

**Linda Menghetti Dempsey**

*Vice President*

*International Economic Affairs*

October 4, 2012

The Honorable Daniel Baer  
Deputy Assistant Secretary  
U.S. Department of State  
DRL/EAP, Suite 7817  
Burma Human Rights Officer  
2201 C Street, NW  
Washington, DC 20520

Re: Notice of Proposed Information Collection: Reporting Requirements for Responsible Investment in Burma (Public Notice 7971)

Dear Mr. Baer:

The National Association of Manufacturers (NAM) welcomes the opportunity to comment on the proposed reporting requirements for responsible investment in Burma.

The NAM is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. Our members are strong supporters of the global system of rules that promote trade and investment on a level playing field and that create new economic opportunities both here in the United States and around the world. Because investment is so important for business growth and competitiveness, the NAM places a high priority on advancing domestic and international policies that favor investment in manufacturing and enable manufacturers in the United States to take advantage of growing opportunities in the global marketplace. U.S. investment overseas also has important benefits for other countries, helping to promote economic growth while serving as an example of market-oriented business operations.

For NAM member companies, the democratic reforms taking place in Burma open the door for business and investment opportunities that will strongly benefit Burma and its people. Our members look forward to creating new economic opportunities for manufacturers here in the United States through investments in Burma. U.S. businesses can assist in establishing respect for the rule of law, corporate governance structures and intellectual property rights. In addition, U.S. companies investing overseas often provide capacity building and training, as well as community-based projects that provide broader benefits in host countries.

Therefore, the NAM very much welcomed the Administration's decision to suspend sanctions on Burma and the Treasury Department's issuance of a general license (GL 17) on July 11 that authorizes new investment in Burma. The conditions of GL 17 include a requirement that U.S. persons engaging in new investment in Burma provide information related to that investment to the State Department.

Developing a framework to reduce restrictions on private investment across all sectors is vital to job growth here as well as to advancing our shared goals for promoting the rule of law,

corporate governance structures and intellectual property rights in Burma. Government restrictions to promote or limit specific types of sectors undermine, rather than enhance, needed investment. With various entities from Europe and Asia significantly increasing their involvement in Burma in recent months, U.S. companies are already at a disadvantage. Allowing some U.S. sectors to invest in Burma while excluding others simply ensures that our competitors fill the void, as they are already doing, and jobs that could be filled by American workers will go to workers in our competitor countries. We applaud the decision to suspend all sanctions that ban investment in Burma without discrimination between commercial sectors.

The extensive reporting requirements proposed as a condition for new investment in Burma, though, set worrisome precedent. Notably, our competitors do not face similar requirements and will be able to invest much more readily – to the detriment of U.S. economic goals. These extensive reporting requirements will likely have the unfortunate side effect of discouraging investment by U.S. persons in Burma that would otherwise take place.

The NAM urges the State Department to reconsider its approach and make several fundamental modifications to the proposed reporting requirements. First, we recommend that any reporting requirement on new investment in Burma include a sunset provision. As drafted, the reporting requirement is permanent and would stay in place even if the underlying sanctions are permanently repealed or allowed to expire. Special reporting, ostensibly necessary because the sanctions on investment have been suspended rather than repealed, should require the same periodic renewals as the underlying sanctions. A sunset provision could perhaps be tied to Executive Order 13047, which must be renewed annually, or to the *Burmese Freedom and Democracy Act* (P.L. 112-163), recently renewed through 2015.

Second, the NAM is very concerned that the modest “aggregate investment” threshold of \$500,000 would create a substantial administrative burden on small and medium-size manufacturers who are interested in establishing a local presence in Burma to facilitate exports or grow sales. We urge the State Department to increase the reporting threshold to at least \$5 million.

Third, we urge the State Department to mitigate the substantial annual reporting requirements. As drafted, the proposed requirements would create an undue burden on U.S. companies while doing little to help the State Department achieve its stated goals. In addition to providing an overview of operations, a U.S. investor will be required to provide extensive information about property acquisition and payments of royalties, taxes and fees to the Burmese government – as well as details about the company’s human rights, worker rights, anti-corruption, and environmental policies and procedures. Most notably, requirement 10 calls for the U.S. investor to document communications and meetings with armed forces or other armed groups “that were material to the submitter’s investments in Burma.” This reporting requirement could require extensive recordkeeping for some companies that often must work closely with host governments and their security forces. Additionally, this requirement is unclear, since nearly all communications with a host government’s security forces could be considered “material.” We urge the State Department to rewrite requirement 10 to clarify the Department’s expectations. We recommend the Department clarify that the requirement does not apply to regular, ongoing or routine operational contact with the armed forces of Burma.

There are a number of additional important clarifications that are needed to address ambiguities and uncertainties in the proposed reporting requirements.

- The definition of “aggregate investment” is not sufficiently clear in the reporting requirements to determine when the \$500,000 threshold has been met. Certain investments – like the purchase of land or the purchase of equipment for facilities in Burma – are clearly part of an aggregate investment, but other expenditures may be more complicated. For example, it is unclear whether “aggregate investment” would include equipment or tools transferred to Burma for a new operation from the parent company, travel costs for parent company employees to Burma for setting up the operation, or the cost of training new Burmese employees. It is also unclear how to calculate the “aggregate investment” amount if the U.S. parent company of the Burmese entity is a joint venture or foreign subsidiary of a U.S. company. Differences in calculating the aggregate investment and how indirect investments are included could result in varying determinations of whether a U.S. company should begin reporting on new investments.
- The reporting requirements as proposed are also unclear as to whether indirect, as well as direct, investments would trigger the reporting requirements. As an example, consider a U.S. company that is part of a joint venture that invests in Burma. The joint venture is an independent legal entity using its own capital to invest. Would that indirect investment trigger the reporting requirements for the U.S. company? Or, as another example, would a non-U.S. subsidiary of a U.S. company that invests in Burma with financial support by the U.S. parent company trigger the reporting requirement for the U.S. company? For both of these cases, it is unclear under the current proposal when and if the reporting requirement would be triggered.

We look forward to working with the State Department and with Congress to ensure the citizens of Burma have the best chance to rebuild their country with a fair and rules-based economic system that creates sustainable growth both here and in Burma. Thank you for the opportunity to submit our comments on the proposed reporting requirements.

Respectfully,



Linda Menghetti Dempsey

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