

Burmese Perspectives

Letter from Guildford, Surrey

1 October 2007

“We suggest that Government should undertake an urgent enquiry into sanctions policy on Burma, with a view to deciding whether it is worth continuing with it.”¹

Myanmar: the Quest for Effective Sanctions and the Law of Unintended Consequences

In recent years, Western countries have been taking an increasingly close interest in the application of trade and financial sanctions to induce a change of behaviour in targeted countries. Sanctions have been used in trade disputes between Western countries themselves, generally on a tit-for-tat basis, almost as part of the bargaining process. Against developing countries, sanctions have been used as an instrument designed to punish regimes accused of human rights violations and to secure compliance with internationally accepted norms of social and political liberties.

Burma, whose change of name to Myanmar was accepted by the United Nations in 1989 although for policy reasons the former name is used whenever possible by the US, Britain and some other countries, has for many years been subject to aid, trade and arms embargoes by the US and most European countries.

The following Question and Answer presentation on sanctions against Myanmar is especially relevant at the present time when international condemnation of the savage repression of recent nation-wide protests over the rising cost of living and the denial of civil and political liberties have given rise to demands, notably from the US, Britain and some European countries, for the imposition of yet tougher sanctions against the military government.

What economic and financial sanctions currently exist?

The US has imposed comprehensive economic and financial sanctions against Myanmar. Many of the sanctions in place are applied under several different legislative and policy vehicles. Since 1997 the US Government has prohibited new investment by US companies and in 2003 Congress adopted and the President passed into law the Burma Freedom and Democracy Act which includes a ban on imports from Myanmar, a ban on the export of financial services to Myanmar, a freeze on the assets of Burmese companies and individuals in the US and visa restrictions on senior officials. The sanctions have very wide support in both Houses of Congress and have been renewed regularly.

¹ Report of the House of Lords Select Committee on Economic Affairs on “The Impact of Economic Sanctions” published on 9 May 2007, Chapter 4 “Targeted and General EU Sanctions”, Paragraph 61.

The EU has applied progressive, but more selective sanctions on Myanmar since 1997, and these now include a withdrawal of trade preferences and other support enjoyed generally by Least Developed Countries, a ban on investment in and the provision of financial facilities to the two main military-owned conglomerates, Union of Myanmar Economic Holdings and Myanmar Economic Corporation, their subsidiaries and Joint Ventures, an asset freeze and visa ban on senior officials and their families. In addition, most EU countries discourage trade, investment and tourism.

Both the US and EU imposed arms embargoes and cut defence links some years ago. The US still retains a Defence Attaché in Rangoon. Political relations with both countries are far from normal. The US retains only a Charge d'Affaires in Rangoon and the Burmese Ambassador in Washington who left last year has not been replaced.

What effect have the sanctions had?

There is no evidence that the cumulative impact of US and EU sanctions has had the slightest effect in inducing the Burmese government to institute meaningful political reform. This is broadly recognised both in Washington and in European capitals. The European Parliament recently asked the European Council to examine why EU sanctions were not succeeding. At the same time, paradoxically, the European Parliament pressed the Council to introduce tougher measures. Though the medicine is not working, the patient must take more.

There is on the other hand evidence that both US and EU sanctions have had a detrimental effect on the population generally by affecting the economy as a whole rather than the regime itself. This is the *Law of Unintended Consequences* in action, to which I shall from time to time refer.

What are the reasons for their ineffectiveness?

There are two principal reasons. The first is that only the US and EU apply any significant sanctions against Myanmar. The second is that Myanmar is sitting on some 18.99 trillion cubic feet of gas reserves² which earned them some US\$ 2.2 billion in the year to 31 March 2007, or 35% of total foreign exchange earnings. This bonanza only started a few years ago and could continue for the next 40 years.

Without universal support, any sanctions regime is likely to be doomed. In 1999 the British Government conducted a wide-ranging review of its use of sanctions, and noted that one of the criteria essential for a successful sanctions policy was that measures should "have effective arrangements for implementation and

² BP Plc - Statistical Review of World Energy 2007

enforcement by all States, especially by neighbouring countries.” This has not happened in the case of Myanmar, nor is there any likelihood that this will change.

The withdrawal of Western industrial and commercial businesses from Myanmar has lessened the competition for Asian interests who have generally moved into those sectors vacated. It is a reflection of the *Law of Unintended Consequences* that the pressures applied on Western businesses to withdraw from Myanmar have entrenched their Asian competitors in the market who are now even less inclined, because of their commercial stakes in Myanmar, to contemplate supporting any Western sanctions policy which would damage their interests. Had there been a balance in Myanmar between Western and Asian businesses, there might have been some willingness to share the costs of sanctions, but activist pressures to withdraw have made this now highly unlikely.

As the rural population generally live outside the “formal” economy, surely the effect of sanctions on them has been marginal?

Unfortunately this is not the case, though it is an argument frequently advanced by the supporters of sanctions. The evidence is that the standard of living of the rural population has not only stagnated, but has even declined. The main reason for this is that both the US and the EU have, as part of their financial sanctions rarely mentioned in Congress or European Parliaments, for several years blocked all developmental aid from international financial institutions (“IFIs”) like the IMF, World Bank, and Asian Development Bank. As a result neither the funds nor the expertise are available to restructure the economy, stabilise the fragile banking sector, and provide the resources needed for a nationwide programme of infrastructural rehabilitation so necessary in both the urban and rural sectors of the economy.

While trade and investment sanctions may not directly affect the rural population, under the *Law of Unintended Consequences* the military government has fewer funds available because of sanctions to support rural programmes. There is a growing humanitarian crisis in Myanmar to which the international community has paid totally inadequate attention as their political interest has tended to concentrate on issues such as human rights abuses and restrictions on civil and political liberties rather than on the increasing misery of the mass of the population.

It should be self-evident that the blocking of IFI funding was bound to have a deleterious effect, but in both the US and EU there has been a general coyness about admitting to these measures publicly, and in the case of the EU you need to be an investigative journalist to uncover EU policy which is not easily found in European Council or Commission documentation, and is rarely mentioned in speeches, though it is the most damaging financial sanction by the EU against Myanmar, and particularly against the Burmese people.

But surely the incompetence of the regime and widespread corruption are more to blame than the reluctance of the international community to provide funding?

There are serious structural problems with the economy, to which visiting IMF teams have drawn attention, such as excessively centralised control, a weak banking sector and multiple exchange rates. As the IMF is prevented from providing either funding or expertise to resolve these difficulties, the regime lacks the ability to do so themselves. It is also alleged that the regime would be bound to misappropriate any funding provided, but there is no evidence that this has happened in the past and the experience of UN agencies over the years is that programmes may be implemented with Government financial and administrative involvement with a reasonable degree of transparency and accountability which compares not unfavourably with other LDCs. US objections to the routing of any funds through Government remain a major stumbling block.

The US and the EU cannot escape a measure of responsibility for the humanitarian crisis in Myanmar, whatever the level of incompetence and corruption in the Burmese leadership might be.

Though US and EU sanctions may not be effective, surely they send a strong message and have important symbolic value?

The phrase “send a strong message” is beloved of politicians, but when the people to whom the message is sent are not in the least moved, or even interested in hearing the message, such sanctions remain only of symbolic value, though they help to meet local constituency concerns. This is understandable enough, but when the sanctions are not merely ineffective but actually counterproductive, entrenching the regime in power, the symbolic value of sanctions becomes a heavy price to pay. Unfortunately there is little evidence that either in the US or the EU is any attention paid to monitoring the effectiveness of sanctions, perhaps because they know they would discover that they are simply not working³. There is often more concern to get sanctions in place than to assess whether they are likely to be effective.

There is now strong pressure for further targeted sanctions in the EU, so surely this deserves wide support?

Targeted or “smart” sanctions have become the mantra of policy-makers. Sanctions are an important tool of foreign policy, but should be used sensibly. The British Government review in 1999 (to which I have referred above) concluded that they should be targeted to hit the regime, and not the population, should have clear and realistic objectives, should be supported by all States, especially in the region and so far as

³ “We are concerned that the Government and EU have not published any substantial analysis of the sanctions on Burma.” - Report of the House of Lords Select Committee on Economic Affairs on “The Impact of Economic Sanctions” 9 May 2007 HL Paper 96-I.

possible should avoid unnecessary impact on British economic and commercial interests. EU sanctions on Myanmar have failed to meet any of these criteria. It is no wonder then that they have failed.

On 27 September 2007 the US designated 14 senior Burmese Government officials for asset freeze. At the same time the same 14 persons were placed on a visa prohibition list. Some people have asked why these 14 people were not previously targeted. The answer is that of course they were already caught by the Burma Freedom and Democracy Act 2003 ("BFDA"), which targeted **all** officials and **all** State-owned entities for asset freezes and visa bans. The White House seemingly felt that a political gesture had to be made, so the President took action which any of his advisers could, and might have told him was quite superfluous. More than that, the new legislation restricts the targeting to only 14 senior officials, while the 2003 BFDA targets them all. Someone might soon ask: why have the others been omitted? To which the answer is they haven't and they never were.

I have had some difficulty in discovering the extent of assets seized in the US since 2003. Some US\$ 320,000 were initially blocked and by now this could have doubled, but the amounts are minimal. In the case of comparable EU sanctions, which are supported by 10 other countries who are EU candidates or potential candidates or EFTA members (excluding Switzerland), a mass trawl through the banking systems of the 27 EU countries has uncovered only the combined sum of around € 7,000 in a number of probably forgotten accounts.

As targeted sanctions, the asset freezes in both the US and the EU have clearly had next to no impact, and though some generals and their wives might regret not being able to visit Europe, they are welcome in Singapore, Thailand and Hong Kong where all the medical, banking and shopping facilities they might need are freely available. It is unfortunate that their children are not allowed into the US and EU to be educated, and to take home to their parents the full benefit of their exposure to a democratic way of life, a consequence of the *Law of Unintended Consequences*.

But surely you can suggest some "smart" sanctions which the EU could apply?

I can certainly suggest a number of sanctions which will look good on paper, but which will be quite meaningless in practice. Current EU legislation forbids investment in, or the provision of financial facilities to the two main military conglomerates and their subsidiaries. There is no reason why the list cannot be extended to include all State-owned enterprises, including those in the oil and gas, timber and other extractive industries. Activists and some Conservative MPs are pressing for this. But this extension, if enacted, would be as meaningless as the existing measures.

A State-owned enterprise (SOE), under Burmese law and according to their corporate statutes, cannot accept investment from another non-State investor and remain an SOE. It loses that status and becomes a

Joint Venture. This is in any case not what SOEs want. If they want a Joint Venture with another partner, they set up another corporate entity. So no investment is possible in existing SOEs. As regards financial facilities, it has not been the practice for many years for SOEs to seek financing facilities from Western banks. These are arranged through Overseas Chinese owned banks in Singapore, as well as through banks in Thailand and Hong Kong.

The EU really hasn't tried serious sanctions. Why not institute a trade embargo against Burmese exports to the EU?

I have already shown that, under the *Law of Unintended Consequences*, trade embargoes hit the ordinary people as much, if not more than they hit the regime. A trade embargo against Myanmar would deal a serious blow against the garment industry in Myanmar already mauled by US trade sanctions. A study by Toshihiro Kudo ⁴, Director at the Institute of Developing Economies in Chiba, Japan, concluded that "US sanctions actually harmed a potential growth industry that could alleviate widespread poverty in a least developed economy where labor intensive manufacturing industries were and are necessary to mobilize both the unemployed and the underemployed labor force in urban and rural areas."

Garments and textiles made up almost 70% in value of Burmese exports to the EU in 2006 and accounted for € 212 million out of € 306 million ⁵. But Toshihiro Kudo found that of 142 exporting garment firms in Myanmar in 2004, 112 were domestic private firms, 22 were 100% foreign-owned, 8 were Joint Ventures with minority State participation, but none were SOEs - the latter manufacture only for the local market. Though some of the domestic private firms might be owned by "cronies" of the regime, mostly they are smaller factories very vulnerable to the intense international competition in garment exports and some have already succumbed. Accordingly, to target textile exports to the EU would be to undermine the private sector in Myanmar, to force more workers into unemployment, and under the *Law of Unintended Consequences* to raise the relative importance of the handful of SOE Joint Ventures and 100% foreign-owned enterprises. The loss of some 80,000 garment workers as a result of US sanctions may have resulted in an increase in HIV/Aids as some women have taken to the sex-trade in order to survive.

It should also be noted that in Myanmar all raw materials such as yarn need to be imported, as well as all machinery and spare parts. This means that business margins are very tight. Gross overseas earnings of € 212 million need to be set against essential imports, and by the time wages and operating expenses have been calculated into the business equation, the net operating profit is modest indeed. Then there are the

⁴ "The Impact of United States Sanctions on the Myanmar Garment Industry" December 2005 - accessed at http://www.ide.go.jp/English/Publish/Dp/pdf/066_kudo.pdf

⁵ Source EUROSTAT DG Trade 7 August 2007

usual EBIDTA commitments (interest on loans, depreciation, tax liabilities and amortization) which leave little net profit at the end of the day, and even less for the payment of dividends to shareholders. ⁶

The other main exports to the EU are wood and wooden manufactures (€ 48 million or 15.6%) and animal products (€ 16 million of 5.4%). Now it might well be true that some wooden products might come from SOEs. Some could equally come from private companies such as Myanmar Inter-Safe ⁷ which has close Thai connections. An embargo on wooden exports would be totally ineffective. They could easily be rerouted through Thailand. Many of the furniture factories in Chiang Mai and other towns in Northern Thailand have traditionally used Burmese teak as well as Thai teak for their furniture manufactures.

So you are saying that targeted sanctions are equally ineffective?

What I would say is that, as asset freezes and visa bans have already been applied, I would find it very difficult indeed to recommend additional "smart" sanctions, because they frankly do not exist. There is little point in introducing a formal investment ban when no Western companies are currently thought to have any plans to invest. The last substantive investments by European companies in Myanmar were made during the 1990s, not in this century. Applying a formal investment ban would not only not have any significance, it would under the *Law of Unintended Consequences* assure an open market for our Asian competitors, and lock them even more securely into supporting the Burmese economy and opposing economic sanctions.

Unfortunately, such are the political pressures in the UK on Ministers from both the Conservative Opposition, within their own party and from activist groups that, as President Bush has found, taking "no action" is not an option. So something will have to be done through the EU to give expression to the outrage felt. It will not matter that the action taken is ineffective, even that it is counterproductive and entrenches the regime in power. The domestic political imperative rather than support for the suffering Burmese people will dominate. So officials in capitals and in Brussels are searching, but in vain for those "smart" sanctions against the military regime, for if they existed, they would have been found and applied already, long ago.

So what action would you recommend to put pressure on the regime?

The solution to the problems of Myanmar can only be found through dialogue and engagement.

⁶ From 1994-1995 I was Chairman of Apex Dalat Limited, a garment factory in Dalat, Vietnam, employing some 400 workers in factory and another 600 on contract.

⁷ Website at <http://www.myanmarwood.com/>

- The US should be told that their policies of isolation, ostracism and sanctions have not only not worked, but have made things worse, and that the EU plans instead to develop a working relationship with the Burmese authorities to tackle poverty eradication through a substantive programme of humanitarian and development assistance. This is what the Burmese people want.
- Terms of accountability and transparency should be agreed, of the kind that the 3 Diseases Fund has negotiated which has now replaced the Global Fund to fight Aids, Tuberculosis and Malaria which pulled out of Myanmar precipitately alleging lack of cooperation from the Burmese authorities.⁸ Daw Aung San Suu Kyi would support this.
- The EU should also abandon its attempts to boycott travel and tourism, because there can surely be no EU citizen who is not now fully aware of Myanmar's problems. For there will during the next few years no "tourists" as such going to Myanmar, but only responsible travellers with a measure of enlightenment already about the country. The Burmese people are desperate for contact. Daw Aung San Suu Kyi would be likely to support responsible travel of this nature.
- EU trade and investment should no longer be discouraged, but companies should be expected to adhere to a Code of Conduct of the kind which applied to EU firms trading and investing in South Africa during the apartheid years, and which led Nelson Mandela to thank both Shell and BP for staying the course in South Africa even though it was ANC policy to promote disinvestment. I do not know what Daw Aung San Suu Kyi would today say in this context. She has previously spoken against foreign investment, though she was at one stage also against humanitarian relief programmes, but changed her mind.
- As a principle, the sanctions of the market place are infinitely more effective than the sanctions of government instigation. It was the sanctions of the international financial community which declared apartheid South Africa an unacceptable financing risk which helped to bring an end to the apartheid regime, not the trade and oil sanctions which were surmountable.

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⁸ I was Chairman of Ockenden International, a charity supporting displaced persons. We have worked in the Sudan and Afghanistan for many years, as well as in other very difficult countries, and if we had pulled out of countries whenever the going got tough, we would never have accomplished anything.