

Commissioner Cecilia Malmström
Directorate-General for Trade
European Commission
Rue de la Loi 170/Wetstraat 170
1049 Bruxelles/Brussel
Belgium

9 October 2018

Dear Commissioner Malmström,

Re: EU relations with Myanmar

The Institute for Human Rights and Business (IHRB) has been working to encourage respect for human rights and corporate responsibility in Myanmar since 2012, with permanent representation since 2013 through the Myanmar Centre for Responsible Business (MCRB). I have just returned from another visit to Myanmar which demonstrated once again the complexities of the country and the need for comprehensive and coherent approaches to human rights and responsible business conduct.

It is essential that all governments, and in particular the European Union, act decisively to demonstrate full support for the recommendations of the Independent International Fact-Finding Mission (IFFM) on Myanmar which reported to the United Nations in September 2018. I read with interest your blog of 5 October following the informal Ministerial, and the EU's intention to send an emergency, high-level EU mission to the country. This includes the potential withdrawal of Myanmar from the Everything But Arms (EBA) arrangement.

The views of the IFFM need to be taken fully into account in any actions the EU takes in its review of EBA. The IFFM report is clear that steps must now be taken to respond to grave violations of international law. These steps include “*targeted individual sanctions, including travel bans and asset freezes*” which would “*send a strong message to Myanmar officials who appear most responsible for the violations and crimes*” outlined in the report. The report also makes clear that “*such targeted individual sanctions should be designed so as to have no effect on the broader Myanmar population.*”

The IFFM report explicitly states:

“The Mission does not support general economic sanctions on Myanmar. It is concerned that such sanctions in the past may have contributed to the impoverishment of the Myanmar people generally while having little impact on those most responsible for serious human rights violations. The Mission supports continuing efforts to reduce the poverty in which most people in Myanmar live, through increased economic engagement and development assistance, provided that the engagement and assistance is carefully targeted to avoid any benefit to the Tatmadaw (the military) generally or to its leaders individually or to others responsible for serious human rights violations.”



Rather, the FFM recommends (in paragraph 1716):

“All business enterprises active in Myanmar or trading with or investing in businesses in Myanmar should demonstrably ensure that their operations are compliant with the United Nations Guiding Principles on Business and Human Rights. They should respect human rights, avoiding infringing on the human rights of others and addressing the adverse human rights impacts with which they are involved. They should have:

- (a) a policy commitment to meet their responsibility to respect human rights;*
- (b) a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;*
- (c) processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.”*

In 2012, IHRB patrons Mary Robinson (former President of Ireland) and Professor John Ruggie (author of the UN Guiding Principles on Business and Human Rights) wrote to all EU Foreign Ministers asking that, in the case of sanctions being lifted, a requirement for human rights due diligence be put in place for all major investors. In other words, we hoped that Europe would not rush straight from a “red light” to a “green” one without considering the leverage an “amber light” would provide. We regret that more was not done at the time by the EU to establish such due diligence requirements, following steps taken by the US State Department which established Reporting Requirements. However, it is clear that major European investors have, in the main, adopted a human rights due diligence approach.

These companies have been supported in doing so by the work of the Myanmar Centre for Responsible Business (MCRB). The Centre was established by IHRB and the Danish Institute for Human Rights in 2013 and has been supported financially by six European governments, and works closely with many others. Its creation in 2012-13 resulted from detailed discussions at the UN, amongst European governments and also with the then Government of Myanmar. The Centre’s mandate is based on the application of the UN Guiding Principles on Business and Human Rights (UNGPs), as well as other aligned standards such as the OECD Guidelines on Multinational Enterprises. Such an impartial space for pre-competitive dialogue and action on trade and investment related matters remains relatively rare in any country. MCRB recently received a very positive independent evaluation of the first five years of work in Myanmar, and its impact on companies, including Myanmar and Asian investors, as well on the Myanmar government.

We have observed that the primary leverage for encouraging responsible business and respect for human rights has come through the business partnerships which Myanmar businesses have with European and other Western investors, and the market opportunities in Europe which come with an expectation of responsible supply chains. This is particularly true of the apparel sector, which has now grown to employ over half a million, mainly young women, who would otherwise be working in rural poverty or risk being trafficked to Thailand and elsewhere as took place during the last period that the Generalised Scheme of Preferences (GSP) was withdrawn. Europe is the key destination for many of these exports and tariff-free access a critical part of this. Flanking measures have been put in place by the Commission and other European development partners to support reforms in this sector, and in others with European export potential such as agriculture and fisheries. These development efforts will be meaningless without tariff-free market access to Europe.



Furthermore, European investment and access to the European market are a means to ensure not only that basic human rights standards are applied through supply chains, but that responsible investors bring other more intangible positive benefits such as a respect for workplace diversity and equality, and leadership skills. These are all necessary elements if Myanmar is to develop into a country which protects human rights and fundamental freedoms.

I would like to encourage the high-level EU mission to meet with Vicky Bowman, Director of the Myanmar Centre for Responsible Business, when they visit. She can outline in greater detail the work the Centre is doing to promote responsible investment and enhance its positive impacts on wider society. MCRB's work sets out the enhanced due diligence companies must take and how all companies should build diverse non-discriminatory workplaces.

I note that Regulation 978/2012 allows for preferential arrangements to be withdrawn temporarily, in respect of all or of certain products originating in a beneficiary country. We would recommend that the EU's response should embrace strong measures in relation to the economic interests of the military – consistent with paragraph 1717 of the FFM Report – but for the remaining economic impacts, a calibrated response could be adopted based on an overall analysis of the human rights impact of withdrawal. This could lead to the exclusion from suspension of tariff-free access for those products for which access to European markets is creating the greatest opportunities for safe and responsible employment of the most vulnerable people in the country and thus creating demonstrably positive impacts of trade on the poorest. Such an approach would reinforce, rather than undermine, the last six years of EU policy and development assistance to Myanmar and be a demonstration of the EU's approach of Policy Coherence for Development (PCD), and the New European Consensus on Development.

Yours sincerely,

John Morrison
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