Date: 2016.04.05  
Time: 14:30 – 16:30  
Location: Centre Albert Borschette, Room 1-A, Rue Froissart 36, 1040 Brussels

Lead speakers

Mr Carlo Pettinato, Deputy Head of Unit, Trade and Investment, Directorate-General for Trade  
Mr Nicolas von Lingen, Investment negotiator, Trade and Investment Unit, Directorate-General for Trade  
Ms Delphine Sallard, Head of Unit, Evaluation Unit, Directorate-General for Trade  
Mr João Pereira, Evaluation Coordinator, Evaluation Unit, Directorate-General for Trade  
Ms Silvia Formentini, Trade and Sustainable Development Unit, Directorate-General for Trade  
Mr Joachim Monkelbaan, Team Leader, Independent Contractor  
Mr Ben Gardiner, Senior Modelling Expert, Cambridge Econometrics  
Mr Guillermo Hernández, Economic Analyst, Milieu Ltd.  
Mr Tony Zamparutti, Principal Policy Advisor, Milieu Ltd.  
Ms Emily Hemmings, Development Solutions Europe Ltd.  
Mr Matthew Langdon, Development Solutions Europe Ltd.  
Ms Linda Koning, Development Solutions Europe Ltd.

Moderator

Ms Montserrat Gago, Coordinator, Information, Communication and Civil Society Unit, Directorate-General for Trade

Panel Presentation

The Second Civil Society Dialogue was organised as an opportunity for stakeholders to provide oral comments on the Draft Final Report in tandem with written comments submitted online through the Trade Sustainability Impact Assessment website.

The European Commission described the status of the on-going EU-Myanmar IPA negotiations. The European Commission explained that there had not been any rounds of negotiations since the last civil society dialogue on 5 November 2015. Negotiations are expected to resume in spring 2016. This break was a result of
Myanmar’s elections in November 2015 and the inauguration of a new administration on 1 April 2016.

The European Commission emphasised that the proposed agreement with Myanmar solely covers investment protection and, upon completion, will be the first standalone EU agreement of its kind. The EU-Myanmar IPA is being negotiated independently from any free trade agreement (FTA) and there are no Member States bilateral investment treaties (BIT) with Myanmar. The European Commission is pursuing its new approach on investment also in the context of the EU-Myanmar IPA. Besides a new dispute settlement mechanism, the ‘investment court system’, the EU will also push for precisely drafted provisions, safeguards to the right to regulate (http://trade.ec.europa.eu/doclib/press/index.cfm?id=1396) and include additional elements such as dedicated chapters on sustainable development and transparency.

The European Commission reaffirmed that the purpose and long-term objective of the IPA is to improve the possibility for Myanmar to attract EU investment, an objective shared both by the EU and Myanmar, at a time when the investment framework and the rule of law necessary for sustainable growth are still developing.

Joachim Monkelbaan, Team Leader; Guillermo Hernandez, Economic Analyst, Mileu; and Ben Gardiner, Senior Modelling Expert, Cambridge Econometrics (hereafter referred to as the Project Team) gave a presentation on the Draft Final Report of the Trade Sustainability Impact Assessment in support of the EU-Myanmar IPA. The Project team presented the key conclusions of the report and feedback received during stakeholder outreach activities.

The Draft Final Report and the presentation given at the Civil Society Dialogue can be found on the project website http://www.eu-myanmarsia.com/.

Discussion Highlights / Questions and Replies

The Transnational Institute asked how the Project Team consulted with ethnic nationalities in Myanmar, particularly those that are currently involved in civil conflict, and what measures would be taken to ensure that the IPA did not contravene peacebuilding efforts. Also questioned the need to consider ISDS at a time when many laws still needed to be adopted in Myanmar.

The Project Team replied that the Trade Sustainability Impact Assessment was continuously well-informed by the 50 interviews conducted with stakeholders in Myanmar, including respondents from ethnic nationalities.

The International Federation for Human Rights raised several questions and comments regarding the Draft Final Report:

(1) What policy recommendations will the Project Team be making regarding human rights and including incorporation of international standards?
(2) Greater emphasis should be placed on human rights, for instance by confirming international standards in the sustainable development chapter and by including human rights in the list of policy objectives, and recommendations made to address shortcomings that the International Federation for Human Rights has identified in CETA, TTIP and the EU-Vietnam FTA.
(3) Why was an interim report not conducted for the EU-Myanmar IPA Trade Sustainability Impact Assessment?
(4) Report should analyse the impact of each provision of the IPA, such as the right to regulate, or the sunset clause, should consider the possibility to
include a "fork in the road" for investment claims and that physical security to investors be granted in accordance with international standards.

(5) What specific analysis was conducted on land ownership risks and investments made in the extractive industry?

(6) How will the EU-Myanmar IPA fulfil Article 21 of the Treaty on European Union and enhance the quality of EU investments relative to other source countries?

(7) What measures might be taken to ensure that a clause on legitimate expectations does not lead to a race-to-the-bottom for domestic standards to attract investment?

(8) Recommendations should go beyond development cooperation and address specific concerns in the oil sector.

The Project Team replied that the human rights impacts analysis conforms with the Terms of Reference for the Trade SIA and the Guidelines on the analysis of human rights impacts in impact assessments of trade-related policy initiatives issued by the European Commission. Recommendations encouraging adherence to European standards by EU companies, and land ownership issues have been addressed in the human rights section of the report. Specific safeguards can be detailed further in the Final Report.

The European Commission added that an interim report was deemed unnecessary in this case given the limited scope of this IPA.

ACT Alliance Advocacy to the European Union cited the European Investment Bank’s (EIB) decision to exclude certain projects from its list of projects (e.g. involving land disputes) and inquired if EU-sourced investments in Myanmar might be bound by a similar system under the IPA. ACT Alliance also inquired whether the IPA could include provisions on the responsible use of pesticides and what would happen if EU companies did not conform with European standards.

The European Commission replied that its remit was in negotiating an IPA with Myanmar to protect lawful investors, but that unlike the EIB it did not have an investment portfolio and defers to various multilateral agreements for social and environmental matters.

The International Federation for Human Rights asked what recommendations will be made to ensure that European investors comply with international human rights standards and how to address situations of land grabbing without compensation.

The Project Team replied that it is for the Myanmar government to sign and ratify agreements on these issues, whereas strengthening human rights falls outside of the scope of investment agreements. The Project Team acknowledges the importance of investors’ due diligence and independent compliance with international standards, but notes that it is so far unprecedented to regulate such issues through an IPA – although this does not rule out the potential for an innovative or future template.

The International Federation for Human Rights asked what concrete recommendations the Project Team makes to ensure that investors are genuine in upholding human rights, which is cited as an overall policy objective for engagement between the EU and Myanmar and why the draft report only mentioned National Contact Points and not the setting up of a grievance mechanism. The International Federation for Human Rights requested further analysis of the compatibility between human rights and investment dispute settlement.
The Transnational Institute asked the Project Team to consider the feasibility of binding regulations on foreign investors.

The European Commission replied that it would issue a position paper in response to the recommendations made in the Trade SIA. In addition, the European Commission explained that an IPA is not the appropriate context to impose binding obligations on foreign investors and that they are first and foremost bound by the national laws in the country that is hosting their investment. The European Commission cannot regulate what rules will apply in Myanmar, something the Myanmar government would not accept. Instead, the European Commission can encourage its own investors to follow international instruments such as the OECD Guidelines and provide guidance to partner countries like Myanmar should they aspire to raise standards unilaterally or multilaterally, including through ratification and implementation of the ILO Conventions.

The International Federation for Human Rights noted with concern that legislating human rights standards at the national level has been problematic in Myanmar and reaffirmed its call for the respect of international standards, including by using the IPA as an instrument to that end. The International Federation for human rights asked for an explicit mention of human rights in the text of the EU-Myanmar IPA and a commitment to ratify international human rights instruments.

The European Commission replied that the scope of an IPA is finite, concerning only the enforcement of existing rules affecting investment.

The Transnational Institute asked what analysis had been conducted regarding measures taken at the state or local level that could expose the federal government to investment disputes and liabilities, particularly within the context of Myanmar's peacebuilding process. How could it be ensured that local governments would have the ability to regulate investment and past investment?

The Project Team replied that this analysis largely fell outside of the scope of the Terms of Reference for the project, but the Project Team would consider if this issue could be considered for the Final Report.

The European Commission replied that investment dispute settlement was only an enforcement mechanism and that attention should be paid to the way the substantive rules and the provisions safeguarding the right to regulate were drafted.

The Transnational Institute asked if measures taken to unilaterally protect human rights would be explicitly exempted from investment dispute settlement mechanisms.

The European Commission replied that measures pursuing legitimate public policy objectives would be safeguarded, including human rights. Explicit mention of human rights may not be necessary.

The International Federation for Human Rights asked if it would be possible to see a summary of the results of stakeholder consultations interviews and questionnaires to be published as part of the Final Report.

The Project Team replied that, although respondent-confidentiality restricted a full release of these documents, a summary of inputs would be prepared for the Final Report.