

EUROPEAN COMMISSION
Directorate-General for Trade

The Director General

Brussels, **10 JAN. 2014**
Trade/B2/Ares (2013) 3747040

Mrs Pietje Vervest
via www.asktheeu.org

Subject: Request for access to documents – Ref GestDem 2013/5137

Dear Mrs Vervest,

Thank you for your request for access to documents under Regulation (EC) No 1049/2001¹ regarding public access to European Parliament, Council and Commission documents (“the Regulation”), registered on 17 October 2013 under the above-mentioned reference number.

We understand from your request that you would like to have access to the following documents:

- 1) List of meetings of DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and representatives of individual companies and/or industry federations such as BusinessEurope, the European Services Forum (ESF), the Federation of German Industries (BDI) and/or law firms such as Freshfields, White & Case, Herbert Smith, Lovells and Sidley, in which the EU's foreign investment in Burma and the need for investment protection was discussed in 2012 and 2013;
- 2) Minutes and other reports of these meetings;
- 3) All correspondence (including emails) between DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and representatives of companies, business associations and law firms, in which the EU's foreign investment in Burma and the need for investment protection was discussed in 2012 and 2013.

We have identified 12 documents (minutes of meetings and emails) as falling under the scope of your request. 9 of these 12 documents are minutes of interviews conducted by the Commission in the context of its impact assessment on a possible EU-Myanmar/Burma investment agreement. A wide number of civil society stakeholders (both private and public) were consulted at this occasion. However, and in light of your request please note that we have solely identified the minutes relating to interviews of businesses or business associations for the purposes of the present reply. In attachment to this letter, you will find a list of these meetings, the names of the stakeholders interviewed as well as the dates on which of these interviews took place.

Having examined these documents under the provisions of the Regulation, we consider that parts of these documents are covered by some of the exceptions provided by Article 4 of the Regulation and have to be withheld accordingly. In particular, please note that given the specific situation in

¹ OJ L145, 31.05.2001, page 43

Myanmar/Burma and the limited number of entities interviewed, the release of their names in the present reply, as well as all information which could lead to the identification of these entities and hence put at risk their relations with the authorities of Myanmar/Burma against these entities, was consistently removed from the reply (Article 4.2 first indent of the Regulation).

Our assessment relating to the release of these 12 documents, and those parts which must be withheld under the Regulation, is the following:

Document 1

The section “*Information on respondents*” of the report contains the name of the entity and its representative, as well as the sector concerned. Revealing this information might undermine the commercial position of the company on the market of Myanmar/Burma and hence undermine the protection of its commercial interests contrary to Article 4.2 first indent of the Regulation. In addition, the name of the representative of the company has been withheld as its disclosure might undermine the privacy and integrity of the individual concerned contrary to Article 4.1(b) of the Regulation.

Part 1.1 entitled “*Investment in Myanmar?*”, 1st paragraph, part of the sentence of the 2nd paragraph and 2nd sentence of the 3rd paragraph reveal sensitive business information, prospects and business strategy in Myanmar. Placing this information in the public domain could harm the entity’s commercial interests contrary to Article 4.2 first indent of the Regulation.

Point entitled “*Difficulties encountered*”, sub-point 1 “*Main general problems*”, 1st sentence, part of 3rd sentence and 4th sentence contain the assessment of the Myanmar/Burma authorities and assessment of the political situation in the country. Releasing this information would risk undermining the commercial interests at stake contrary to Article 4.2 first indent of the Regulation.

Sub-point 2 entitled “*Questions linked to the implementation of the 2012 Foreign Investment Law*”, part of 1st sentence and 4th and 5th sentences contain the company’s assessment of the political situation in Myanmar/Burma. Releasing this information would risk harming the relationship of the company with the authorities concerned and therefore undermine the commercial interests at stake contrary to Article 4.2 first indent of the Regulation. Part of 3rd sentence contains a reference to the sector in question. Placing this information in the public domain would allow an easy identification of the company concerned and would risk undermining its commercial interests contrary to Article 4.2 first indent of the Regulation.

Point entitled “*Most problematic investment barriers in Myanmar?*” except part of 4th bullet contains information on the company’s assessment of the political and economic situation in Myanmar/Burma. Releasing this information would risk harming the relationship of the company with the authorities concerned and therefore undermine the commercial interests at stake contrary to Article 4.2 first indent of the Regulation.

Section II entitled “*Potential impacts of an EU-Myanmar investment agreement*”, 1st paragraph contains information on the company’s approach to Corporate Social Responsibility practices. Placing this information in the public domain would reveal the company’s policy and activities in this area and therefore undermine the commercial interests of the company contrary to Article 4.2 first indent of the Regulation. Point II last sentence contains the company’s prediction on possible

future employment issues in Myanmar/Burma. Putting this type of information in the public domain would reveal the company's business concerns and would risk undermining the protection of its commercial interests contrary to Article 4.2 first indent of the Regulation.

Document 2

The section "*Information on respondent*" of the report contains the name of the entity, its representative and the sector concerned. Revealing this information might undermine the commercial position of the company on the market of Myanmar/Burma and hence undermine the protection of the commercial interests at stake contrary to Article 4.2 first indent of the Regulation. In addition, the name of the representative of the company has been withheld as its disclosure might undermine the privacy and integrity of the individual concerned contrary to Article 4.1(b) of the Regulation.

Part 1.2 entitled "*Prospective part*", 1st paragraph contains the respondent's business strategy and predictions with regard to Myanmar/Burma. Placing this information in the public domain would give sensitive information to the company's competitors and as a result undermine the company's commercial interests contrary to Article 4.2 first indent of the Regulation.

Part 1.2 entitled "*Prospective part*", 2nd word in the 2nd paragraph contains a qualification of the type of change needed in Myanmar/Burma according to the respondent. Revealing this word could have an impact on the company's public image and would therefore risk undermining its commercial interests contrary to Article 4.2 first indent of the Regulation.

Section II entitled "*Potential impacts of an EU-Myanmar/Burma investment agreement*", 1st sentence under the 2nd bullet contains the company's approach to Social Corporate Responsibility. Placing this information in the public domain would unduly reveal the company's policy and practice in this area and therefore undermine its commercial interests contrary to Article 4.2 first indent of the Regulation.

Section II entitled "*Potential impacts of an EU-Myanmar/Burma investment agreement*", part of 1st sentence under the 3rd bullet and parts of 1st sentence and 2nd sentence under the 4th bullet contain information, which if placed in the public domain would allow the entity's identification and put its commercial interests in Myanmar/Burma at risk contrary to Article 4.2 first indent of the Regulation.

Document 3

The section "*Information on respondent*" of the report contains the name of the entity, its representatives as well as the sector concerned. Revealing this information might undermine the commercial position of the company on the market of Myanmar/Burma and hence undermine the protection of its commercial interests contrary to Article 4.2 first indent of the Regulation. In addition, the names of the representatives of the company have been withheld as their disclosure might undermine the privacy and integrity of the individuals concerned contrary to Article 4.1(b) of the Regulation.

Part 1.1 entitled "*Investment in Myanmar?*", 1st paragraph contains a description of the company. Placing this information in the public domain would allow the identification of the company

concerned and could affect its commercial position on the market. This would risk undermining the protection of its commercial interests contrary to Article 4.2 first indent of the Regulation.

Sub-point 1 “*Main general problems*”, 1st paragraph and parts of 2nd paragraph contain a detailed description of the obstacles and difficulties of making business in Myanmar/Burma. Releasing this information would risk harming the relationship of the company with the authorities concerned. Besides, 1st paragraph contains elements of the company’s commercial strategy with regard to market of Myanmar/Burma. Placing this information in the public domain could affect its commercial position on the market. This would risk undermining the protection of its commercial interests contrary to Article 4.2 first indent of the Regulation.

Sub-point 2 entitled “*Questions linked to the implementation of the 2012 Foreign Investment Law*”, 2nd sentence contains information on the company’s commercial strategy for the future. Placing this information in the public domain could put the company at a disadvantage on the market of Myanmar/Burma in addition to allowing its fast identification. This would risk undermining the protection of its commercial interests contrary to Article 4.2 first indent of the Regulation.

Point entitled “*Most problematic investment barriers in Myanmar*”, part of 1st bullet contains information, which if placed in the public domain would allow the entity’s identification and put its commercial interests in Myanmar/Burma at risk contrary to Article 4.2 first indent of the Regulation.

Point entitled “*Most problematic investment barriers in Myanmar*” contains an assessment of the judicial situation in Myanmar/Burma. Releasing parts withheld would risk harming the relationship of the company with the authorities and could have an impact on the public image of the company concerned. This would risk undermining the protection of the company’s commercial interests contrary to Article 4.2 first indent of the Regulation.

Part 1.2 entitled “*Prospective part*”, 2nd and 3rd paragraphs contain the company’s commercial strategy and potential investments in Myanmar/Burma. This is sensitive business information and placing this information in the public domain would risk undermining the commercial interests of the company concerned contrary to Article 4.2 first indent of the Regulation.

Section II entitled “*Potential impacts of an EU-Myanmar investment agreement*”, 2nd bullet contains the name of the company and details on its Corporate Social Responsibility policy. Placing this information in the public domain would risk undermining the protection of commercial interests of the company concerned contrary to Article 4.2 first indent of the Regulation.

Document 4

The section “*Information on respondent*” of the report contains the name of the entity, its representative and the sector concerned. Revealing this information might undermine the commercial position of the company on the market of Myanmar/Burma and hence undermine the protection of the commercial interests at stake contrary to Article 4.2 first indent of the Regulation. In addition, the name of the representative of the company has been withheld as its disclosure might undermine the privacy and integrity of the individual concerned contrary to Article 4.1(b) of the Regulation.

Part 1.1 entitled “*Investment in Myanmar*”, parts of 1st and 2nd paragraphs contain sensitive business information and elements of the entity’s business strategy in Myanmar/Burma. Placing this information in the public domain would risk undermining its commercial interests contrary to Article 4.2 first indent of the Regulation.

Point entitled “*Most problematic investment barriers in Myanmar?*” contains the name of the company and its assessment of the situation in Myanmar/Burma and specific problems identified in the sector in question. Placing this information in the public domain would risk undermining the commercial interests of the company contrary to Article 4.2 first indent of the Regulation.

Section II entitled “*Potential impacts of an EU-Myanmar investment agreement*” contains the name of the company, elements of the company’s commercial strategy, sensitive business information as well as the assessment of the current judicial situation in Myanmar/Burma. Placing this information in the public domain would risk undermining the commercial interests of the company contrary to Article 4.2 first indent of the Regulation.

Document 5

The section “*Information on respondent*” of the report contains the name of the entity, its representative as well as the sector concerned. Revealing this information might undermine the commercial position of the company on the market of Myanmar/Burma and hence undermine the protection of its commercial interests contrary to Article 4.2 first indent of the Regulation. In addition, the name of the representative of the company has been withheld as its disclosure might undermine the privacy and integrity of the individual concerned contrary to Article 4.1(b) of the Regulation.

Section I entitled “*Investment environment in Myanmar*”, part 1.1 “*Investment in Myanmar?*” contains sensitive business information. Placing this information in the public domain would risk undermining the commercial interests of the company contrary to Article 4.2 first indent of the Regulation.

Point entitled “*Difficulties encountered*” contains the name of the company, its assessment of the situation in Myanmar/Burma as well as specific problems identified in the sector in question. Placing this information in the public domain would allow an easy identification of the company concerned and would risk undermining its commercial interests contrary to Article 4.2 first indent of the Regulation. In addition, the name of the representative of the company has been withheld as its disclosure might undermine the privacy and integrity of the individual concerned contrary to Article 4.1(b) of the Regulation.

Point entitled “*Most problematic investment barriers in Myanmar?*”, last part of the sentence contains an assessment of the situation in Myanmar/Burma and a description of specific problems identified in the sector in question. It would allow the identification of the company and put at risk its relations with the authorities of Myanmar/Burma. Placing this information in the public domain would risk undermining the commercial interests of the company contrary to Article 4.2 first indent of the Regulation.

Part 1.2 entitled “*Prospective part*” contains elements of the company’s business information and commercial strategy in Myanmar/Burma. Placing this information in the public domain would allow

an easy identification of the company concerned and would risk undermining its commercial interests in Myanmar/Burma contrary to Article 4.2 first indent of the Regulation.

Section II entitled “*Potential impacts of an EU-Myanmar/Burma investment agreement*”; subsection 1, 2nd sentence reveals elements of the business strategy as well as concerns that could be addressed with an EU-Myanmar/Burma investment agreement. Placing this information in the public domain would risk undermining the commercial interests of the entity concerned contrary to Article 4.2 first indent of the Regulation.

Document 6

The section “*Information on respondents*” of the report contains the name of the entity, its representatives as well as the sector concerned. Revealing this information might undermine the commercial position of the company on the market of Myanmar/Burma and hence undermine the protection of the commercial interests at stake contrary to Article 4.2 first indent of the Regulation. In addition, the names of the representatives of the company has been withheld as their disclosure might undermine the privacy and integrity of the individuals concerned contrary to Article 4.1(b) of the Regulation

Part 1.1 entitled “*Investment in Myanmar?*”, 1st and 3rd sentences contain sensitive business information and the company’s future business strategy. Placing this information in the public domain would risk undermining the commercial interests of the company contrary to Article 4.2 first indent of the Regulation.

Point entitled “*Most problematic investment barriers in Myanmar*”, second part of the sentence contains the company’s assessment of the judicial situation in Myanmar/Burma. Releasing this information would risk harming the relations of the company concerned with the authorities of Myanmar/Burma and could have an impact on the public image of the company concerned. This would risk undermining its commercial interests contrary to Article 4.2 first indent of the Regulation.

Section II entitled “*Potential impacts of an EU-Myanmar investment agreement*”, part of 1st bullet contains an assessment of Myanmar/Burma foreign investment policy. Placing this information in the public domain would risk undermining the commercial interests of the company contrary to Article 4.2 first indent of the Regulation.

Section II entitled “*Potential impacts of an EU-Myanmar investment agreement*” contains the name of the entity as well as information on the company’s approach to Corporate Social Responsibility practices, employment practices, environmental and human rights policies. Revealing this information might undermine its commercial position on the market of Myanmar/Burma and hence undermine the protection of its commercial interests contrary to Article 4.2 first indent of the Regulation.

Document 7

The section “*Information on respondents*” of the report contains the name of the entity, its representative as well as the sector concerned. Revealing this information might undermine the commercial position of the entity on the market of Myanmar/Burma and hence undermine the

protection of the commercial interests at stake contrary to Article 4.2 first indent of the Regulation. In addition, the name of the representative of the company has been withheld as its disclosure might undermine the privacy and integrity of the individual concerned contrary to Article 4.1(b) of the Regulation.

Section I entitled "*Investment environment in Myanmar*", part on "*Unclear investment regulations*", 3rd, 4th and 5th sentences contain the name of the company, strategic business information as well as the company's assessment on the situation in Myanmar/Burma. Releasing this information would risk harming the relations of the company with the authorities, have an impact on the image of the entity concerned and would risk undermining its commercial interests in Myanmar/Burma contrary to Article 4.2 first indent of the Regulation.

Point entitled "*Most problematic investment barriers*", part of the 1st sentence and 2nd sentence contain the name of the company, the assessment of the situation in Myanmar/Burma and its business priorities. Releasing this information would risk harming the relation of the company with the authorities of Myanmar/Burma and undermining its commercial interests contrary to Article 4.2 first indent of the Regulation.

Part 1.2 entitled "*Prospective part*" contains the current commercial position and business strategy of the company concerned. Revealing this information might undermine the position of that company in Myanmar/Burma and hence the protection of its commercial interests contrary to Article 4.2 first indent of the Regulation.

Section III entitled "*Potential impacts of an EU-Myanmar investment agreement*", part of point 1 and parts of point 2 contain information that would allow the identification of the entity concerned and could potentially harm its relation with the authorities of Myanmar/Burma. Placing this information in the public domain would risk undermining the commercial interests of the company contrary to Article 4.2 first indent of the Regulation.

Document 8

The section "*Information on respondent*" of the report contains the name of the entity as well as the sector concerned. Revealing this information might undermine the commercial position of the company with regard to the market of Myanmar/Burma and hence undermine the protection of the commercial interests at stake contrary to Article 4.2 first indent of the Regulation.

Part 1.1 entitled "*Investment in Myanmar*" contains business information that would allow the identification of the entity concerned and could potentially harm its relation with the authorities of Myanmar/Burma. Placing this information in the public domain would risk undermining commercial interests of the company contrary to Article 4.2 first indent of the Regulation.

Point entitled "*Difficulties encountered*" 3rd and 4th paragraphs contain information that would allow the identification of the company and might harm its relation with the authorities of Myanmar/Burma if revealed. Revealing this information might undermine the commercial position of the company with regard to the market of Myanmar/Burma and hence undermine the protection of the commercial interests at stake contrary to Article 4.2 first indent of the Regulation.

Document 9

The section “*Information on respondent*” of the report contains the names of the entity and its representative as well as the sector concerned. Revealing this information might undermine the commercial position of the entity with regard to the market of Myanmar/Burma and hence undermine the protection of the commercial interests at stake contrary to Article 4.2 first indent of the Regulation. In addition, the name of the representative of the company has been withheld as its disclosure might undermine the privacy and integrity of the individual concerned contrary to Article 4.1(b) of the Regulation.

Part 1.1 entitled “*Investment in Myanmar*”, last part of the sentence contains the commercial strategy of the entity and information which would allow its identification. Revealing this information might undermine its commercial position on the market of Myanmar/Burma and hence undermine the protection of its commercial interests contrary to Article 4.2 first indent of the Regulation.

Sub-section 2 entitled “*Questions linked to the implementation of the 2012 Foreign Investment Law*” second paragraph contains the entity’s assessment of the situation in Myanmar/Burma and its business priorities. Revealing this information might undermine the commercial position of the entity in Myanmar/Burma and hence undermine the protection of the commercial interests at stake contrary to Article 4.2 first indent of the Regulation.

Part entitled “*Prospective part: do you have plans to invest in Myanmar in the coming years*” contains highly sensitive business information and geographical priorities. Revealing this information would undermine the protection of the commercial interests at stake contrary to Article 4.2 first indent of the Regulation.

Section II entitled “*Potential impacts of an EU-Myanmar investment agreement*”, parts of 1st and 2nd sentences under 4th bullet contains information which would allow the identification of the entity. Revealing this information might undermine the commercial position of the entity on the market and hence undermine the protection of its commercial interests contrary to Article 4.2 first indent of the Regulation.

Document 10

The document consists in a chain of emails exchanged between the Commission and an entity in order to arrange for an interview of the latter in the context of the Commission’s Impact Assessment on a possible EU-Myanmar/Burma Investment agreement. In the email of 27 May 2013 from Benoit Lefort, name, position, email address and phone numbers of the representative of the company have been withheld as their disclosure might undermine the privacy and integrity of the individual concerned contrary to Article 4.1(b) of the Regulation.

One sentence in the 4th paragraph has been withheld as it contains sensitive information on the modalities of the interviews conducted by the Commission. Releasing this information would undermine the protection of the decision-making process of the Commission contrary to Article 4.3 of the Regulation.

Four words in the 5th paragraph have been withheld as they contain information, which if placed in the public domain would allow the entity's identification and put its commercial interests in Myanmar/Burma at risk contrary to Article 4.2 first indent of the Regulation.

Document 11

The document is an email sent by the Commission to propose an interview in the context of its Impact Assessment on a possible EU-Myanmar/Burma Investment agreement. In this email, name, email address of the representatives of the company as well as the name of the person from whom we received the contact details have been withheld as their disclosure might undermine the privacy and integrity of the individuals concerned contrary to Article 4.1(b) of the Regulation.

Part of the 4th paragraph has been withheld as it contains sensitive information on the modalities of the interviews conducted by the Commission. Releasing this information would undermine the protection of the decision-making process of the Commission contrary to Article 4.3 of the Regulation.

Parts of the 5th paragraph has been withheld as they contain information, which if placed in the public domain would allow the entity's identification and put its commercial interests in Myanmar/Burma at risk contrary to Article 4.2 first indent of the Regulation.

Document 12

The document is an email sent by the Commission to propose an interview in the context of its Impact Assessment on a possible EU-Myanmar/Burma Investment agreement. In this email name and email address of the representative of the company have been withheld as their disclosure might undermine the privacy and integrity of the individual concerned contrary to Article 4.1(b) of the Regulation.

In addition, Part of the 4th paragraph has been withheld as it contains sensitive information on the modalities of the interviews conducted by the Commission. Releasing this information would undermine the protection of the decision-making process of the Commission contrary to Article 4.3 of the Regulation.

The exceptions laid down in Articles 4.2 and 4.3 of the Regulation apply unless there is an overriding public interest in disclosure of the documents. Accordingly, we have also considered whether the risks attached to the release of this document are outweighed by the public interest in accessing the requested documents. We do not believe this to be the case.

Should you wish this position to be reviewed, you should write to the Commission's Secretary-General at the address below, confirming your initial request. Following receipt of this letter you have fifteen working days to do so, after which your initial request will be deemed to have been withdrawn.

The Secretary-General will inform you of the result of this review within 15 working days from the registration of your request, either granting you access to the document or confirming the refusal.

All correspondence should be sent to the following address:

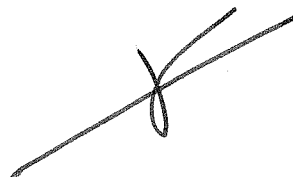
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In addition to the present reply to your request for access to documents, I am pleased to refer you to some additional publications that might be of interest to you.

First, I would like to draw to your attention that the summary report of the on-line public consultation on the future of the EU-Myanmar/Burma investment relationship carried out by DG Trade between 23 April and 15 July 2013 is now available on the Commission website. Individual contributions of respondents who accepted their contributions to be made public are also available.

Second, I would also like to inform you that the results of the impact assessment carried out by the Commission services will also be made public in a near future.

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized 'J' and 'L' followed by a horizontal line.

Jean-Luc DEMARTY