

# Seattle to Brussels Network

## **S2B Statement on EU-Myanmar Investment Treaty**

### **An investment treaty will block democratic transition**

24 March 2014

Last week the member states of the EU gave the green light to the European Commission to start negotiations on an EU-Myanmar Investment Agreement. The members of S2B are of the opinion this is very dangerous, for the following reasons:

Myanmar is in a process of political transition, which will involve the revision of a range of policies and laws affecting foreign investors. This process will involve regulatory changes in the areas we normally think of as public policies - for example, new public health and environmental regulation. It will also involve fundamental changes in economic governance and the fiscal regime governing investments. For example, existing contracts and licenses awarded under the military regime will need to be renegotiated to put them on an arms' length basis. There are many examples of the beginning of this process, wherever you go in Myanmar there are conflicts over land and natural resources, the Leptadaung copper mine being one of them.

An investment treaty is particularly dangerous at this moment in time, as the investment treaty will constrain the government's ability to make the needed legal and policy changes in Myanmar.

According to the press statement brought out by the EC (March 20) the investment agreement will "*not interfere with the right of the state to regulate to pursue public policy objectives*". This is not true. While negotiations are done in secret and texts are not shared, leaked draft documents show that none of the EU treaties currently negotiated preserve a state's ability to undertake 'legitimate public policies'. In fact, in the leaked CETA (Canada-EU agreement) draft we have seen (Nov 2013), the EU is trying to make sure that any exception relating to public policies does not apply to the investor-protection provisions of CETA. (Article X: General exceptions). Even if Canada were to prevail over the EU's objections, the exceptions would only protect a narrow range of public policies (e.g. public health) and subject to further conditions (e.g. whether the measure is 'necessary'). The decision of whether a measure is a 'legitimate public policy' would be left to the arbitrators - a triumvirate of for-profit lawyers - at the international arbitration tribunals. What an arbitrator with background in commercial litigation thinks is 'legitimate' may be very different from what is

required in a poor country, going through a rapid process of political and economic reform, with a bureaucracy weakened by five decades of authoritarian rule. The standard provisions in investment treaties will seriously hamper the policy space required to give shape to the new Myanmar and as such run counter to the EU's long term support to democratic transition in Myanmar.

We call upon the European Union not to push through with the negotiations for an investment treaty with Myanmar. It will not help but hurt democratic transition.

The Seattle to Brussels network

The S2B network includes over 50 development, environment, human rights, women and farmers organisations, trade unions, social movements as well as research institutes in Europe working on EU trade and investment issues.

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