Comments Concerning Reporting Requirements for Responsible Investment in Burma

In response to Public Notice 9359

Submitted by

U.S. Chamber of Commerce

January 25, 2016

The U.S. Chamber of Commerce welcomes the opportunity to provide comments in response to public notice 9359 from the U.S. Department of State, regarding the "Reporting Requirements for Responsible Investment in Burma." We believe that this is an appropriate time to assess the utility of the reporting requirements.

In October of 2012, the U.S. Chamber of Commerce, and other U.S. industry groups, identified a number of concerns with the reporting requirements. After the requirements were enacted, many of those concerns were borne out, and remain valid. We do not believe that the reporting requirements improve human rights, advance worker protections, or promote higher standards of corporate social responsibility in Myanmar. In light of Myanmar's political and economic reforms over the past few years, and the successful November 2015 elections, we believe that the time has come to eliminate the reporting requirements.

The request for comment asks the basic question, "…whether the proposed information collection is necessary for the proper functions of the Department." It is difficult to see how the reporting requirements are necessary to the State Department's functions; the Department will have access to multiple sources of information on the country so long as the normal diplomatic relations now in place are preserved.

The Department's estimate of the time and cost burden associated with the reporting appears to be well below that indicated by companies. In some cases, very significant resources, in terms of both time and money, have been directed toward preparing these reports. Anecdotal information indicates that the reporting requirements are a deterrent to investment by smaller or medium sized companies, and even larger U.S. companies sometimes find themselves incentivized to keep their investments below the $500,000 reporting threshold, or to avoid the reporting obligations through the use of third parties, off-shore financing, and the like.

The reporting requirements are not only a dead-weight opportunity cost given the time and resources they require, but they also constitute a competitive disadvantage as they are unique to U.S. companies. Our competitors have no such obligations.

The Foreign Corrupt Practices Act has proven itself to be a bulwark for transparency, and, in a globally wired world, the strategic importance of reputation constitutes an operational imperative. By contrast, we have not ascertained any change in policies by U.S. companies as a result of these reporting requirements. As a general matter, multiple layers of reporting responsibilities placed on companies by different agencies of the U.S. government culminate in a duplicative and resource-consuming reporting burden for very limited audiences.

Corporate social responsibility (CSR) is another focus of the reporting requirements. However, U.S. companies already operate CSR programs at a much higher standard than their competitors in Myanmar as a matter of normal corporate policy; additional reporting does not affect the standards of these programs.

The reporting requirements may have been a political necessity at the time of their introduction, but they have had no obvious impact in terms of improving conditions on the ground. Unfortunately, they seem only to serve as an added expense, an opportunity cost, and a disincentive to U.S. investment.

On the other hand, U.S. investment in and of itself, while limited, does appear to have had substantial positive impacts. For example, the Myanmar Investment Commission's investment application form now includes CSR requirements, as a result of U.S. companies' lobbying and their CSR policies. In addition, Myanmar has made important, if modest, progress in a number of international indices, such as Transparency International's, with its adoption of an Anti-Corruption Law (law no. 23/2013), under which hundreds of government employees have been prosecuted. Its enactment of a Competition Law (law no. 9/2015) and regulations earned Myanmar a 134 ranking by the World Economic Forum (ten from bottom), where it had not even been ranked before 2014.

This encouraging progress has come in large part because of the example of the few American businesses present in the country, and without regard to the reporting requirements. If the U.S. business presence can grow in Myanmar, we believe it will further help the country's level of development, as well as it's respective rankings.

We have strongly supported the U.S. government's policy of engagement with Myanmar, and its efforts to normalize the commercial relationship between the two countries. A U.S. investment presence in Myanmar will promote the country's economic growth by bringing in capital, technology, and jobs. It will spur the development of a skilled workforce, facilitate Myanmar's integration into regional and global supply chains, and will have other benefits including the demonstration effect in terms of corporate governance standards and CSR-related activities.