and establish their tobacco control policies, Parties are encouraged to implement these guidelines to the extent possible in accordance with their national law."

[45] Art. 5.3 guidelines, scope clause. "The guidelines apply to setting and implementing Parties' public health policies with respect to tobacco control."

[46] UNDP and WHO FCTC Convention Secretariat, "Tobacco Control: What Ministries of Trade and Industry Need to Know" (2024); "Tobacco Control: What Ministries of Finance Need to Know" (2024). The series comprises thirteen briefs, ten of them addressed to ministries, among them ministries of trade and industry and of finance ("Tobacco Control Sectoral Briefs", fctc.who.int, accessed 15 October 2026).

[47] UNDP and WHO FCTC Convention Secretariat, sectoral briefs (2024), trade-and-industry brief. The briefs ask economic ministries for coherence with the Convention's objectives, support for advertising and packaging measures, implementation of the Protocol, and the exclusion of tobacco from trade and investment agreements wherever possible.

[48] India, 2025 FCTC Report, p. 87, q. 21.2.3.2.

[49] India, 2025 FCTC Report, pp. 12–13, qq. 4.2.4.1, 4.2.6.

[50] India, 2025 FCTC Report, pp. 86–87, qq. 21.2.1.2, 21.2.2.1.

[51] Protocol to Eliminate Illicit Trade in Tobacco Products, 12 November 2012, art. 8.2.

[52] Illicit Trade Protocol, art. 8.3.

entered into force on 25 September 2018, so the five-year period expired on 25 September 2023.[53,54] India's filing reports no markings on any unit of tobacco packaging, the tracking system described in the proposed tense.[55,56,57] Section 148A of the CGST Act, inserted by the Finance Act 2025 and commenced on 1 October 2025, empowers the Government to specify goods for unique identification marking.[58] However, on the CBIC's published record no goods have been specified as at 11 September 2026.[59]

Accordingly, when Chapter 12 asks for a notification under Section 148A specifying tobacco products, it asks the Government to exercise an existing statutory power to meet an existing treaty obligation that India itself has reported as outstanding. That is the narrowest possible ask, because the power is already in the statute.

A Note on Trade Law

Whether a measure prohibiting outright the products at the lower end of the risk range, while lawful trade continues in those at the higher end, would satisfy a necessity or least-trade-restrictive enquiry is a question this report raises and does not resolve.[60,61,62,63] Nothing here alleges any breach. In *EC - Asbestos*, the Appellate Body held at paragraph 168 that "it seems to us perfectly legitimate for a Member to seek to halt the spread of a highly risky product while allowing the use of a less risky product in its place".[64] India's configuration is the reverse of that reasoning, because India prohibits the less risky products while lawful trade in the more risky ones continues. In *US - Clove Cigarettes*, the Appellate Body observed that where the addictive ingredient is present in products remaining permitted, it was "not clear that the risks… would materialize" from banning one class alone.[65] In *Australia - Tobacco Plain Packaging*, a well-founded tobacco measure applied uniformly survived, because the complainants could not demonstrate the alternatives to be less trade restrictive.[66,67] The question is not whether tobacco measures can survive trade-law scrutiny, since plainly they can, but whether selective prohibition of lesser-risk products while greater-risk products remain in lawful trade would satisfy the same discipline.

Entry Conditions and the Design Lesson

Two arbitral awards, *Philip Morris v Uruguay* and *Philip Morris Asia v Australia*, supply the drafting principles for Chapter 12's entry conditions.[68,69,70,71,72,73] Neither favoured the investor. The lesson they yield is to cast the entry conditions as general legislation of prospective application, reciting that the tobacco sector is one of progressively more stringent regulation, so that the legitimate-expectation claim is foreclosed before it arises. Therefore Chapter 12 drafts accordingly.

[53] UNTC, Protocol to Eliminate Illicit Trade in Tobacco Products, depositary status (Ch. IX.4.a); India, accession, 5 June 2018.
[54] Illicit Trade Protocol, art. 45; the Protocol entered into force on 25 September 2018.
[55] India, 2025 FCTC Report, pp. 50–51.
[56] India, 2025 FCTC Report, p. 50.
[57] India, 2025 FCTC Report, p. 85.
[58] Finance Act, 2025, s. 132, inserting s. 148A in the Central Goods and Services Tax Act, 2017; Notification No. 16/2025-Central Tax, 17 September 2025 (in force 1 October 2025).
[59] CBIC, published notification record, as at 11 September 2026: no goods have been specified under s. 148A of the CGST Act 2017.
[60] Appellate Body Report, *Brazil - Retreaded Tyres*, WT/DS332/AB/R, 3 December 2007, para 150.
[61] Appellate Body Report, *Brazil - Retreaded Tyres*, WT/DS332/AB/R, para 210.
[62] Appellate Body Report, *Brazil - Retreaded Tyres*, WT/DS332/AB/R, para 156.
[63] Appellate Body Report, *US - Tuna II (Mexico)*, WT/DS381/AB/R, 16 May 2012, para 322.
[64] Appellate Body Report, *EC - Asbestos*, WT/DS135/AB/R, 12 March 2001, para 168.
[65] Appellate Body Report, *US - Clove Cigarettes*, WT/DS406/AB/R, 4 April 2012, para 225.
[66] Panel Report, *Australia - Tobacco Plain Packaging*, WT/DS435/R, WT/DS441/R, WT/DS458/R, WT/DS467/R, 28 June 2018, para 7.1732.
[67] Appellate Body Report, *Australia - Tobacco Plain Packaging*, WT/DS435/AB/R, WT/DS441/AB/R, 9 June 2020, paras 6.521–6.522. One Division Member wrote separately.
[68] *Philip Morris v Uruguay*, ICSID Case No. ARB/10/7, award of 8 July 2016, para 426.
[69] *Philip Morris v Uruguay*, ICSID ARB/10/7, para 429.
[70] *Philip Morris v Uruguay*, ICSID ARB/10/7, para 430.
[71] *Philip Morris v Uruguay*, ICSID ARB/10/7, paras 305, 399.
[72] *Philip Morris Asia v Australia*, PCA Case No. 2012-12, award on jurisdiction of 17 December 2015, paras 554, 585.
[73] *Philip Morris Asia v Australia*, PCA 2012-12, para 586.

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Taxation, Illicit Trade and Revenue Design

10

Taxation, Illicit Trade and Revenue Design

From 1 February 2026 the fiscal regime for tobacco products stands rebuilt, on a scale the sector has not previously seen, and the bar on foreign equity in cigarette manufacture is no part of it.[1] Two statutes and a series of notifications reach every product from unmanufactured leaf to reconstituted tobacco, computing GST at 40 per cent on the printed retail sale price, substituting the rate table in Section IV of the Fourth Schedule of the Central Excise Act, zeroing the compensation cess, and adding a capacity-based levy on the machines that produce smokeless products.[2] If the instruments that act on consumption through a stated mechanism have not delivered their stated objective, an instrument that acts through no mechanism at all cannot borrow their justification.

EXHIBIT 16 **What Changed on 1 February 2026**

The rows where tariff and effective diverge, or where the instrument does something other than what its name suggests, with the revenue figure that has not been published shown as a gap.

ELEMENT	INSTRUMENT, NUMBER AND DATE	RATE OR STATUS	TARIFF OR EFFECTIVE
GST compensation cess	Notification No. 03/2025-Compensation Cess (Rate), 31 December 2025, in force 1 February 2026	**CESS ZEROED (NIL), NOT ABOLISHED.** Sixty-two clauses, i. to lxii., each substituting the entry Nil in column (4) against S. Nos. 1 to 38 of the Schedule to Notification 1/2017-Compensation Cess (Rate) and its lettered sub-entries	Not applicable
Additional excise duty: the Fourth Schedule rate	The Central Excise (Amendment) Act, 2025 (Act No. 34 of 2025), assent and gazette 11 December 2025, commenced 1 February 2026	Cigarettes Rs 2,700 per thousand (2402 20 10) to Rs 11,000 per thousand (2402 20 90). Cigars, cheroots and cigarillos at 25 per cent or Rs 5,000 per thousand, whichever is higher. Unmanufactured tobacco 2401 at 70 per cent, refuse at 60. Biris at 10 per cent. Chewing tobacco and jarda scented at 100 per cent, other 2403 99 90 at 125, homogenised or reconstituted at 70, cut-tobacco at 10. 2404 11 00 and 2404 19 00 at 100 per cent	**TARIFF.** This is the ceiling, not the charge
Additional excise duty: the effective rate actually collected	Notification No. 03/2025-Central Excise, 31 December 2025, G.S.R. 955(E), in force 1 February 2026	Made under s. 5A(1) in supersession of 3/2019-Central Excise, exempting so much of the Fourth Schedule duty as exceeds the rate in column (4). Cigarettes run Rs 2,050 per thousand (2402 20 10) to Rs 8,500 per thousand (2402 20 90). 2401 at 18 per cent (Nil, by Notification No. 04/2026-Central Excise of 1 February 2026, where not bearing a brand name and not packed for retail sale); chewing tobacco and jarda scented at 82; gutkha (2403 99 90) at 91 and other goods of 2403 99 90 at 81; cut-tobacco at 8	**EFFECTIVE.** This is the charge actually collected, as distinct from the Fourth Schedule tariff rate of Act 34 of 2025, which is the ceiling
National Calamity Contingent Duty ceiling	Notification No. 01/2026-Central Excise, 1 February 2026, **IN FORCE 1 MAY 2026**	Exempts from so much NCCD under the Seventh Schedule to the Finance Act 2001 as exceeds 25 per cent, on 2403 99 10 chewing tobacco, 2403 99 30 jarda scented tobacco and 2403 99 90 all goods	Effective ceiling on a Finance Act 2001 levy, not on the Fourth Schedule
Track and trace: CGST s. 148A	Inserted by s. 132 of the Finance Act, 2025 (Act 7 of 2025); brought into force 1 October 2025 by Notification No. 16/2025-Central Tax of 17 September 2025	**IN FORCE AND UNUSED.** s. 148A(1) lets the Government, on the recommendations of the Council, specify by notification (a) the goods and (b) persons or class of persons who are in possession or deal with such goods. No notification specifying goods or persons, and no unique-identification marking rules, exist as at 11 September 2026	Not applicable
Revenue actually collected under the February 2026 regime	No published figure	No collection figure covering the regime had been published as at 11 September 2026, when the regime was seven months old and no receipts series covered it	Not applicable

Source: the Central Excise (Amendment) Act 2025 and CGST s. 148A; Notifications No. 03/2025-Compensation Cess (Rate) and No. 03/2025-Central Excise of 31 December 2025, No. 04/2026-Central Excise and No. 01/2026-Central Excise of 1 February 2026, and No. 16/2025-Central Tax of 17 September 2025. The rows where tariff and effective diverge, or where an instrument does something other than its name suggests. The Fourth Schedule sets a ceiling; the notification sets the charge.

The February 2026 Regime

The centrepiece is a 40 per cent GST, introduced by Notification 19/2025-Central Tax (Rate) of 31 December 2025 and computed not on the manufacturer's reported transaction value but on the printed retail sale price that the consumer pays, so that the under-valuation gap which had been the sector's oldest revenue

[1]Central Excise (Amendment) Act, 2025 (Act 34 of 2025); Health Security se National Security Cess Act, 2025 (Act 35 of 2025); rate and procedural notifications of 31 December 2025, in force 1 February 2026. Exhibit 16 sets out the instruments in which tariff and effective rate diverge, or which do something other than their names suggest. The bar is Press Note No. 2 (2010 Series), Department of Industrial Policy and Promotion, 10 May 2010, construed at Chapter 3.

[2]Central Excise (Amendment) Act, 2025, s. 2; rate notifications of 31 December 2025, in force 1 February 2026. The principal instruments are set out in date order at Annex E, in Volume II.

leak is closed by design.[3] A companion notification under Section 15(5) of the CGST Act subjects tobacco and pan masala to valuation on "the maximum price declared on goods … includes all taxes, duties, surcharge or cess, by whatever name called", while rule 31D, inserted by the CGST (Fifth Amendment) Rules of the same date, supplies the computation formula.[4] In this context the package calibrates its charge to the product, taxing cigarettes and smokeless products at 40 per cent while lowering bidis, which carry a disproportionate share of Indian smoking, to 18 per cent GST.[5]

The excise limb has been rebuilt from its statute downward. The Central Excise (Amendment) Act, 2025 (34 of 2025), a Money Bill that received assent on 11 December 2025, substitutes the rate table in Section IV of the Fourth Schedule, with tariff ceilings that include 70 per cent on unmanufactured tobacco and Rs 11,000 per thousand sticks on the longest cigarettes.[6]

However, the tariff rate is not the charge.

Notification 03/2025-Central Excise (G.S.R. 955(E)) exempts the excess under Section 5A(1), so that the effective rates on cigarettes run from Rs 2,050 to Rs 8,500 per thousand, chewing tobacco at 82 per cent and gutkha at 91 per cent.[7] This is the charge. Three smokeless products are further notified under Section 3A(1) for a capacity-based duty per packing machine per month, across four machine-speed bands.[8] The Health Security se National Security Cess Act, 2025 (35 of 2025), whose drafters stated the twin purposes of enabling targeted utilisation for public health and national security, adds a second capacity levy on pan masala machinery, "linked to the production capacity … rather than the quantity actually produced".[9]

The compensation cess, layered atop the GST since 2017, was zeroed with effect from 1 February 2026 by sixty-two clauses substituting "Nil" against every rate in the Schedule, even though no instrument of abolition exists, so that the levy survives in law at a rate of nothing.[10] The NCCD on smokeless products was capped at 25 per cent by a separate notification, commencing not on 1 February but on 1 May 2026.[11] Exhibit 16 sets the instruments side by side. This is the most extensive single reconstruction of Indian tobacco taxation since the advent of GST.

The Enforcement Limb

Section 148A of the CGST Act, inserted by Section 132 of the Finance Act, 2025, empowers the Government, on the recommendations of the Council, to "specify … the goods" and the "persons or class of persons" to which a track-and-trace regime shall apply.[12] The scheme provides for unique identification markings that are "unique, secure and non-removable" under the definition in Section 2(116A), for electronic storage and access under Section 148A(2), and, under Section 122B, for a penalty of one lakh rupees or ten per cent

[3]Notification No. 19/2025-Central Tax (Rate), 31 December 2025 (in force 1 February 2026), Schedule III, pp. 1–2. Tobacco inserted into Schedule III at 20 per cent CGST (40 per cent GST combined), drawing power from CGST Act 2017, ss. 9(1) and 15(5).

[4]Notification No. 19/2025-Central Tax, 31 December 2025, notifying tobacco and pan masala under CGST Act 2017, s. 15(5), p. 1, Explanation (a); Notification No. 20/2025-Central Tax, 31 December 2025 (CGST (Fifth Amendment) Rules, 2025), inserting rule 31D, pp. 1–2.

[5]Notification No. 19/2025-Central Tax (Rate), 31 December 2025, inserting biris (2403 19 21, 2403 19 29) into Schedule II at 9 per cent CGST (18 per cent GST), p. 1.

[6]Central Excise (Amendment) Act, 2025 (Act 34 of 2025), assent 11 December 2025, Gazette of India Extraordinary Part II Section 1 No. 58, Bill 143-F (Money Bill under Art. 110), s. 2, Fourth Schedule, pp. 1–5. Selected tariff rates: 2401 at 70 per cent; 2402 20 90 at Rs 11,000 per thousand. These are the Fourth Schedule tariff ceilings, not the rates actually charged.

[7]Notification No. 03/2025-Central Excise, G.S.R. 955(E), 31 December 2025, under s. 5A(1) of the Central Excise Act, 1944, pp. 1–2. Effective rates: cigarettes Rs 2,050 (Sl. 3, 2402 20 10) to Rs 8,500 (Sl. 8, 2402 20 90) per thousand; chewing tobacco (2403 99 10) 82 per cent; jarda scented (2403 99 30) 82 per cent; gutkha (2403 99 90) 91 per cent.

[8]Notification No. 04/2025-Central Excise, 31 December 2025, under s. 3A(3) of the Central Excise Act, 1944, duty per packing machine per month on chewing tobacco, jarda scented tobacco and gutkha, pp. 1–2. Goods notified under s. 3A(1) by Notification No. 04/2025-Central Excise (N.T.); capacity rules made by Notification No. 05/2025-Central Excise (N.T.), the Chewing Tobacco, Jarda Scented Tobacco and Gutkha Packing Machines (Capacity Determination and Collection of Duty) Rules, 2026.

[9]Health Security se National Security Cess Act, 2025 (Act 35 of 2025), s. 1(1); brought into force on 1 February 2026, under s. 1(2), by Ministry of Finance (Department of Revenue) notification S.O. 6153(E), 31 December 2025, Gazette of India, Extraordinary, Part II, s. 3(ii), No. 5943, p. 2. Statement of Objects and Reasons: "twin purposes of enabling targeted utilisation for public health, as well as national security." The phrase quoted in the text is from para 2 of the same Statement. In the title, "se" is the Hindi postposition ("from"); the short title at s. 1(1) uses lower case.

[10]Notification No. 03/2025-Compensation Cess (Rate), 31 December 2025 (in force 1 February 2026), pp. 1–2. Sixty-two clauses, i. to lxii., each substituting "Nil" in column (4) against S. Nos. 1 to 38 and lettered sub-entries. No repeal of the GST (Compensation to States) Act, 2017; no instrument in the package uses words of abolition.

[11]Notification No. 01/2026-Central Excise, 1 February 2026 (in force 1 May 2026). Caps NCCD at 25 per cent on 2403 99 10 (chewing tobacco), 2403 99 30 (jarda scented tobacco) and 2403 99 90 (all goods).

[12]Central Goods and Services Tax Act, 2017, s. 148A(1), inserted by s. 132 of the Finance Act, 2025 (Act 7 of 2025): "specify … the goods" and "persons or class of persons who are in possession or deal with such goods".

of the tax payable, whichever is higher.[13] The full statutory power to implement a track-and-trace regime for tobacco products has accordingly existed since 1 October 2025.[14]

As at 11 September 2026, no notification under Section 148A specifying goods or persons, and no unique-identification marking rules, have been issued on CBIC's published notification record.[15]

India's own 2025 filing to the Convention confirms the position. Asked whether it requires the application of any markings to units of tobacco packaging, the Government answered "No".[16] Track and trace appears in the filing in the proposed tense, a forward priority still to "Develop and operationalize".[17] The Illicit Trade Protocol, to which India acceded on 5 June 2018, requires unique markings on all unit packets of cigarettes within five years of entry into force for that Party, and on other tobacco products within ten.[18] Hence, the Protocol's five-year deadline for cigarettes passed in September 2023. India's report on illicit-trade monitoring under Article 20 also answers "No", which is consistent with its Article 15 table recording a 0 per cent illicit share for 2023 from CBIC.[19]

However, the power has not been exercised.

The Objective and Its Own Evidence

The regime, then, is real, and it acts on consumption through a mechanism its own drafters can name, which is the tax-inclusive price. The Prime Minister's Economic Advisory Council has set out in its working paper how that mechanism is expected to work across households of different means.[20]

"Higher price as a result of increased tax rate will act as deterrent to people in bottom 40 group", the paper observes, adding that affordability "is less of an issue" for the wealthiest fifth, and that "If they choose to consume tobacco products regardless of the price hike due to its inelasticity of demand, government will be able to earn more tax revenue from this group."[21] As can be seen, the paper expects the price to deter the poorer households, among whom its own data place the higher incidence of tobacco expenditure, and to raise revenue from the richer ones.[22] It also concludes that "Tobacco products generated just 2.4 % of gross tax revenue in FY23" and that, even after the proposed hike, "tax policy alone will not suffice."[23]

This study takes no position on the level at which tobacco should be taxed, which is a question for the Government's fiscal judgment and lies outside a study of the investment instrument. What matters here is narrower. The paper nowhere mentions FDI, foreign ownership or the 2010 press note,[24] so that its prescription of regulatory oversight cannot be read as an endorsement of the investment prohibition, which regulates ownership, not the product. Hence the contrast this chapter draws is between instruments rather than between rates, since taxation acts on consumption through the price that the consumer pays while the investment entry acts through no mechanism at all.

[13]CGST Act 2017, s. 2(116A) (definition of unique identification marking, including "unique, secure and non-removable"); s. 122B (penalty). Both inserted by ss. 121(iii) and 131 of the Finance Act, 2025, pp. 45–47.

[14]Notification No. 16/2025-Central Tax, 17 September 2025, appointing 1 October 2025.

[15]CBIC, notification records published on taxinformation.cbic.gov.in from 28 January 2025 to 1 September 2026, as at 11 September 2026: no notification under s. 148A specifying goods or persons, and no rules on unique identification marking, appear among them.

[16]India, Implementation Report under the WHO Framework Convention on Tobacco Control (2025 reporting cycle), p. 50: "Do you require the application of any markings to units of tobacco packaging, including any outside packaging? No."

[17]India, Implementation Report (2025 reporting cycle), p. 50 (track and trace in the proposed tense); p. 85 ("Develop and operationalize").

[18]Protocol to Eliminate Illicit Trade in Tobacco Products, 12 November 2012, art. 8.3. India acceded 5 June 2018; in force 25 September 2018 (art. 45). The five-year and ten-year limits are the Protocol's text; the derived dates are the study's own arithmetic.

[19]India, Implementation Report (2025 reporting cycle), p. 74 (Art. 20, monitoring of "Illicit trade in tobacco products": "No"); pp. 50–55 (Art. 15 table: 0 per cent for 2023, source CBIC; aggregate seizure question and seizures table blank).

[20]Economic Advisory Council to the Prime Minister, Working Paper EAC-PM/WP/42/2026, "Rise in Tobacco Consumption and Policy Implications" (Shamika Ravi and Partha Protim Barman), February 2026.

[21]EAC-PM/WP/42/2026, p. 54. The passage reads in full: "Higher price as a result of increased tax rate will act as deterrent to people in bottom 40 group. Affordability is less of an issue for people in top 20 consumption group. If they choose to consume tobacco products regardless of the price hike due to its inelasticity of demand, government will be able to earn more tax revenue from this group."

[22]EAC-PM/WP/42/2026, p. 37. In 2023-24 tobacco incidence among the poorest forty per cent of households stood at 70.2 per cent in rural and 52.0 per cent in urban India, against 63.4 and 36.6 per cent among the wealthiest twenty per cent. Chapter 1 carries the reconciliation of the household expenditure and prevalence series.

[23]EAC-PM/WP/42/2026, p. 4 (punctuation as in the original): "Tobacco products generated just 2.4 % of gross tax revenue in FY23. While the Central Excise (Amendment) Bill, 2025 proposes a significant hike in duties - raising the levy on chewing tobacco to 100 % tax policy alone will not suffice. Regulatory oversight must be strengthened."

[24]EAC-PM/WP/42/2026. The paper nowhere uses the terms "FDI", "foreign direct investment", "foreign ownership" or "press note".

On the one measurement of the tax-to-burden ratio that exists, for 2017-18, the economic cost of tobacco use among persons aged 35 and over was INR 1,773.4 billion, approximately 1.04 per cent of GDP, while excise revenue in the preceding year recovered only 12.2 per cent of that cost.[25] The figure covers only excise in a base year now nearly a decade old. Accordingly, neither its age nor the narrowness of the revenue base changes the order of magnitude, which is that the state recovered about one rupee in eight of what the habit cost the economy.

The Market the Government Does Not Measure

If the size of the illicit tobacco market is disputed, the reason is that the Government of India has never measured it, and has told the Convention as much.[26] The estimates that exist span five provenance classes that do not confirm one another. Official seizures by the Directorate of Revenue Intelligence totalled Rs 158.46 crore on 9.4 crore sticks in FY 2024-25, against Rs 93.32 crore in FY 2021-22, but seizures measure enforcement output rather than market share, since the DRI itself publishes no share estimate.[27] However, every share estimate that exists is non-governmental. Chamber estimates from FICCI CASCADE place the illicit share at 25.3 per cent for 2022-23, while commercial modelling by Euromonitor, carried onward by both the chamber and ITC, puts the cigarette share at 26.1 per cent.[28] ITC's own annual report claims "about 1/3rd of the legal industry" and Rs 23,000 crore, both unsourced in its own text, and the second materially higher than the chamber's range of revenue-loss estimates.[29] One academic pack-collection study, fielded in 2013 across fourteen countries including India and published in 2017, found 30.4 per cent of the Indian packs to be illicit, but the fieldwork is now more than a decade old.[30] Exhibit 17 sets the ranges side by side by provenance class. Hence what every provenance class agrees on is the one thing this study can state as its own finding, that the size of the illicit market is unknown to the Government whose instruments it evades, because the system that would produce the measurement is a power unexercised.

EXHIBIT 17 **Where the Illicit-Trade Numbers Come From**

Each figure should be read with the note beneath it. The figures are not plotted on one axis, because they do not measure one quantity.

FIGURE	YEAR	SOURCE
OFFICIAL SEIZURE		
9.4 crore sticks of smuggled cigarettes seized, valued at Rs 158.46 crore	FY 2024-25	DRI, Smuggling in India Report 2024-25, p. 38
A seizure total, not a market share. DRI publishes no estimate of illicit market share, and any share figure attributed to DRI is a misattribution		
1,102.63 lakh sticks seized, value Rs 9,332.4 lakh (Rs 93.32 crore)	FY 2021-22	DRI, Smuggling in India Report 2021-22, p. 79, Table 3: Cigarette seizures by DRI
Seizures only. The FY22 to FY25 movement is a movement in enforcement output, not in market size		
Foreign cigarettes: 1,19,163 cases, Rs 13,515.91 lakh	FY 2024-25	DRI, Smuggling in India Report 2024-25, p. 172, table of seizures by other law enforcement agencies
Seized by the Assam Rifles, not DRI: reported in the DRI volume but attributed there to another agency, and counted in cases rather than sticks		
CHAMBER		
Illicit market in tobacco products Rs 21,811 crore (2018-19) to Rs 22,930 crore (2019-20); illicit share 19.88 to 20.04 per cent	2019-20	FICCI CASCADE, Illicit Markets: A Threat to Our National Interests, September 2022, p. 28
Modelled, by FICCI CASCADE with TARI. All tobacco products, not cigarettes alone		
Tax revenue loss to Government from illicit tobacco products Rs 13,331 crore, on an assumed tax rate of 58.14 per cent on tobacco products excluding bidi	2019-20	FICCI CASCADE, Illicit Markets: A Threat to Our National Interests, September 2022, pp. 28 and 84
By FICCI CASCADE's Annual Report 2025-26 the same number is described as the loss from the cigarette trade alone. The number has not changed but its referent has narrowed, and the 2022 report remains the source of the figure		
Alternative estimate Rs 15,500 crore, using Euromonitor cigarette data added to CASCADE's other-tobacco estimate; the report's own range is Rs 13,331 to Rs 15,500 crore	2019-20	FICCI CASCADE, Illicit Markets: A Threat to Our National Interests, September 2022, p. 28
The upper bound of the chamber range is itself part-commercial in provenance		

[25] Rijo M. John and others, "Economic Costs of Diseases and Deaths Attributable to Tobacco Use in India, 2017–2018" (2021) 23 *Nicotine & Tobacco Research* 294, abstract and Table 6, doi 10.1093/ntr/ntaa154 (WHO-funded). Base year 2017-18; excise revenue only.

[26] India, Implementation Report (2025 reporting cycle), p. 74 (Art. 20: "No"). No official Government of India estimate of illicit cigarette market share exists as at 11 September 2026; the 0 per cent entry for 2023 in the same report (p. 54) names CBIC as its source and cites no study.

[27] Directorate of Revenue Intelligence, *Smuggling in India Report 2024-25*, p. 38 (Rs 158.46 crore, 9.4 crore sticks, FY 2024-25; provenance: official seizures); Directorate of Revenue Intelligence, *Smuggling in India Report 2021-22*, p. 79 (Rs 93.32 crore, FY 2021-22; provenance: official seizures). DRI publishes no estimate of illicit market share; any share figure attributed to DRI is a misattribution.

[28] FICCI CASCADE, *Consuming the Illicit* (October 2024), p. 28 (25.3 per cent for 2022-23; Rs 30,012 crore; provenance: chamber estimate); Euromonitor International, via the same report, p. 108 (26.1 per cent, 33.2 billion sticks; provenance: commercial modelling). The two CASCADE reports (2022 and 2024) are not a continuous series: the base-year figure for 2018-19 differs between them.

[29] ITC Limited, Report and Accounts 2026, pp. 71–72 (provenance: industry). "About 1/3rd of the legal industry" and Rs 23,000 crore are unsourced in ITC's own report. The Rs 23,000 crore is materially higher than the chamber range of Rs 13,331 to Rs 15,500 crore for all tobacco products (FICCI CASCADE with TARI, *Illicit Markets: A Threat to Our National Interests* (September 2022), p. 28; provenance: chamber estimate).

[30] Brown J and others, "An analysis of purchase price of legal and illicit cigarettes in urban retail environments in 14 low- and middle-income countries" (2017) 112 *Addiction* 1854, doi 10.1111/add.13881 (fieldwork 2013, fourteen low- and middle-income countries, 3,240 packs collected; 30.4 per cent of Indian packs illicit; provenance: academic). Cited via FICCI CASCADE reports.

FIGURE	YEAR	SOURCE
Legitimate output loss Rs 22,930 crore; tobacco GVA coefficient 0.493, employment coefficient 0.161; output multiplier 1.844, GVA multiplier 1.929	2019-20	FICCI CASCADE, Illicit Markets: A Threat to Our National Interests, September 2022, pp. 28 and 84
Model parameters, recorded so that the modelled figures can be read as modelled		
Illicit tobacco products market grew 17.7 per cent, from Rs 25,495 crore (2018-19) to Rs 30,012 crore (2022-23), reaching 25.3 per cent	2022-23	FICCI CASCADE, Consuming the Illicit, October 2024, p. 28
CASCADE's own 2019-20 figure was Rs 22,930 crore at 20.04 per cent in the 2022 report, but the 2024 report's series starts at Rs 25,495 crore for 2018-19, so the two reports do not form a continuous series		
It is estimated that 26 per cent of the cigarettes market is illicit	2022-23	FICCI CASCADE, Consuming the Illicit, October 2024, p. 28
Quoted verbatim. The sentence is CASCADE's and rests on the Euromonitor series reproduced in the same report		
Illicit cigarette consumption is 600 billion sticks or 10 per cent of the total cigarettes consumption	Not dated	FICCI CASCADE, Illicit Markets: A Threat to Our National Interests, September 2022, p. 28, attributed to global consensus and estimates
A global figure, not an Indian one, and attributed to no identified study		
COMMERCIAL		
Illicit cigarette volumes 25.7, 26.5, 27.9, 28.1, 26.8, 30.2, 33.2 billion sticks; share 24.0, 24.3, 24.3, 27.6, 25.9, 25.7, 26.1 per cent	labelled 2015 to 2023	Euromonitor International, Trends in Trade of Illicit Cigarette (2015-2023), reproduced in FICCI CASCADE, Consuming the Illicit, October 2024, p. 108
Seven data points against a nine-year label, since the report does not attach a year to each point		
COMMERCIAL, RESTATED BY INDUSTRY		
India is the 4th largest illegal cigarette market globally, comprising over a quarter of the total market	2023	Euromonitor International, via FICCI CASCADE, Consuming the Illicit, October 2024, p. 108; and ITC Limited, Report and Accounts 2025-26, Report of the Board of Directors, pp. 71-72
ITC's version is sourced onward to Euromonitor and is not an independent estimate		
INDUSTRY		
Illicit trade accounts for about 1/3rd of the legal industry	2025-26 report	ITC Limited, Report and Accounts 2025-26, Report of the Board of Directors, pp. 71-72
Unsourced in ITC's own report, and measured against a different denominator from Euromonitor's share of the total market, so the two do not confirm one another		
Illicit trade causes an annual revenue loss of approximately Rs 23,000 crore to the Exchequer	2025-26 report	ITC Limited, Report and Accounts 2025-26, Report of the Board of Directors, pp. 71-72
Unsourced in ITC's own report, and materially higher than the chamber range of Rs 13,331 to Rs 15,500 crore for all tobacco products		
About 68 per cent of total tobacco consumed in India remains outside the tax net	2014	ASSOCHAM and KPMG, Report on the impact of current tax framework on the tobacco sector in India, 2014, cited in ITC Limited, Report and Accounts 2025-26, Report of the Board of Directors, pp. 71-72, fn. 3
The underlying study is more than a decade old		
INDUSTRY, VIA CHAMBER		
Nearly one in every four cigarettes consumed in the country is estimated to be illicit	2025-26	Ashish Paul, Vice President Corporate Affairs, ITC Ltd., in FICCI CASCADE, Annual Report 2025-26, p. 84
Conference reportage in a chamber annual report, not fresh estimation		
ACADEMIC		
23.8 per cent of 3,240 cigarette packs purchased in 14 low- and middle-income countries were illicit; for India the figure was 30.4 per cent	2013 fieldwork	Addiction 112(10), 1854, cited in FICCI CASCADE, Illicit Markets: A Threat to Our National Interests, September 2022, p. 28; and FICCI CASCADE, Consuming the Illicit, October 2024, p. 108
The only pack-collection estimate, as distinct from a modelled one, and its fieldwork, in 2013, is more than a decade old. Cited as reported by FICCI CASCADE		
OFFICIAL NEGATIVE FINDING		
No official Government of India estimate of illicit cigarette market share exists	as at 11 September 2026	Study finding
The nearest official statements are DRI's seizure totals and its qualitative attribution of the trade to high taxes and import duties. The 0 per cent entry for 2023 in India's 2025 FCTC report names CBIC as its source and cites no study		

Source: DRI's smuggling reports, FICCI CASCADE's illicit-market studies, ITC's annual report and one academic study, grouped by provenance. Seizures are not market share, and neither can be scaled into the other. No official Government of India estimate of illicit cigarette market share exists, and the 0 per cent entry for 2023 in India's 2025 FCTC report cites no study.

The Instrument With No Mechanism

Taxation acts on consumption through price, and enforcement through traceability and availability, so that each instrument can name the path by which it reaches its stated objective, even when that path has not delivered what was promised. Thus the question is whether an instrument with no mechanism at all can claim the same objective. The 2010 press note sets no rate, collects no revenue, changes no shelf price, marks no pack and stops no consignment.[31] It bars a class of investor from owning the capacity to manufacture cigarettes. Since ownership is not a mechanism by which demand is reached, the prohibition cannot claim the benefit of the fiscal instruments' objective.

If the tax instrument, with its named mechanism and its twenty years of escalation, has not delivered the objective its own prescribers acknowledge, then the investment prohibition, which shares none of that mechanism, cannot borrow the justification. It is no fiscal instrument at all. Therefore Part IV closes where it opened, on the observation that the instruments aimed at this sector have been judged against their own test and found short, while the one instrument that cannot be so judged has no test to pass.

[31]Chapter 3 established that the 2010 press note states no mechanism and added nothing to the control of new capacity, since no fresh industrial licence for cigarette manufacture had issued on health grounds since 1999. The only reasons on the record are a commitment to an anti-smoking regime and consistency with the 1999 embargo, neither of which is a mechanism.

PART

V

Towards Reform

TOWARDS REFORM

11

Comparative FDI Regimes and the Case for Staging

11

Comparative FDI Regimes and the Case for Staging

Of nine leaf-producing economies with private manufacture, tested against their own investment instruments, not one bars foreign investment in cigarette manufacture.[1] Where a comparator imposes a condition of entry, the condition attaches to the activity, not to the owner.[2] The only exclusions of private capital found anywhere are, accordingly, sovereign, reserved by statute to the state in China and in Thailand.[3] India's instrument stands alone in its form, because it sorts manufacturers by the passport of their capital while the identical manufacture stays lawful for nationals, a restriction that reaches portfolio money as well as direct.[4]

However, the staging forms examined here are offered as drafting precedents and not as the ask, since the ask is the deletion of the entry on the prohibited list and a reasoned review of the 1999 embargo beneath it, as Chapter 12 settles.[5] Hence none of them presently opens the tobacco entry.

Who Admits the Investment, and on What Condition

In Brazil, Decreto-Lei no. 1.593 of 1977, in the wording given by Lei 10.833/2003, requires every cigarette manufacturer to maintain a fiscal registration with the federal revenue authority, in words that are indifferent to nationality.[6,7] Lei 14.286/2021 now extends national treatment to foreign capital, so that the condition turns on the factory and the fisc, never on the passport.[8]

Law No. 4733, Madde 6, sets a capacity floor for every manufacturer in Türkiye, requiring single-shift annual capacity of two billion cigarette units.[9] This is a high barrier to small entrants. However, it is indifferent to nationality, and Türkiye proved the point in 2008 by selling its state cigarette enterprise to British American Tobacco.[10]

In the United States, 21 U.S.C. Section 387e(b) requires every manufacturer to register annually with the FDA and to disclose each corporate officer and the State of incorporation, which is a disclosure requirement and not an ownership restriction.[11]

Indonesia makes the negative finding most cleanly, because Perpres 10/2021 closes alcohol manufacture by KBLI code and leaves tobacco out of all three annexes to the investment list, so that cigarette manufacture

[1]The nine operative instruments, tested against their own investment laws: Decreto-Lei no. 1.593/1977, art. 1 (as amended by Lei 10.833/2003, art. 40), and Lei 14.286/2021, art. 9 (Brazil); Law No. 4733, Madde 6 (Türkiye); 21 U.S.C. Section 387e(b) (United States); Perpres 10/2021, Pasal 2(2) as replaced by Perpres 49/2021 (Indonesia); Investment and Export Promotion Act, 2024 (Act No. 6 of 2024), s. 22(2), and Tobacco Industry Act, 2024 (Act No. 5 of 2024), s. 88(1) (Malawi); Executive Order No. 175, s. 2022, Twelfth Regular Foreign Investment Negative List (Philippines); National Industrial Policy 2022, Annexures 6-7 (Bangladesh); Pakistan Investment Policy 2023, Section 9.1 (Pakistan); ZIDA Act 2019 (Act No. 10 of 2019), s. 12 (Zimbabwe); each is cited individually below.

[2]Same instruments as n. 1; wherever there is an entry condition (fiscal registration, capacity floor, investment certificate, annual FDA registration), it attaches to the activity and not to the nationality of the investor.

[3]Tobacco Monopoly Law of the People's Republic of China, 29 June 1991 (as amended 24 April 2015), art. 3; Tobacco Authority of Thailand Act, B.E. 2561 (2018), s. 7.

[4]Foreign Exchange Management (Non-debt Instruments) Rules, 2019, S.O. 3732(E), 17 October 2019, Schedule I, para (2)(g); Consolidated FDI Policy Circular of 2020, DPIIT, para 5.1(g), p. 28; Foreign Exchange Management (Non-debt Instruments) Rules, 2019, Schedule II, para (1)(a)(ii), fourth proviso.

[5]The ask is stated in Chapter 12; this chapter's staged alternatives are offered as drafting precedents, not as the ask.

[6]Decreto-Lei no. 1.593/1977, art. 1, in the wording given by Lei 10.833/2003, art. 40. The condition turns on adequate industrial installations and the fiscal regularity of the applicant and its officers.

[7]Decreto-Lei no. 1.593/1977, art. 1 (as amended by Lei 10.833/2003, art. 40). Art. 1 provides: "A fabricação de cigarros … será exercida exclusivamente pelas empresas que, dispondo de instalações industriais adequadas, mantiverem registro especial na Secretaria da Receita Federal do Ministério da Fazenda."

[8]Lei 14.286/2021, art. 9. Full text: "Ao capital estrangeiro no País será dispensado tratamento jurídico idêntico ao concedido ao capital nacional em igualdade de condições."

[9]Law No. 4733, Madde 6, second paragraph. Statutory text: "yıllık üretim kapasitesi tek vardiyada, sigara … için iki milyar adet", with complete and new technology.

[10]Özelleştirme Yüksek Kurulu Decision 2008/23, *Resmî Gazete*, 24 April 2008, no. 26856. Purchase price USD 1.72 billion; the transaction transferred the Adana, Ballıca, Bitlis, Malatya and Tokat factories together with existing brands and 25,000 tonnes of leaf stock.

[11]21 U.S.C. Section 387e(b)-(d), which sets the registration condition. No federal instrument affirmatively establishes the absence of a sectoral bar on foreign investment in tobacco manufacture, and federal law has no negative list in which such a bar could sit.

[12]Perpres 10/2021, Pasal 2(2) as replaced by Perpres 49/2021, Pasal I item 1. The closed codes: "Industri Minuman Keras Mengandung Alkohol (KBLI 11010), Industri Minuman Mengandung Alkohol: Anggur (KBLI 11020), dan Industri Minuman Mengandung Malt (KBLI 11031)."

is accordingly open to all investors without limit.[12,13] The instrument is capable of doing to tobacco what India does. It declined.

Malawi requires an investment certificate and a manufacturer's registration without any citizenship condition.[14] The Philippines' FINL contained no tobacco entry, while Bangladesh lists tobacco in neither its reserved nor its controlled industries.[15,16,17] Pakistan imposes a new-unit prohibition on alcohol manufacture alone, which is precisely the form a tobacco restriction would take if Pakistan wanted one, and which Pakistan withholds from tobacco.[18]

Hence, across nine economies that grow tobacco leaf and leave its manufacture to private capital, the instrument India applies to cigarette manufacture has no comparator.

The only sovereign exclusions are proved from statute, in China and in Thailand,[19,20] though state ownership elsewhere is a shareholding fact and not a legal exclusion.[21] Bhutan bans tobacco manufacture for all persons, a blanket prohibition on the activity and not an investment bar,[22] even as Zimbabwe wrote a nationality rule for tobacco grading and packaging but left manufacture open.[23,24]

What the Trade Record Shows

India is the second-largest producer of unmanufactured tobacco, behind China, and the second-largest exporter by volume, behind Brazil.[25] Exhibit 18 tabulates leaf production for the nine comparators.[26,27,28,29] Accordingly, the economies that admit foreign investment in cigarette manufacture include the world's largest leaf exporters, while the only one that bars it is the second-largest producer.

EXHIBIT 18 **Who Admits Foreign Investment in Cigarette Manufacture**

ECONOMY	LEAF 2024, TONNES	PRIVATE	FOREIGN INVESTMENT	THE CONDITION, AND ON WHOM IT BITES	INSTRUMENT AND PINPOINT
LEAF-PRODUCING ECONOMIES THAT ALLOW PRIVATE CIGARETTE MANUFACTURE, BY LEAF PRODUCTION					
Brazil	637,749	Yes	Conditioned	A fiscal registration, indifferent to nationality. The *registro especial* is conditioned on adequate industrial installations, a minimum capital, automatic production counters and fiscal regularity	Lei 14.286/2021 art. 9 (national treatment); Decreto-Lei 1.593/1977 art. 1 and paras 1 to 2, as worded by Lei 10.833/2003 art. 40
Indonesia	353,386	Yes	Open, with no foreign-equity ceiling	None. Cigarette manufacture appears in none of the three annexes, so Perpres 10/2021 Pasal 3(2) applies: it *dapat diusahakan oleh semua Penanam Modal*. The list works by exhaustion, so the negative is a finding and not an absence of evidence	Perpres 10/2021 Pasal 2(1), 2(2) as replaced by Perpres 49/2021, and Pasal 3(1)(d) and 3(2); Lampiran I, II and III as replaced by Perpres 49/2021

[13]Perpres 10/2021, Pasal 3(2). "Dapat diusahakan oleh semua Penanam Modal."
[14]Investment and Export Promotion Act, 2024 (Act No. 6 of 2024) (Malawi), s. 22(2); Tobacco Industry Act, 2024 (Act No. 5 of 2024) (Malawi), s. 88(1). Conditions: the applicant "is a body corporate", "demonstrates that it has good financial standing" and "has capacity to manufacture tobacco and nicotine products."
[15]Executive Order No. 175, s. 2022, Twelfth Regular Foreign Investment Negative List (Philippines). Examined in full, the list contains no entry for tobacco, cigarettes or nicotine in either List A or List B.
[16]Executive Order No. 113, s. 2026, s. 1 and the fourth WHEREAS clause (Philippines). The Thirteenth Regular FINL, promulgated in April 2026 and in force from 2 May 2026, replaced the Twelfth with the stated purpose of easing restrictions; the annexed list has not been examined.
[17]National Industrial Policy 2022 (Bangladesh), Annexures 6 (reserved) and 7 (controlled), *Bangladesh Gazette*, Extraordinary, 29 September 2022, pp. 15771-15772. Reserved industries (Annexure 6): four. Controlled industries (Annexure 7): twenty-two. Tobacco appears in neither.
[18]Pakistan Investment Policy 2023, Section 9.1; Board of Investment, Investment Regime page, invest.gov.pk, accessed 11 September 2026. The four industries requiring government permission: arms and ammunition, high explosives, radioactive substances, and security printing.
[19]Tobacco Monopoly Law of the People's Republic of China, art. 3.
[20]Tobacco Authority of Thailand Act, B.E. 2561 (2018), s. 7.
[21]FCTC Implementation Reports (2025 reporting cycle), question 4.2.12.1; India, Implementation Report under the WHO FCTC (2025 reporting cycle), printed p. 16. Of the 2025 reports examined, five states answer that they have a wholly or partially state-owned tobacco industry: Belarus, Egypt, Moldova, Thailand and Viet Nam. India answers "No" to the same question. The answers are binary and do not identify the vehicle or the extent of state ownership.
[22]Tobacco Control Act of Bhutan, 2010, s. 11(a). Section 11 provides: "No person in the country shall: a) Cultivate, harvest or manufacture tobacco or tobacco products."
[23]Indigenisation and Economic Empowerment Act [Chapter 14:33] (Zimbabwe), s. 3A(1), First Schedule, item 9; Indigenisation and Economic Empowerment (Foreign Participation in Reserved Sectors) Regulations, 2025 (S.I. 215 of 2025), Schedule, item 9. S.I. 215 of 2025 assigns tobacco grading and packaging no threshold where retail, milling and haulage receive generous ones. No item of the Schedule names manufacture.
[24]Zimbabwe Investment and Development Agency Act, 2019 (Act No. 10 of 2019) [Chapter 14:37], s. 12. Section 12 admits foreign investment in "any and all sectors" subject only to the reserved-sector list.
[25]FAOSTAT, Crops and livestock products, unmanufactured tobacco, item 826, element 5510, calendar 2024, accessed 11 September 2026; UN Comtrade, HS 2401 exports, calendar 2024, accessed 11 September 2026.
[26]FAOSTAT, Crops and livestock products, unmanufactured tobacco, item 826, element 5510, calendar 2024, accessed 11 September 2026. Flag I (imputed). FAOSTAT records Indian leaf production at 727,203 tonnes in 2024, an imputed figure rather than an official national return.
[27]FAOSTAT, unmanufactured tobacco, calendar 2024; UN Comtrade, HS 2401 exports, calendar 2024; both accessed 11 September 2026.
[28]FAOSTAT, unmanufactured tobacco, and UN Comtrade, HS 2401 exports, both calendar 2024 and accessed 11 September 2026.
[29]UN Comtrade, HS 2401 exports, calendar 2024, accessed 11 September 2026.

ECONOMY	LEAF 2024, TONNES	PRIVATE	FOREIGN INVESTMENT	THE CONDITION, AND ON WHOM IT BITES	INSTRUMENT AND PINPOINT
Zimbabwe	236,815	Yes	Open	None on cigarette manufacture. Leaf buying is conditioned by licence and financial standing, not nationality	ZIDA Act 2019 (Act No. 10 of 2019) ss. 12 and 13; Tobacco Industry and Marketing Act [Ch. 18:20] ss. 36 and 37(2)
Pakistan	184,982	Yes	Open	None. Government permission is not required except for four specified industries, and the only product-specific new-unit prohibition in the regime is the alcohol one, applied to alcohol and withheld from tobacco	Pakistan Investment Policy 2023 s. 9.1 and the reserved-industry list
United States	147,520	Yes	Conditioned	An annual establishment registration. Subsection (a)(2) requires a corporation to name each officer and director and the State of incorporation, which is a disclosure requirement and not an ownership restriction. Nothing in the section refers to nationality	21 U.S.C. s. 387e(b) to (d), FDCA s. 905
Malawi	119,957†	Yes	Conditioned	A universal screening requirement plus a corporate and financial test, neither turning on nationality. No citizenship, nationality or local-ownership condition attaches to buyer, processor or manufacturer registration anywhere in the Act	Investment and Export Promotion Act, 2024 (Act No. 6 of 2024) s. 22(2); Tobacco Industry Act, 2024 (Act No. 5 of 2024) ss. 88 to 89
Türkiye	108,000	Yes	Conditioned	A production-capacity floor, indifferent to nationality: plants of complete and new technology with an annual single-shift capacity of not less than two billion units for cigarettes, and a certificate from the Ministry to manufacture or sell	Law No. 4875 on Direct Foreign Investments Madde 3(a); Law 4733 Madde 6, second paragraph
Bangladesh	97,814	Yes	Open	None. Tobacco is in neither the four reserved industries at Annexure-6 nor the twenty-two controlled industries at Annexure-7	National Industrial Policy 2022, Annexure-6 (ref. para 3.2.14), gazette p. 15771; Annexure-7 (ref. para 3.2.15), gazette p. 15772
Philippines	55,346	Yes	Conditioned	A minimum paid-in capital for small enterprises, and nothing tobacco-specific. Tobacco, cigarettes and nicotine appear nowhere in either list	Foreign Investments Act 1991 s. 8 as amended by RA 11647 (2022); Twelfth Regular FINL, EO 175 of 27 June 2022, List B items 5 and 6
AN ADJACENT TOBACCO ACTIVITY, NOT MANUFACTURE					
Zimbabwe: tobacco grading and packaging		Not applicable	Barred to non-citizens	Absolute, and uniquely so within its own Schedule. Every other reserved sector was given a threshold at which a foreign national may enter; tobacco grading and packaging was given none, with a 75 per cent divestment duty on incumbents. *It does not reach manufacture, and conflating the two would misstate the position.*	Indigenisation and Economic Empowerment Act [Ch. 14:33] s. 3A(1) and First Schedule item 9; S.I. 215 of 2025, Schedule item 9 and reg. 6(2)
SOVEREIGN MONOPOLIES, AND THE TWO OUTLIERS					
China (mainland)	2,256,400	No	State monopoly	Not a foreign-investment condition at all: manufacture is reserved to the State, and the monopoly reaches upstream inputs and the machinery	Law on Tobacco Monopoly of the People's Republic of China, in force 1 January 1992, amended 2009, 2013 and 2015, Arts. 1 to 5
Thailand		No	State monopoly	Reserved to a state enterprise by statute. The Act converted the former Thailand Tobacco Monopoly, a Ministry of Finance department, into a corporatised state enterprise	Tobacco Authority of Thailand Act, B.E. 2561 (2018), Government Gazette Vol. 135 Ch. 33 Kor, ss. 5 to 7 and 9
Bhutan		No	Barred to everyone. Not a foreign-investment rule	A prohibition on the activity, not on the owner. s. 11(b) to (e) were repealed by the 2021 amendment, and s. 12 as amended now permits import for personal consumption or commercial purpose, so only cultivation, harvest and manufacture remain prohibited	Tobacco Control Act of Bhutan 2010, consolidated to 2021, ss. 11(a) and 12
India	727,203†	Yes	Barred	The bar is on the owner, and it is the only one of its kind in the comparator set. The fourth proviso extends the bar to portfolio holding in listed Indian manufacturers. Beneath it stands a separate practice: fresh industrial licences have not been issued for this item since 1999	FEMA (Non-Debt Instruments) Rules, 2019, S.O. 3732(E) of 17 October 2019: Sch. I para (2)(g), gazette printed p. 72; Sch. II para (1)(a)(ii), fourth proviso, printed p. 95

Source: the investment and tobacco statutes of each economy, cited row by row; leaf production from FAOSTAT, calendar 2024. Conditions are summarised from the instruments. Where an economy tested conditions entry, it conditions the activity; only India conditions the owner. India's and Malawi's leaf figures are imputed by FAOSTAT, and Thailand's and Bhutan's leaf production is not shown. Two rows are provisional. In the United States, foreign acquisitions remain open to review by CFIUS, a transaction-by-transaction security screen and not a sector rule, and no federal instrument affirmatively states that tobacco manufacture carries no sectoral bar. In the Philippines, the Thirteenth Regular Foreign Investment Negative List, in force from 2 May 2026, replaced the list cited, and the new list itself has not been examined.

India also exports the heading its own entry names, since HS 2402, word for word the commodity description in paragraph 5.1(g), was exported at 8,465.78 tonnes in FY2023-24, valued at Rs 824.45 crore,[30] even as the comparators that admit the investment dwarf India's manufactured-product exports, with Türkiye at 4.6 times and Indonesia at 14 times the value.[31] It follows that the grower whose leaf feeds India's exports is locked inside an instrument no comparable economy uses.

Therefore the comparative record yields two findings. The instrument has no comparator in form. And it has not served any visible trade objective.

The Two Staged Alternatives, Examined and Set Aside

If the prohibition is to be lifted by stages rather than by deletion, two routes suggest themselves, an export-only carve-out and an approval route confined to existing manufacturers. The first was rejected by the Government on its own conduct. The second fails the grower.

[30]Tobacco Board, Annual Report 2023-24, printed pp. 83, 89.

[31]UN Comtrade, HS 2402 exports, calendar 2024, accessed 11 September 2026. India's own HS 2402 exports in calendar 2024 were US$98.62 m on the same source.

Before the April 2010 decision the Department had proposed a mainly-for-export version, but the ministries concerned agreed on the blanket prohibition that the Cabinet Committee on Economic Affairs approved.[32,33] It is also closed on the merits, because FTP 2023, paragraph 6.01(b), permits export of an ITC(HS)-prohibited item only "provided the input(s) used for the export item(s) is/are imported and there is no procurement of such inputs from DTA."[34] Since the grower's auction price is not improved by a factory that must import its leaf, the export-only form is set aside on the grower's own ground. The export trade that a carve-out would supposedly create already exists without one, since foreign capital already participates through the channels the prohibition left open.[35]

Hence the approval route is set aside on the same ground, because it is not a new buyer that it adds but only a new passport for the capital.

However, the objection that the 1999 licensing embargo is the real barrier must be conceded in its premise, because the Cabinet's own press release of 8 April 2010 recited it as the second stated reason for the prohibition.[36] If the embargo survives the reasoned review that Chapter 12 proposes, no new buyer appears because no new manufacturing capacity can be created, so that the auction-side gain does not run through the industrial licence, as the section on what needs no reform shows.[37]

The Staging Forms Indian Law Keeps

Indian law already knows how to license inside a prohibition, as four forms demonstrate, the first of which is Gujarat, where Section 12(a) of the Gujarat Prohibition Act, 1949, prohibits the manufacture of liquor, while Section 11 saves anything done under licence and Section 26(c) empowers the State to license distilleries.[38,39,40] Section 147, for its part, disapplies the Act entirely to movement across the customs frontier,[41] so that export out of India is outside the Act altogether.

The carabeef entry keeps the prohibition on the species and opens the cut, because ITC(HS) 2023 marks bovine carcasses and half-carcasses as prohibited, while the boneless buffalo-meat lines permit export on production of a veterinary certificate and an APEDA plant registration.[42,43,44] The domestic prohibition stands beside this freedom, since the Uttar Pradesh Prevention of Cow Slaughter Act does not contain the word "buffalo,"[45] which means that it is the certificate, not the tariff line, that decides.

Section 53 of the SEZ Act, 2005, deems Special Economic Zones a territory outside the customs territory of India, but only for the purposes of undertaking the authorised operations,[46,47] and DPIIT puts SEZ industrial licensing with the Department of Commerce.[48] FTP 2023 contemplates export-oriented units

[32]Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010; the Department's alternative proposal reported in "Govt Bans FDI in Cigarette Manufacturing", *Business Standard*, 9 April 2010.

[33]"Govt Bans FDI in Cigarette Manufacturing", *Business Standard*, 9 April 2010. The proposal, as reported, was to scale back the FDI ceiling for the tobacco industry from 100 to 74 per cent and to insert a caveat that cigarettes manufactured in the new ventures or in upgraded facilities must be mainly for consumption outside India. The ministries then agreed on the ban, which the Cabinet Committee on Economic Affairs approved, and the alternative is not a live proposal.

[34]Foreign Trade Policy 2023, Chapter 6, para 6.01(b), printed p. 53.

[35]Godfrey Phillips India Limited, Annual Report 2024-25, PDF p. 170, related-party note; Tobacco Board, Annual Report 2023-24, printed pp. 83, 89. Godfrey Phillips India contract-manufactures for Philip Morris and booked Rs 48,987.52 lakhs of export and contract-manufacture revenue from Philip Morris Products S.A. alone in FY25. India shipped 8,465.78 tonnes of HS 2402 goods in FY2023-24.

[36]Press Note No. 2 (2010 Series), Department of Industrial Policy and Promotion, 10 May 2010; Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010. The second stated reason: the decision "would bring the policy in line with the administrative decision not to grant industrial licence for cigarette manufacturing."

[37]Tobacco Board Act, 1975 (Act No. 4 of 1975), ss. 11A, 12; Alliance One Industries India's crop share derived from Tobacco Board, Annual Reports 2019-20 to 2023-24, Annexure-IV (AR 2023-24, printed pp. 78-80).

[38]Gujarat Prohibition Act, 1949 (Bombay Act No. XXV of 1949), s. 12(a). Section 12(a) provides: "No person shall manufacture liquor."

[39]Gujarat Prohibition Act, 1949, s. 11. Section 11 saves from the prohibition anything done "in accordance with the terms and conditions of a licence … granted thereunder."

[40]Gujarat Prohibition Act, 1949, s. 26(c). Section 26(c): the State Government may "license, on such conditions as the State Government deems fit to impose the construction and working of a distillery or brewery." No provision in the Act licenses manufacture for export per se.

[41]Gujarat Prohibition Act, 1949, s. 147. Section 147 declares, "for removal of doubts", that "nothing in this Act shall be deemed to apply to any intoxicant or other article in respect of its import or export across the customs frontiers."

[42]ITC(HS) 2023, Schedule 2, Chapter 2, tariff items 02011000 and 02021000 (DGFT Notification No. 60/2023).

[43]ITC(HS) 2023, Schedule 2, Chapter 2, policy condition against tariff items 02013000 and 02023000. Policy condition: production of "a certificate from the designated veterinary authority of the State, from which the meat or offals emanate, to the effect that the meat or offals are from buffaloes not used for breeding and [milch] purposes."

[44]ITC(HS) 2023, Schedule 2, Chapter 2, Note 6.

[45]Uttar Pradesh Prevention of Cow Slaughter Act, 1955 (U.P. Act No. I of 1956), s. 3. Section 3 forbids the slaughter of "a cow, bull or bullock." The word "buffalo" does not appear.

[46]Special Economic Zones Act, 2005 (Act No. 28 of 2005), s. 53.

undertaking to export their entire production, but the scheme nowhere mentions tobacco,[49,50,51] and even where Paragraph 6.01(b) permits export of an ITC(HS)-prohibited item, the imported-input condition forecloses the route for the grower, as the preceding section observed.[52]

Accordingly, four Indian instruments share one grammar, a prohibition, a saving for what is licensed, a condition on destination or provenance, and a registry, which is the sequence Chapter 12 follows. None of the four forms presently opens the tobacco entry.

They are offered as drafting precedents, since the Government need not invent the sequence when its own statute book already contains it. The Trojan-horse objection rests on a misstatement of the ask, which is deletion and not an export-only carve-out, and of Section 53, which deems the zone outside the customs territory and not outside India,[53] whereas the new-generation-product dimension is kept separate in Chapter 8.

What Needs No Reform

Paragraph 5.1(g) reaches the manufacture of one heading, HS 2402, and several adjacent activities sit outside the prohibition as drafted.[54]

Since the Board's registration scheme is ownership-neutral, as Section 12 provides that "No person shall export tobacco … unless he registers himself with the Board,"[55] foreign-invested leaf merchants already buy at the auctions, and Alliance One Industries India, 49 per cent held by Pyxus International, took 6.18 per cent of the combined Andhra Pradesh and Karnataka crop in FY2023-24.[56] Section 11A provides that "No person shall process virginia tobacco" without registration.[57] In this context "No person" attaches no nationality condition, and the Board's registration form has asked the foreign-majority question for fifty years without treating the answer as a bar.[58,59] The auction-side gain the study contemplates does not, accordingly, run through the industrial licence.

Upstream, leaf threshing is manufacturing under paragraph 5.2.5.1, while agro-services admit 100 per cent FDI on the automatic route.[60,61] However, the plantation list excludes tobacco,[62,63] and hence a clarificatory circular confirming that leaf processing for export is automatic-route manufacturing, and that registration under the Board is ownership-neutral, would add nothing to the law but would say what no instrument has yet said to the foreign investor in one place.

This is the cheapest recommendation in the report.

[47]Consolidated FDI Policy Circular of 2020, para 5.1; Foreign Exchange Management (Non-debt Instruments) Rules, 2019, rules 3-4. NDI Rules 2019 bar investment "in India" at rules 3 and 4 without any zone carve-out; neither the Consolidated FDI Policy Circular nor the NDI Rules contains an SEZ exception to the prohibited list.

[48]DPIIT, *FAQ, IDR / Arms*, services.dpiit.gov.in/lms/faq, accessed 11 September 2026.

[49]Foreign Trade Policy 2023, Chapter 6, para 6.00(a), printed p. 53.

[50]Foreign Trade Policy 2023, Chapter 6, para 6.07, printed p. 56. Paragraph 6.07: "Entire production of EOU/EHTP/STP/BTP units shall be exported."

[51]Foreign Trade Policy 2023, Chapter 6; Handbook of Procedures, Chapter 6; Appendix 6B. The words "tobacco", "cigarette", "bidi", "biri", "gutkha" and "pan masala" occur in none of them. Across the whole Policy and Handbook, the only passage in which "tobacco" appears is in Chapter 2 of the Policy, in the list of luxury goods that may not be supplied to the Democratic People's Republic of Korea.

[52]Foreign Trade Policy 2023, Chapter 6, para 6.01(b), printed p. 53.

[53]Special Economic Zones Act, 2005, s. 53.

[54]Consolidated FDI Policy Circular of 2020, para 5.1(g), p. 28.

[55]Tobacco Board Act, 1975, s. 12.

[56]CARE Ratings, press release on Alliance One Industries India Private Limited, 27 September 2023, pp. 1-3; Tobacco Board, Annual Reports 2019-20 to 2023-24, Annexure-IV (AR 2023-24, printed pp. 78-80). Alliance One is a joint venture with a shareholding of 51:49, the 49 per cent held by Pyxus International Inc. through its wholly owned subsidiary Standard Commercial Tobacco Company (UK) Ltd. The 6.18 per cent share in FY2023-24, 16,270,013.4 kg bought at an average Rs 222.52 per kg, is up from 3.68 per cent in FY2019-20.

[57]Tobacco Board Act, 1975, s. 11A.

[58]Tobacco Board Rules, 1976, Form 13, item 1(d). Form 13, in use since 1976, asks whether "the applicant firm is a foreign majority or multinational concern" and for "the extent of non-Indian ownership"; this is a declaration and not a disqualification.

[59]"'Ensure Higher Prices for Tobacco Farmers': H D Kumaraswamy to Board, Traders", *Deccan Herald*, 2 March 2026. The Board's Chairman said in March 2026, as reported, that for foreign companies there is "no prohibition on them purchasing tobacco leaf for export."

[60]Consolidated FDI Policy Circular of 2020, para 5.2.5.1, p. 34.

[61]Consolidated FDI Policy Circular of 2020, para 5.2.1(d), p. 30.

[62]Consolidated FDI Policy Circular of 2020, para 5.2.2 and note, p. 31.

[63]Lok Sabha, written reply of the Minister of State for Agriculture and Farmers Welfare, 5 August 2025 (PIB, PRID 2152559). The Board "does not directly deal with farm-to-factory linkages."

The Invitation

The Parliamentary Standing Committee on Commerce, in its 154th Report, recommended, as reported, that the Department study the prospects of opening the sector to foreign investment at the earliest,[64,65] even as the Commerce and Industry Minister was reported in July 2024 as saying that the Government was "not inclined to liberalize."[66]

Neither the recommendation nor the remark is an instrument. The recommendation asked for a study, and this report answers it. Every comparable economy admits the investment in cigarette manufacture, Indian law already keeps the staging forms, and the upstream agenda sits outside the prohibition as drafted. Therefore the only question still open is the one the Committee put, which no published study had answered by September 2026, and the next chapter answers it with drafted instruments.

[64]Department-related Parliamentary Standing Committee on Commerce, 154th Report, "Export of Agricultural and Marine Products, Plantation Crops, Turmeric and Coir", Rajya Sabha, submitted 26 August 2020, presented 18 September 2020.

[65]Department-related Parliamentary Standing Committee on Commerce, 154th Report, submitted 26 August 2020, presented 18 September 2020. The Committee also asked the Department to "explore the feasibility of establishing export-only tobacco farms."

[66]Commerce and Industry Minister Piyush Goyal, as reported in "Government Won't Liberalise FDI in Tobacco Sector: Piyush Goyal", ANI, 10 July 2024. In the agency's words, the Government was "not inclined to liberalize" and was "rather considering tightening the norms."

TOWARDS REFORM

12

Draft Instruments and Regulatory Design

12

Draft Instruments and Regulatory Design

Because exhortation is easy to shelve, the report ends in drafting. The study proposes seven instruments, each in the form the Government uses for that kind of act, and five of the seven take, wholly or in part, forms it uses every month.[1] Three carry the argument of this chapter. Instrument A1 deletes the tobacco entry from the prohibited sectors and inserts a conditional entry, with grower-welfare, capacity and parity conditions applying to every company on identical terms.[2] A2 constitutes the reasoned review of the 1999 embargo that travels with it.[3] A6 is the standing economic assessment that is the flagship recommendation, in a Gazette resolution whose form follows the precedent of NITI Aayog itself.[4]

A1 and A2 move together, and the pairing is not a courtesy.

The Pair

The deletion of the entry alone would add no new manufacturer-buyer at any auction, because the 1999 embargo means that fresh licences for cigarette manufacture "are not being issued for manufacture of this item on health grounds since 1999" in the Department's own words, while tobacco remains one of four industries still under compulsory licensing.[5] A1's own condition (i) says so on the instrument's face, that no investment under the entry "shall of itself authorise a new unit, a new article, or a substantial expansion of installed capacity".[6]

A person newly free to invest is therefore not free to build.

As Chapter 5 records, the manufacturer side of the flue-cured Virginia auction is two names, ITC and Godfrey Phillips India, ITC taking between a third and three-fifths of every crop.[7] A third manufacturer-buyer requires a new manufacturer, which requires the industrial licence the 1999 embargo withholds. Hence the deletion of the entry without a review of the embargo would change the passport of the capital and nothing else, which is the very criticism the study levels at the staged alternative. This is why the two instruments move together.

However, the deletion does carry one automatic consequence of its own, since the fourth proviso to Schedule II of the Non-debt Instruments Rules caps aggregate foreign portfolio holding in a prohibited-sector company at twenty-four per cent, while deletion removes the prohibition on which the proviso bites.[8] The portfolio ceiling therefore reverts to the cap in the new entry, a consequence A1 rule 4 states on the instrument's face.[9] Hence A1.2, the press note carrying the reasons, runs long by design, because an instrument deleting an unreasoned measure without reasons repeats the defect it corrects.[10,11]

[1]Preliminary Note to the draft instruments. Four of the seven are executive instruments throughout (rule amendment and press note, office memorandum, notification and rules, Gazette resolution); A7 joins a commencement notification and rules to two amendments of the Act of 2003; the two Bills (A3 and A4) require legislation.

[2]Instrument A1; Foreign Exchange Management (Non-debt Instruments) Rules, 2019, S.O. 3732(E), 17 October 2019, Schedule I, para (2)(g); Consolidated FDI Policy Circular of 2020, DPIIT, para 5.1(g), p. 28.

[3]Instrument A2; DPIIT, *Industrial Licensing Services*, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026; DPIIT, *FAQ, IDR / Arms*, services.dpiit.gov.in/lms/faq, accessed 11 September 2026.

[4]Instrument A6. NITI Aayog was constituted by a Cabinet Secretariat resolution of 1 January 2015.

[5]DPIIT, *Industrial Licensing Services*, accessed 11 September 2026. The four industries requiring compulsory licensing are tobacco, defence electronics, explosives and hazardous chemicals.

[6]Instrument A1.1, condition (i).

[7]Tobacco Board, Annual Reports 2019-20 to 2023-24, company-wise Annexure IV. Together the two constitute the entire Manufacturers category in every season for which buyer data exist; the dominant manufacturer takes 43 to 60 per cent of the Andhra Pradesh crop and 34 to 48 per cent of Karnataka's.

[8]NDI Rules 2019, Schedule II, para (1)(a)(ii), fourth proviso.

[9]Instrument A1, rule 4. Rule 4 offers to defer the reversion for a prescribed period.

[10]Instrument A1.2, explanatory note.

[11]Instrument A1.2, paras 2.1-2.4; Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010; DPIIT, *Industrial Licensing Services*, accessed 11 September 2026; Economic Advisory Council to the Prime Minister, Working Paper EAC-PM/WP/42/2026, "Rise in Tobacco Consumption and Policy Implications" (Shamika Ravi and Partha Protim Barman), February 2026. The recitals cite the three sentences of the April 2010 CCEA release, the Department's own statement of the 1999 practice, the Economic Advisory Council's findings and the 154th Report of the Commerce Committee, so that the record behind the deletion is as visible as the record behind the measure was opaque.

A2 is the review that travels with it. Its eight questions at paragraph 3 ask what the embargo decided, on what evidence, and whether the health objective would be better served by other instruments.[12,13,14] The review is drafted to be falsifiable, because paragraph 4 requires the data published in machine-readable form, while paragraph 8 fixes periods for the Government's decision.[15,16]

The objection that the embargo is the real barrier and the deletion cosmetic must therefore be conceded in its premise and answered on A2's face.[17] If the review concludes that the embargo should stay, no new capacity is built, and what the deletion has achieved is the removal of a nationality condition on the ownership of existing capacity, as Chapter 7 records. If the review concludes that new capacity may be licensed, it does so on published evidence under the assessment gate at paragraph 5.[18] Hence the review carries the discipline that the measure it reviews never did.

One design consequence must be stated openly, since silence on it is the strongest unforced error available to an opponent.[19] The deleted entry reaches heading 2402 alone. On the repeal of PECA, which A3 carries, foreign investment in heading 2404 products falls to the automatic route by default under paragraph (3) of Schedule I to the Non-debt Instruments Rules, because the prohibition was the work of the Act of 2019 and not of the investment entry.[20] The Bill's licensing regime at A3 Chapter II is the gate.[21] This is a decision the report cannot take for the Government.

The Product, the Buyer and the Track

Instrument A3 provides the replacement for PECA that Chapter 8 argued for.[22] Its operative contribution is in Sections 3 and 4, which classify vapour products, heated tobacco products and oral nicotine products as three distinct classes, with Section 4(2) providing that no prescribed condition "shall apply to more than one class unless it is expressly so prescribed".[23] This is the classification the Act of 2019 abandoned, since Section 3(d) swept every product into one undifferentiated class in which nicotine is expressly optional.[24,25] The Bill borrows laboratory recognition from COTPA Section 11, in force since 1 September 2019.[26,27]

EXHIBIT 19 **Seven Instruments, and What Each One Amends**

As proposed in Chapter 12: nothing here is law in force. The first column records the two sequencing constraints, and there are no others.

ORDER	NO.	WHAT IT DOES	AMENDS OR ISSUES UNDER
with A2	**A1**	Deletes the tobacco entry from the prohibited sectors and replaces it with a conditional entry among the permitted sectors. A1.1 is the rule amendment, which omits the prohibited entry, inserts the conditional entry (grower welfare, capacity, parity, no vested right) and lets the 24 per cent portfolio ceiling revert to the sectoral cap. A1.2 is the press note carrying the reasons	Rule amendment by NOTIFICATION of the Ministry of Finance, Department of Economic Affairs, under FEMA 1999 s. 46(2)(aa) and (ab), amending the FEMA (Non-Debt Instruments) Rules 2019, S.O. 3732(E) of 17 October 2019, Sch. I para (2)(g) and Sch. II para (1)(a)(ii) fourth proviso; plus a PRESS NOTE of DPIIT (FDI Policy Section) restating FDI Policy 2020 para 5.1(g). Practice issues the press note first and the rule amendment immediately after, on the same effective date. Movers: Ministry of Finance and DPIIT
with A1	**A2**	Constitutes the review of the 1999 licensing practice: eight questions on published evidence, data published in machine-readable form, a standstill on capacity while it runs, and a direction to design the assessment gate that A1.2 para 5.2 refers to	OFFICE MEMORANDUM of the Ministry of Commerce and Industry, DPIIT. It rests on the Industries (Development and Regulation) Act 1951 First Schedule entry and on the Department's own published statement that fresh licences are not being issued for manufacture of this item on health grounds since 1999. Mover: DPIIT

[12]Instrument A2, para 3, question (1).
[13]Instrument A2, para 3, questions (2)-(4).
[14]Instrument A2, para 3, questions (5)-(8).
[15]Instrument A2, paras 4 and 8.
[16]Instrument A2, para 6. A standstill under paragraph 6 prevents any fresh capacity from being built while the review runs.
[17]CCEA release, PIB, 8 April 2010, reason (ii); FDI Policy Circular 2020, paras 5.2.1, 5.2.2.1 and 5.2.5.1.
[18]Instrument A2, para 5.
[19]Instrument A1.2, para 3.2; Annex A, Part 2, item 6.
[20]NDI Rules 2019, Schedule I, para (3); PECA 2019, s. 4; Central Excise (Amendment) Act, 2025 (Act 34 of 2025), Fourth Schedule, tariff items 2404 11 00 and 2404 19 00 at 100 per cent.
[21]Instrument A1.2, para 3.2. Paragraph 3.2 states that consequence for the decision it calls for, whether the automatic route is intended or whether a conditioned entry is needed for heading 2404 as well.
[22]Instrument A3; Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019 (Act 42 of 2019), ss. 3(d) and 4.
[23]Instrument A3, ss. 3 and 4(2).
[24]PECA 2019, s. 3(d).
[25]Instrument A3, ss. 16(2) and 3(h); Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011, reg. 2.3.4. Oral nicotine products sit in Chapter VIII of the Bill, kept away from gutkha and khaini by the definition of "smokeless tobacco product" and by Section 16(2), which preserves those Regulations.
[26]Instrument A3, ss. 14(1), 12(2), 18 and 10(4). The Bill carries structural choices that remain open (the regulator at Section 14(1) among four options, standardised presentation at Section 12(2), flavours for oral nicotine products at Section 18, sale by electronic means at Section 10(4)); every rate, limit and penalty figure is bracketed, save the sums and suspensions that Section 19A(1) fixes. Exhibit 19 maps each of the seven instruments to the law it amends or issues under.
[27]Instrument A3, s. 8(3); COTPA 2003, s. 11, in force from 1 September 2019 under S.O. 3134(E), 29 August 2019.

ORDER	NO.	WHAT IT DOES	AMENDS OR ISSUES UNDER
	A3	The Nicotine and Novel Tobacco Products (Licensing, Standards and Regulation) Bill, 2026: classification, licensing, standards and nicotine limits, disclosure, a minimum age of twenty-one verified at sale and on delivery, marketing controls, presumptive brand-owner liability, with licence cancellation mandatory for marketing to minors and after a third contravention for sales to them, risk-graduated rates, a Tobacco Transition Fund for cessation and cancer care, surveillance and a regulator, with oral products in a Chapter of their own, repealing PECA 2019 with savings	A BILL, to be enacted by Parliament. It repeals the Prohibition of Electronic Cigarettes Act 2019 (42 of 2019), answering ss. 3(d) and 4; borrows laboratory recognition from COTPA s. 11 and the laying formula from COTPA s. 31(3); is bounded by FSS Regulations 2011 reg. 2.3.4; gives its graduated rates effect through exemption notifications under s. 5A of the Central Excise Act, 1944, within the Fourth Schedule ceilings set by Act 34 of 2025, and through GST rates notified on the GST Council's recommendation; and credits its Fund after appropriation by Parliament. Mover: Ministry of Health and Family Welfare, subject to the seating question at A6
	A4	Tobacco Board (Amendment) Bill, 2026: a new s. 12A registering buyers on stated criteria only, with deemed grant on delay and an express bar on refusing for sufficiency of numbers or protection of incumbents; provisos to s. 13 opening every auction and forbidding allotment otherwise than by bidding; s. 13C publishing buyer-wise purchases; s. 14B carrying the grower-welfare undertaking; and s. 8(2)(hh) adding a competition function	A BILL further to amend the Tobacco Board Act, 1975 (4 of 1975): amending ss. 3, 8(2), 13, 14, 23 and 32 and inserting ss. 12A, 13C and 14B. Mover: Ministry of Commerce and Industry
	A5	A5.1 specifies the goods (headings 2402, 2403, 2404 and optionally 2401) and the persons dealing with them, so that the track and trace power is used. A5.2 outlines the marking rules, rule 5 writing in the independence requirement the section lacks	A NOTIFICATION of the Ministry of Finance, Department of Revenue, CBIC, under CGST s. 148A(1), with RULES under s. 148A(2) and (3) read with s. 164. s. 148A was inserted with effect from 1 October 2025 by s. 132 of the Finance Act, 2025 (Act 7 of 2025) and commenced by Notification 16/2025-Central Tax of 17 September 2025. Mover: CBIC, on the recommendations of the GST Council
	A6	Constitutes the Standing Assessment on the Tobacco Sector: mandate at para 3, the health ministry's field confined at para 4, composition and disclosure at para 5, evidence-calling powers at para 6, the rule at para 7 that no new or tightened economic restriction is adopted without assessment, and at para 8 a timetabled review of every restriction already in force, each to be re-founded on assessed evidence or withdrawn, both enforced by a duty to publish reasons for departure	A GAZETTE RESOLUTION, not a statute, issued by the appointing authority (the Cabinet Secretariat, NITI Aayog or the Prime Minister's Office, a choice the draft leaves open). Its recital rests on the instruments listed at its para 1 and on the absence of any published economic assessment of them. Seating with the Economic Advisory Council to the Prime Minister or with NITI Aayog is likewise left open
(a) before or with (b)	**A7**	The harm-side coupling instruments, in outline. (a) commencement of COTPA s. 7(5); (b) the Maximum Permissible Nicotine and Tar Contents Rules 2026; (c) omission of cl. (b) of the s. 5(2) proviso, replaced by a prescribed price list; (d) omission of the s. 4 proviso, with a transition for existing smoking rooms	A COMMENCEMENT NOTIFICATION under COTPA s. 1(3), in the form of the five notifications already issued under that sub-section, and RULES under s. 31(2)(b) read with the proviso to s. 7(5); plus amendments to the s. 4 and s. 5(2) provisos and to the Prohibition of Smoking in Public Places Rules, 2008, G.S.R. 417(E), rr. 4(1) and 2(e). Mover: Ministry of Health and Family Welfare

Source: the study's own draft instruments proposed in Chapter 12, with the powers each one relies on. The whole map is the study's recommendation and none of it is law in force.

The Bill's protections for the young are drafted to bite on the brand owner and not only on the shop. Section 9 sets the minimum age at twenty-one and requires verification at the counter and, for sales by electronic means, both when the order is placed and at a handover in person, with delivery by post barred, while Section 9(4) presumes the manufacturer, importer and brand owner liable for any sale to a minor unless they prove licensed supply, traceability and due diligence.[28] Section 19A then escalates from a penalty of fifty lakh rupees with a ninety-day suspension, to five crore rupees with a year's suspension of every licence, to the cancellation of every licence, and a product marketed at minors loses its licence for good.[29] Licence fees, those penalties and a share of the duty on regulated products are credited, after appropriation by Parliament, to a Tobacco Transition Fund that may be spent only on cessation services, on the treatment of tobacco-related cancers in public hospitals and on surveillance.[30] The graduated rates themselves take effect where the law already places them, through exemption notifications under Section 5A of the Central Excise Act within the Fourth Schedule ceilings and through the GST Council, because a regulatory statute that set a rate of tax would become a taxing statute and could not bind the Council.[31]

Instrument A4 opens the auctions.[32] Section 12A requires the Board to register every qualifying buyer, with deemed grant on delay, and bars refusal "on the ground that the number of buyers is sufficient, or on the ground of the effect on any existing registered buyer".[33] The provisos to Section 13 open every auction to every registered buyer and forbid allotment otherwise than by the outcome of the bidding.[34,35,36] Section 8(2)(hh) gives the Board a competition function, with power to refer a practice to the Competition Commission, and the market study recommended in Chapter 5 asks the Commission to examine the conduct of the incumbent buyers at the auctions and the integration of leaf buying with manufacture and distribution, together with the structural remedy the Act provides where a dominant position is abused.[37]

[28] Instrument A3, ss. 9(1), 9(2) and 9(4), and the explanatory note on A3.

[29] Instrument A3, s. 19A(1) and (2).

[30] Instrument A3, s. 13A; Constitution of India, arts. 117(3) and 266.

[31] Instrument A3, s. 13(2) to (4); Central Excise Act, 1944 (1 of 1944), s. 5A; Notification No. 03/2025-Central Excise, 31 December 2025, G.S.R. 955(E); Constitution of India, art. 279A.

[32] Instrument A4; Tobacco Board Act, 1975 (4 of 1975), ss. 12, 13 and 13A.

[33] Instrument A4, proposed s. 12A(2) and (4). The Board must register every manufacturer, exporter, packer or dealer satisfying stated criteria "and no others".

[34] Instrument A4, amendment to s. 13 (provisos).

[35] Instrument A4, proposed s. 13C. Section 13C requires publication of buyer-wise purchases in machine-readable form.

[36] Tobacco Board Act 1975, ss. 8(2) and 8(3). This is the seventh design conflict in the draft instruments. The grower-welfare condition at Section 14B reaches virginia tobacco only, because Chapter III of the Act applies to virginia tobacco alone and Section 8(3) extends only clauses (c) to (g) of Section 8(2) to other tobaccos, so that the condition binds the flue-cured grower and no other.

[37] Instrument A4, s. 7 (inserting s. 8(2)(hh) in the Tobacco Board Act, 1975); Competition Act, 2002 (12 of 2003), ss. 4, 27, 28 and 49(1); Chapter 5.

Section 148A of the CGST Act has been in force since 1 October 2025.[38,39] Hence A5 asks only that an existing power be exercised.[40,41] Rule 5 of the marking rules writes in the independence requirement the Protocol demands and Section 148A does not contain.[42]

The Coupling as Sequence

A7 couples the capital reform to the completion of the harm-side ledger with a binding that rests on law rather than exhortation, because two of its four limbs are powers in force for years and never used to this end.[43] Commencement of Section 7(5) of COTPA requires a single notification under Section 1(3), the form in which five earlier commencement notifications were issued, the last of them bringing Section 11 into force from 1 September 2019.[44] Section 31(2)(b), the power to prescribe maximum nicotine and tar contents, has been in force since 1 May 2004 and has never been exercised.[45] The executive told the Kerala High Court in July 2026, as reported, that it had "consciously refrained" from notifying Section 7(5), because without statutory maximum limits numerical disclosure could give "incomplete and potentially misleading" information.[46]

It has held the power to end that state of affairs for twenty-two years.

Hence the coupling asks not for new powers but for the exercise of powers Parliament gave two decades ago. The sequence matters. Rules prescribing limits under a power referencing "the proviso to sub-section (5) of section 7" while that sub-section is uncommenced invite the objection that they rest on a dormant provision.[47] Therefore A7(a), the commencement, must precede or accompany A7(b), the limits.[48]

The objection that the coupling is unenforceable as a sequencing commitment across ministries is the strongest objection the study anticipates, and partly right.[49] A policy sequence across ministries is not legally enforceable, while a condition precedent on an instrument's face is. A1.1 condition (ii), read with A1.2 paragraph 5.2, is drafted as a condition precedent, so that no approval issues for a capacity change unless the assessment has been made and published, which is the very form that survives a legitimate-expectation challenge on the reasoning in *Philip Morris v Uruguay*.[50] If the rest fails, A6 records that failure in a published report, which is more than the present arrangement offers, because it has no assessment at all.

The obligations the package places on the manufacturers already in the market are the measure of whose package it is, and the box below gathers them in one place.

[38]Instrument A5; Central Goods and Services Tax Act, 2017, s. 148A, inserted by s. 132 of the Finance Act, 2025 (Act 7 of 2025), commenced by Notification No. 16/2025-Central Tax, 17 September 2025 (in force 1 October 2025).

[39]India, Implementation Report under the WHO Framework Convention on Tobacco Control (2025 reporting cycle), 17 July 2025, pp. 50 and 85. India's own filing reports no markings on unit packaging and lists a tracking system as a priority yet to be developed.

[40]CBIC notification record, taxinformation.cbic.gov.in, notifications from 28 January 2025 to 1 September 2026, accessed 11 September 2026. On the CBIC's own notification record, no notification under Section 148A specifying goods or persons has been issued for tobacco, and no marking rules have been made, as at 11 September 2026.

[41]Instrument A5.1. The notification names four tariff headings and the persons who deal with the goods on those headings.

[42]Instrument A5.2, rule 5; Protocol to Eliminate Illicit Trade in Tobacco Products, 12 November 2012, art. 8, para 12.

[43]Instrument A7; Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (Act 34 of 2003), ss. 1(3), 7(5) and 31(2)(b); ss. 4 and 5(2) provisos. The coupling instruments carry commencement of the COTPA disclosure provision, limits on contents and emissions, closure of the point-of-sale advertising exemptions and removal of the smoking-room carve-outs, so that the package leaves tobacco control stronger than the status quo on identical conditions for every company.

[44]COTPA 2003, s. 1(3); S.O. 1955(E), 16 November 2007 (commencement of ss. 7(1)-(4), 8, 9, 10 and 20; sub-s. (5) and s. 11 omitted); S.O. 3134(E), 29 August 2019 (commencement of s. 11 from 1 September 2019). None of the five commencement notifications brought sub-section (5) into force.

[45]COTPA 2003, s. 31(2)(b), in force from 1 May 2004 under S.O. 238(E), 25 February 2004.

[46]Union affidavit in *Sangeerthana M. v Union of India*, W.P.(C) No. 8332 of 2025, Kerala High Court, hearing of 9 July 2026; as reported in *Bar & Bench*, 10 July 2026, from whose report the quoted words are taken, and *India Legal*, 9 July 2026, which reports the argument from the absence of maximum limits.

[47]COTPA 2003, s. 31(2)(b), expressed to specify limits "under the proviso to sub-section (5) of section 7". This is the third design conflict in the draft instruments.

[48]Instruments A7(a) and A7(b).

[49]The enforceability objection.

[50]Instruments A1.1, condition (ii), and A1.2, para 5.2; *Philip Morris v Uruguay*, ICSID Case No. ARB/10/7, award of 8 July 2016, paras 426 and 429.

WHAT THE INDUSTRY GIVES UP

Each obligation falls on the manufacturers already in the market, and each is drafted in the instruments of Chapter 12. A letter marks the WHO MPOWER measure the obligation serves.

W	Manufacturers declare the nicotine and tar in every product against statutory maxima, a duty Parliament wrote in 2003 and the executive never commenced, and a product above the limit can no longer be sold.	*A7(a) and (b)*
E	The point-of-sale advertising exemption goes, leaving a plain price list, and a novel product marketed at minors loses its licence for good.	*A7(c); A3, ss. 11 and 19A(2)*
P	The proviso that keeps smoking rooms open in hotels, restaurants and airports goes, after a transition.	*A7(d)*
O	Licence fees, penalties and a share of the duty on novel products pay for cessation services and the treatment of tobacco-related cancer.	*A3, s. 13A*
M	Every pack carries a unique mark generated by the State, the industry is barred from running the tracking system, and every buyer's purchases at the leaf auctions are published.	*A5; A4, s. 13C*
AGE	Novel products reach only verified adults of twenty-one and above, through licensees alone, and the brand owner is presumed liable for every sale to a minor unless it shows due diligence.	*A3, ss. 9 and 19A(1)*
ENTRY	No manufacturing capacity is built or changed without a published assessment of its effects on health and competition, and no investor acquires a right that regulation will stand still.	*A1.1, conditions (ii) and (v); A3, s. 21(3)*
AUCTION	Incumbent leaf buyers lose the power to keep rivals off the auction floor.	*A4, s. 12A*

The Staged Alternative Set Aside

If the ask is staged rather than stated, neither route reaches the grower, since an approval route confined to existing manufacturers would unfreeze capital but not add a buyer, while an export-only carve-out is closed on the merits of India's own trade law.[51,52] Thus the staged alternatives fail the grower's test.

The Standing Assessment

India already seats the economics of its other risk products with authorities constituted for the purpose, from FSSAI for food to the state excise frameworks for alcohol.[53] Japan runs its tobacco economics from the Ministry of Finance, whose Tobacco Business Act governs everything from the registration of wholesalers and the licensing of retailers to the pack health caution without the health ministry in the statute.[54,55] In the United States, 21 U.S.C. Section 387e(b) requires every manufacturer to register with the FDA, a disclosure requirement and not a restriction on ownership.[56]

Hence the seating India has chosen for its entry bar is a policy choice and not a structural necessity, since no other democracy among the comparators places the economics of its tobacco sector under the health ministry's effective writ.

[51]ITC Limited, Shareholding Pattern as at 30 June 2026, BSE filing, Table III (BAT group 22.9098 per cent), r. 35 (SUUTI 7.7798 per cent); Godfrey Phillips India Limited, Annual Report 2024-25, Note 15(iii), PDF p. 145 (Philip Morris Global Brands Inc. 25.10 per cent). An approval route confined to existing manufacturers would unfreeze the foreign capital already inside the wall (BAT holds 22.91 per cent of the dominant manufacturer, Philip Morris holds 25.10 per cent of the second-largest, the Union itself holds 7.78 per cent of ITC through SUUTI), but would not add a buyer, because the licensing position is untouched and the manufacturer side of the auction stays at two names. It changes the passport of the capital and not the number of buyers, which is the criticism Chapter 3 levels at the entry itself.

[52]CCEA release, PIB, 8 April 2010; Foreign Trade Policy 2023, Chapter 6, para 6.01(b). The export-only carve-out is closed first by the Government's own conduct, since before the April 2010 decision the Department had proposed a scaled ceiling with a mainly-for-export caveat but the ministries concerned agreed on the blanket prohibition that the Cabinet Committee on Economic Affairs approved, and second on the merits of India's own trade law, since FTP 2023 paragraph 6.01(b) permits export of an ITC(HS)-prohibited item only on the condition that inputs are imported and not procured from the Domestic Tariff Area, which puts the grower's leaf outside the factory and defeats the only reason for wanting the route. Chapter 11 settled both grounds.

[53]Food Safety and Standards Act, 2006; Drugs and Cosmetics Act, 1940; Constitution of India, Seventh Schedule, List II, Entry 8.

[54]Japan Ministry of Finance, *Functions*, mof.go.jp, accessed 11 September 2026; Tobacco Business Act, 1984 (Japan), arts. 11, 20, 22, 33 and 39. The Financial Bureau's stated functions include "the tobacco industry, the salt industry", and the Tobacco Business Act also covers the approval of retail prices and the prescription of the pack health caution.

[55]Tobacco Business Act, 1984 (Japan), art. 1: the object includes "財政収入の安定的確保", the stable securing of fiscal revenue. This is a limitation that must travel with the comparison, since the Act's stated object is the industry's sound development contributing to fiscal revenue, not health.

[56]21 U.S.C. Section 387e(b). The Center for Tobacco Products was established under the Family Smoking Prevention and Tobacco Control Act of 2009 (Pub. L. 111-31).

Instrument A6 constitutes the standing assessment by Gazette resolution, with a mandate to assess every restriction of an economic character on published evidence, while the health ministry retains what is genuinely its own.[57,58] No member remunerated by a manufacturer may serve, every submission is published with its disclosed funding, and every meeting with a manufacturer goes on a published record.[59,60]

Paragraph 7 carries the rule that gives the assessment its force, that no new restriction of an economic character shall be adopted without assessment and publication.[61] Paragraph 8 turns the same rule on the restrictions already in force, each of which must be assessed within a fixed period and then either re-founded on the evidence or withdrawn, so that a Ministry which keeps a restriction the assessment does not support must publish its reasons for doing so.[62] This is the limit of a Gazette resolution, that it cannot bind the Government's discretion. Accordingly, paragraphs 7(2) and 8(2) enforce both rules by a duty to publish reasons for departure.[63] The objection that this body is a structural capture risk is conceded in its premise, since an assessment seated with an economic body will carry the biases of economic development.[64] However, the present arrangement has no assessment at all, of any bias, on a record carrying no study before 2010 and no review since.[65] Hence a published assessment with a stated method is reviewable in a way that an unpublished commitment is not.

The Close

The report opened on a verdict. On the findings recorded in Chapter 1, the share of households reporting expenditure on any tobacco product rose while every instrument aimed at this sector was in force.[66] Having proved that those instruments failed on their own test and that the grower paid, the report closes where it opened, on the institutional question. Economic regulation of the sector must be re-founded on economic evidence owned by economic institutions, through a standing sectoral assessment of the EAC-PM or NITI class, with each ministry confined to the instruments of its own competence.[67]

The health ministry keeps what is genuinely its own. However, it loses the writ over investment policy and market structure, because an investment policy circular is an economic instrument whose justification must be held to the standards of economic reasoning, which in this sector it has never been required to meet.[68] Every economic restriction that cannot be re-founded on assessed evidence, tested periodically and published, goes.[69] Accordingly, the instruments are drafted and the ask is stated. What remains is the signature.

[57] Instrument A6, para 3.
[58] Instrument A6, para 4.
[59] Instrument A6, paras 5(3), 6(2) and 6(3).
[60] Instrument A6, para 5(4). Whether the same disqualification applies to members funded by tobacco-control advocacy is left open at paragraph 5(4).
[61] Instrument A6, para 7(1).
[62] Instrument A6, para 8.
[63] Instrument A6, paras 7(2) and 8(2); explanatory note.
[64] Annex B, objection 7.5, "The standing economic assessment body is a structural capture risk", and the study's answer.
[65] CCEA release, PIB, 8 April 2010 (no study cited); five negative parliamentary answers on review, 2015-2017; Department-related Parliamentary Standing Committee on Commerce, 154th Report, "Export of Agricultural and Marine Products, Plantation Crops, Turmeric and Coir", Rajya Sabha, submitted 26 August 2020, presented 18 September 2020. The five negative review answers between 2015 and 2017, and the absence, as at 11 September 2026, of any published study answering the Commerce Committee's 2020 request, are the full record.
[66] EAC-PM/WP/42/2026, p. 11. The share of urban households reporting expenditure on any tobacco product rose from 34.94 per cent in 2011-12 to 45.64 per cent in 2023-24. The paper does not address the investment entry, and the reading of its figures against the instruments in force is this report's own.
[67] Chapter 2, where the flagship recommendation is stated and defended.
[68] Chapter 2, on the seating of the investment instrument; Cabinet Committee on Economic Affairs, press release, PIB, 8 April 2010.
[69] Chapter 2; Instrument A6, paras 3(c), 7 and 8.

Recommendations

The report asks the Government to delete the entry that prohibits foreign direct investment in the manufacture of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.[1] A conditional entry among the permitted sectors would take its place, with grower-welfare, capacity and parity conditions applying identically to every company, domestic or foreign. At the same time, the report asks for a reasoned review of the 1999 licensing embargo, under which fresh licences for cigarette manufacture have not been issued on health grounds for a quarter of a century.[2]

If the deletion were made while the embargo stands, no new manufacturer-buyer would appear at any auction, since the manufacturer side of the flue-cured Virginia auction is two names, one taking between a third and three-fifths of every crop, and a third requires the licence the embargo withholds.[3]

The report asks for this because the entry failed on its own test. The Prime Minister's own Economic Advisory Council records that the share of urban households reporting expenditure on any tobacco product rose from 34.94 to 45.64 per cent between 2011-12 and 2023-24, and the rural share from 59.31 to 68.49 per cent, years in which the entry was in force throughout.[4] The entry had no counterpart in any of nine other leaf-producing economies with private manufacture. Hence it operated not as an exclusion of foreign capital but as a freeze of the market as it stood in 2010.

The conditions are drafted to leave tobacco control stronger than the status quo. No investment shall of itself authorise a new unit, and no capacity change shall proceed until its health and competition effects have been assessed and published.[5] The capital reform is coupled to the commencement of the COTPA disclosure duty left uncommenced since 2003, limits on nicotine and tar, the closure of the advertising exemptions and the exercise of the Section 148A track-and-trace power.

The report also asks Parliament to replace PECA with a licensing and standards statute that classifies vapour, heated tobacco and oral nicotine products separately, sets the minimum age at twenty-one, makes the brand owner presumptively liable for every sale to a minor, and credits licence fees, penalties and a share of the duty on these products to a fund for cessation and cancer care. Rates on these products would be graduated to risk and would take effect through exemption notifications under Section 5A of the Central Excise Act, within the Fourth Schedule ceilings, and through notification on the recommendation of the GST Council.[6] The report further asks for the Tobacco Board Act to be amended so that every qualifying buyer may bid at the leaf auctions, and for a Competition Commission market study of leaf buying that reaches the conduct of incumbent buyers and their integration with manufacture and distribution.[7]

The flagship recommendation is therefore institutional before it is instrumental. Economic regulation of the sector must be re-founded on economic evidence owned by economic institutions, through a standing sectoral assessment of the EAC-PM or NITI class, while the health ministry retains cessation, warnings, surveillance and health education. Accordingly, every economic restriction that cannot be re-founded on assessed evidence goes, whether it is already in force or yet to be proposed.[8]

The standing assessment decides not whether the Government may regulate tobacco, which no one contests, but whether each instrument can state the mechanism by which it serves its stated objective, on published evidence.

[1]Instrument A1; Foreign Exchange Management (Non-debt Instruments) Rules, 2019, S.O. 3732(E), 17 October 2019, Schedule I, para (2)(g); Consolidated FDI Policy Circular of 2020, DPIIT, para 5.1(g), p. 28.

[2]Instrument A2; DPIIT, *Industrial Licensing Services*, services.dpiit.gov.in/lms/ilServices, accessed 11 September 2026.

[3]Tobacco Board, Annual Reports 2019-20 to 2023-24, company-wise Annexure IV.

[4]Economic Advisory Council to the Prime Minister, Working Paper EAC-PM/WP/42/2026, "Rise in Tobacco Consumption and Policy Implications" (Shamika Ravi and Partha Protim Barman), February 2026, p. 11. The paper does not address the investment entry, and the reading of its figures against the entry is this report's own.

[5]Instrument A1.1, conditions (i) and (ii); Instrument A1.2, para 5.2.

[6]Instrument A3, ss. 4, 9, 13(2) to (4), 13A and 19A; Central Excise Act, 1944 (1 of 1944), s. 5A; Constitution of India, art. 279A.

[7]Instrument A4; Chapter 5; Competition Act, 2002 (12 of 2003), ss. 27, 28 and 49(1).

[8]Instrument A6, paras 7 and 8.