

**BRIDGESTONE/FIRESTONE AMERICAS HOLDING, INC.**

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September 13, 2002

Ms. Mai T. Dinh  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: Notice of Proposed Rulemaking: "Contribution Limitations and Prohibitions"

Dear Ms. Dinh:

In response to the Federal Election Commission's August 22, 2002 Notice of Proposed Rulemaking, Bridgestone Firestone Americas Holding Inc. ("Bridgestone/Firestone") submits this comment in opposition to the proposed regulation to eliminate all federal PACs established by domestic subsidiaries of foreign corporations.<sup>1</sup> The Commission's proposal to curtail the political rights of such companies – as well as their American employee PAC contributors – unfairly and unreasonably discriminates against a specific class of American workers and corporations. We ask the Commission to reject the proposed rule because it runs contrary to the express language of the new statute, is fundamentally unfair to hundreds of American employees and furthers no legitimate public policy.

**I. Introduction and Background**

Bridgestone/Firestone is a wholly-owned United States subsidiary<sup>2</sup> of Bridgestone Corporation, a Japanese company. Bridgestone/Firestone's roots in the U.S. can be traced back more than one hundred years, to the establishment of Firestone Tire and Rubber Company in 1900.

Although known as a world leader in the research, development and marketing of tires of all types, Bridgestone/Firestone is also recognized as a producer of other quality products including air springs, building materials, synthetic and natural rubber and industrial fibers and textiles. The company's corporate headquarters is located in

<sup>1</sup> 67 Fed. Reg. 54366 (Aug. 22, 2002)

<sup>2</sup> Bridgestone Firestone Americas Holding Inc. is a Nevada corporation.

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Nashville, Tennessee, with manufacturing, distribution and retail centers in 47 of the fifty states. We currently employ approximately 40,000 employees nationwide.

In 2002, Bridgestone/Firestone established a federal PAC. Since that time, we have solicited thousands of eligible restricted class employees. Due to the dedication and commitment of our American employee contributors, the PAC's political efforts have been extremely successful thus far. The PAC has raised more than \$100,000 and has contributed to state and federal candidates and the committees of both political parties. In addition to PAC participation among "restricted class" employees, we encourage all Bridgestone/Firestone associates to become more involved in their communities and in the political process.

## **II. The FEC's Proposal to Ban Federal PACs of Domestic Subsidiaries of Foreign Corporations**

In its most recent NPRM to implement the provisions of the Bipartisan Campaign Reform Act ("BCRA"),<sup>3</sup> the FEC proposes to absolutely prohibit domestic subsidiaries from forming and administering PACs, and to ban them from making corporate contributions to state and local candidates and political committees.<sup>4</sup> We see no reason for the Commission to take such drastic action in light of the absence of any statutory authority or public policy rationale to do so. We agree with the Office of General Counsel's legal opinion that the "BCRA does not mandate a rule-making regarding U.S. subsidiaries,"<sup>5</sup> and we urge the Commission to accept that recommendation.

## **III. The Current Foreign National Contribution Prohibition**

Current law prohibits a "foreign principal" or a "foreign national," as defined by 22 U.S.C. § 611(b) from making or promising to make (in either express or implied terms) a contribution in any federal, state or local election.

Section 611(b) defines a "foreign principal" to include:

- (1) a government of a foreign country and a foreign political party;
- (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that *such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States*; and
- (3) a partnership, association, corporation, or other combination of persons organized under the laws of or having its principal place of business in a foreign country (emphasis added).

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<sup>3</sup> P.L. 107-155, 116 Stat. 81 (Mar. 27, 2002).

<sup>4</sup> 67 Fed. Reg. at 54372.

<sup>5</sup> FEC Agenda Doc. 2002-57 at p. 31.

The term “foreign national” includes individuals who are neither citizens of the United States nor permanent legal residents in the U.S. as defined by 8 U.S.C. § 1101(a)(20).<sup>6</sup> Thus, expressly *excluded* from the definition of a “foreign national” are: (1) American citizens; (2) permanent legal residents and (3) corporations established under State law with their principal place of business in the United States. This standard has been interpreted and reiterated in FEC Advisory Opinions since 1977.<sup>7</sup>

FEC regulations place further restrictions on the participation of foreign national individuals in a company’s political activities, including involvement in the PAC. For example, foreign nationals may not be solicited for PAC contributions, and they are prohibited from engaging in PAC administration or decision-making.<sup>8</sup> FEC advisory opinions have also imposed certain safeguards to prevent a foreign parent company from subsidizing a domestic subsidiary’s PAC costs or underwriting its political contributions. The agency’s long-held interpretation of section 441e requires a domestic subsidiary to demonstrate, through a reasonable accounting method, that it has sufficient funds in its account, other than funds given or loaned by a foreign parent, from which to make corporate donations in connection with non-federal elections.<sup>9</sup>

#### IV. The BCRA Foreign National Prohibition

The BCRA in no way altered the pertinent exemptions of section of 441e. According to the BCRA’s preamble to section 441e, the amendments were intended to clarify “that the ban on contributions to foreign nationals applies to soft money donations.”<sup>10</sup>

Section 303 of the BCRA (the amended section 441e), states:

“Section 319 of the Federal Election Campaign Act of 1971 (2 U.S.C. § 441e) is amended –

- (1) by striking the heading and inserting the following ‘contributions and donations by foreign nationals’; and
- (2) by striking subsection (a) and inserting the following:

- (a) Prohibition – It shall be unlawful for –
  - (1) a foreign national, directly or indirectly, to make –

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<sup>6</sup> 2 U.S.C. § 441e(b)(2); 11 C.F.R. § 110.4(a)(4)(ii).

<sup>7</sup> 11 C.F.R. § 110.4(a)(3); FEC Adv. Op. Nos. 1977-53 (prohibiting foreign companies from establish federal PACs); 1990-8; 1995-15, 1999-28.

<sup>8</sup> FEC Adv. Op. Nos. 1898-29, 1990-8, 1992-16, 1995-15, 2000-17.

<sup>9</sup> FEC Adv. Op. No. 1989-20 (prohibiting contributions for state local candidates from a domestic subsidiary where the source of the funds was the foreign parent corporation); 1989-29.

<sup>10</sup> Cong. Rec. S1994 (Mar. 18, 2002).

(A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State or local election;

(B) a contribution or donation to a committee of a political party or

(C) an expenditure, independent expenditure, or disbursement for an electioneering communication.; or

(2) a person to solicit, accept or receive a contribution or donation described in subparagraph (A) or (B) of paragraph (1) from a foreign national.”

**V. The FEC Should Reject the NPRM Proposal to Abolish the Rights of Domestic Subsidiaries to Establish and Administer Federal PACs and Make Contributions to State and Local Candidates.**

We believe that the Commission’s longstanding regulations applicable to the domestic subsidiaries of foreign corporations correctly interpret section 441e. The FEC’s proposal to “prohibit foreign-controlled U.S. corporations, including a U.S. subsidiary of a foreign corporation, from making corporate donations, or from making federal contributions from their PACs, or both” is unwarranted and unreasonable for the reasons described below.

First, the BCRA made no change to the FECA’s existing statutory exception permitting foreign corporations’ domestic subsidiaries to make contributions in state and local elections, to establish a PAC, and to guarantee the ‘restricted class’ American employees an equal opportunity to voice their political views by contributing to the company’s PAC. Because Congress retained this exception, we can only assume that it intended no change in the status of companies like Bridgestone/Firestone. The FEC should refrain from amending its current interpretation in the absence of a certain and specific statutory mandate.

Second, we see no reasonable public policy rationale for overthrowing longstanding agency policy. Though congressional sponsors like Senator Feingold saw the necessity of clarifying court decisions regarding the prohibition on *individual* foreign national contributions regarding soft money donations, no parallel justification exists as a basis for curtailing the rights of American workers of U.S. subsidiaries of foreign corporations or the domestic subsidiaries for whom they are employed. Instead, the promulgation of such a rule would unfairly discriminate against a certain “class” of American workers, simply by virtue of their immediate employer’s ultimate parent.

Finally, we believe that any new regulation of foreign “controlled” companies would be unreasonable and impossible to enforce. The NPRM fails to set forth suggested definitions of “control,” perhaps because the concept will prove difficult to define and enforce. If “control” is defined by stock ownership or majority-held shares, a domestic subsidiary with publicly traded stock may be controlled by a different group of

individuals on any given day, and whose citizenship would be difficult for the FEC to ascertain. An alternative definition of control may be determined by the individuals – either the Board of Directors or senior executives – who oversee the company’s operations. If that is the case, we believe that the Commission’s existing regulation at 11 C.F.R. 110.4(a)(3) effectively serves the Commission’s purpose.<sup>11</sup>

To summarize, the FEC’s current interpretation of section 441e and its controlling regulations provide sufficient guidance for the domestic subsidiaries of foreign corporations. More importantly, however, the regulatory safeguards already in place effectively serve the underlying statutory purpose – to prevent the influence of foreign corporate dollars in U.S. elections.

We therefore urge the Commission to abide by the Office of General Counsel’s recommendation and reject the proposal to eliminate the PACs and corporate contributions of domestic subsidiaries of foreign parent companies.

We thank you for the opportunity to provide comments on this FEC regulatory action and look forward to the agency’s decision.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven Alay". The signature is written in a cursive, flowing style with a large loop at the end.

On behalf of Bridgestone Firestone Americas Holding Inc.

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<sup>11</sup> That paragraph states that a “foreign nationals shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, or political committee, with regard to such person’s Federal or nonfederal election-related expenditures in connection with elections for any local, State or Federal office or decisions concerning the administration of a political committee.”