



EUROPEAN COMMISSION  
Impact Assessment Board

Brussels,  
D(2013)

**Opinion**

**Title**                    **DG TRADE – Impact Assessment on a Commission proposal for negotiating directives for an EU-Myanmar/Burma investment protection agreement**  
(draft version of 23 October 2013)\*

**(A) Context**

Recent political and economic developments in Myanmar/Burma have prompted the EU to open a new chapter in its relations with the country with all but the arms embargo being lifted by the Council on 22 April 2013. This implies the restatement of duty-free quota-free access to the EU market (under the “Everything but Arms” arrangement for Least Developed Countries). On the occasion of the visit of Myanmar/Burma's President U Thein Sein in Brussels on 5 March 2013, the EU and Myanmar/Burma agreed to "*explore the feasibility of an investment agreement*". At present there is no Bilateral Investment Treaty between Myanmar/Burma and any EU Member State. No free trade agreement negotiations are foreseen in the near future.

**(B) Overall opinion: POSITIVE**

**The report should be improved in a number of respects. First, it should present in greater detail under the baseline scenario the outlook for legal certainty, protection from discrimination for EU investors and compliance with labour standards in Myanmar/Burma, given recent policy initiatives in these areas. Second, it should provide more detailed information on the proposed standalone Investment Agreement. Third, it should present a more robust assessment of all feasible options considered, particularly option 2, and provide a broad order of magnitude of the impact of the preferred option on key indicators (FDI from EU, employment, economic growth). The risk of any (unintended) significant impacts on other developing countries should be assessed. Finally, the report should set out more precise plans for monitoring and evaluation.**

**In written communication with the Board DG TRADE accepted to amend the report along the lines of these recommendations.**

\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

### **(C) Main recommendations for improvements**

**(1) Strengthen the baseline scenario.** The report should present in greater detail under the baseline scenario the outlook for legal certainty, protection from discrimination for EU investors and compliance with labour standards in Myanmar/Burma against the background of the possible impact of the recent policy initiatives such as two new labour laws on labour rights and working conditions, the Foreign Investment Law, or Myanmar's adhesion to the Convention on Recognition & Enforcement of Foreign Arbitral Awards. This should include consolidating the content of section 6.1.3.2 ("expected impacts on specific key sectors) under the baseline scenario section. In addition, the report should provide more background information on the newly established framework for bilateral policy dialogue on trade and investment.

**(2) Better present the options.** The report should provide more detailed information on the content of the proposed standalone Investment Agreement, describing the key standards of investment protection that would be included in the negotiation under option 3 and comparing them to existing bilateral investment agreements (or proposals for new EU agreements such as the one with China). The report should also briefly explain why no sub-options can be considered under option 3. In addition, the report should clarify if Regulation (EU) No 1219/2012 establishing transitional arrangements for bilateral investment agreements between EU Member States and third countries (as per option 2) has already been implemented and, if so, under what conditions.

**(3) Strengthen the assessment of impacts.** Against the background of a strengthened baseline scenario, the report should more comprehensively assess all feasible options considered, including option 2. This would better indicate the difference between the impacts of options 2 and 3. Moreover, the report should provide an approximate order of magnitude for the impact the preferred option could have on the main indicators (FDI from EU, employment, economic growth) while stressing the uncertainties attached to such a broad estimation. The report should also better assess the potential risks of production delocalisation, specific impacts on SMEs and any significant (unintended) impacts on other developing countries (such as spill-over or demand-substitution effects).

**(4) Provide more concrete monitoring and evaluation plans.** The report should set out more precise plans for monitoring and evaluation including the date of the planned evaluation (relative to the eventual implementation of a standalone investment agreement), as well as details about the indicators to be collected and by whom.

*Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.*

### **(D) Procedure and presentation**

The report should better present specific stakeholders' views in relation to key elements of the initiative (including divergent or conflicting ones). It should avoid presenting stakeholders' views in terms of percentages of total responses, given that only 36 usable responses were received. The main text should be shortened by avoiding repetitions, by being more concise in the problem definition and analysis of impact sections, and by moving additional details into annexes.

<b>(E) IAB scrutiny process</b>	
Reference number	2013/TRADE/016
External expertise used	No
Date of IAB meeting	Written procedure