



Offering Trade Benefits for More Inclusive Elections

EU Trade Sanctions Against Myanmar Hit the Wrong Targets

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When it comes to sanctions against Myanmar, Western public debate has crystallized broadly into two schools of thought – either in favor of sanctions, as a reflection of a moral position, or against sanctions because of their perceived lack of overall effectiveness. This policy brief suggests a more targeted and evidence-based approach. To begin with it is essential to have a clear and precise understanding of what sanctions should accomplish as well as knowledge of the actual impact of those sanctions on the ground. Equally important is to thereafter promptly dismantle any misguided measures while maintaining and reinforcing those measures that work according to the objectives. Finally, the flow of information to the international community must concern the actual impact of sanctions rather than rhetoric and propaganda.

The current electoral process in Myanmar and the ongoing trade policy review in Europe offer a unique chance for productive steps forward. In 1997, the EU withdrew trade concessions – the so-called Generalized System of Preferences – from Myanmar, in response to the forced labor practices of some Burmese authorities. As it turns out, the measure was off-target from the outset – it had a huge negative impact on the operations of small and medium businesses while the ruling military government did not experience any additional pressure as a result of this sanction.

Putting the GSP back in place would not only remedy this rationally (and morally) unacceptable situation, it could even steer the electoral process in Myanmar in a more positive direction.

The GSP in Short

With the Generalized System of Preferences (GSP), industrialized countries enable exporters in developing countries to benefit from preferential tariffs in their markets. Under GSP benefits, developing countries have better access to mature market economies, and can generate additional export revenue and reduce poverty at home. Developing countries are neither forced nor expected to reciprocate with similar market access preferences.

The rules of GSP were created in the 1970s by Europe, Japan and the United States. Other countries came later. Today, the European Union's scheme is the most widely used and the most generous: The volume of imports to the EU from developing countries under the GSP is greater than the volume of imports under the U.S., Canadian and Japanese GSP systems combined. 176 countries benefit from its three types of preferential access:

- Standard GSP: the EU provides non-reciprocal preferential access on over 6200 tariff lines. In the case of textiles and clothing, GSP duties amount to 80% of the full common customs tariff.¹
- GSP+: encourages sustainable development and good governance in vulnerable developing countries. Beneficiaries must ratify and apply 27 core UN and ILO conventions on human and labor rights, on the environment, the fight against drug production and trafficking, and corruption.
- The “Everything but Arms” GSP: the EBA scheme offers completely free market access, i.e. without duties and quotas, to the 49 least developed countries (LDCs). The only exceptions are arms and armaments.² EBA beneficiaries among the LDC include Bangladesh, Cambodia, Lesotho and Madagascar – but not Myanmar.



The legal basis for the EU's GSP is a Regulation agreed by the EU Council of Ministers, following a proposal from the European Commission. Usually, such Regulations are applicable for a period of three years. The current Regulation is valid until December 31, 2011. The EU's new legal base, the Lisbon Treaty, requires a more elaborate legislative process, involving the European Parliament. Therefore, the European Commission has proposed to roll over existing GSP provisions for a reasonable period in order to permit an in-depth review of the current system and to prepare a new Regulation. A public consultation is already open.³

The European Union declares its primary GSP objective to contribute to the reduction of poverty and the promotion of sustainable development and good governance. If increasing trade is a measure of decreasing poverty, statistics seem to support this assertion: GSP preferential imports (2007) amount to sizable quantities (2007: €58.6 billion), benefitting sectors in which developing countries do have a comparative advantage: textiles and clothing, machinery, mineral products, plastics and rubber, and footwear.⁴

Why Is Myanmar Not a Beneficiary of the EU's GSP?

The EU has withdrawn GSP privileges from Myanmar⁵, in response to a complaint by two international trade union associations, the International Confederation of Free Trade Unions (ICFTU) and the European Trade Union Confederation (ETUC) regarding the use of forced labor by the Burmese authorities.

GSP privileges may indeed be temporarily withdrawn if any form of forced labor is prevailing in the country under scrutiny. The Geneva Conventions of September 25, 1926 and September 7, 1956, and the ILO Conventions no. 29 and no. 105 define the notion of forced labor.

Forced labor is not a standard nationwide practice in Myanmar, but does occur persistently within the remit of armed forces. The army uses this intolerable method by forcing villagers to fix roads or construction sites, or even clean their barracks. Mostly, this happens without pay or compensation. The ILO office in Yangon is examining cases of forced labor brought to its attention. ILO describes the problem well, e.g. in its most recent report⁶ and in the conclusions of its Governing Body.⁷

However, *forced labor does not occur in the private sector*. Clear-

ly, this cannot be proven with absolute certainty. However, there are strong indications supporting this statement: thus, the ILO has not mentioned a single occurrence of forced labor among private businesses. No complaints have ever been received, let alone proven by the ILO liaison office in Yangon. For obvious reasons, ILO would not be in a position to officially confirm something that does not exist. By the same token, the UN Special Rapporteur for Human Rights – who has described various human rights problems in Myanmar in considerable detail – has never reported a single case of forced labor in the private sector. Finally, European advocacy campaigns which are otherwise quick to highlight human rights deficits in Myanmar have done so with regard to the government's misbehavior, but are silent upon the conduct of private textile companies or fishery businesses. In case these were to employ forced labor practices, the international community would certainly become aware of it.

The GSP sensitive sectors of textiles/garments and fisheries are private, not government owned. The last state-owned company in the sector closed in 2001. Only 171 garment companies are left today, down from 279 in 2000. Around a third of them are in the export business; the others are only domestic operators or not operational. 135 companies are local ones and 30 are 100 per cent foreign-owned. Outside the European concern are two Korean joint ventures with MTI/UMEH (both army-owned public entities) and four with the private sector.

There is indeed a case to answer regarding the use of forced labor by the Myanmar government – in particular by the military authorities. The withdrawal of Myanmar's GSP privileges could be in theory justified on this basis. But, an evidence-based approach to sanctions leads to questions:

- (a) Have the sanctions made any impact on the willingness or otherwise of the Myanmar government to address the issue of force labor?
- (b) Have the approved measures negatively impacted on the interests of stakeholder groups who are not associated with the issue of forced labor?

Results of the GSP Withdrawal

There is no evidence that the withdrawal of EU GSP privi-



leges has had any impact on the willingness of the Myanmar military authorities to address the issue of forced labor. There is clear evidence, however, that revenues for private sector companies engaged in the export sector (mainly textiles and fisheries) have fallen dramatically as a result of the withdrawal of GSP benefits from Myanmar.

One is left wondering how the European authorities could conclude in 1996 that for example privately owned textile companies would benefit the military regime.

Was it a historically valid argument? In no way does the conclusion follow from the premises. The measure was badly, if at all, researched. The said EU Regulation confirms that *no proper investigation had been conducted*: “[...] the evidence gathered during the Commission’s investigation of the initial complaint by the ICFTU and ETUC and the resulting conclusions are broad enough in scope to provide a valid basis for examining the extended complaint lodged by those organizations on 2 January 1997, thus rendering a specific investigation of the agricultural sector unnecessary [...]”

It is not possible to justify the cancellation of Myanmar’s GSP status by arguing that export earnings generated by private businesses should be sanctioned as they generate benefits for the government and the armed forces. The withdrawal of GSP benefits from Myanmar appears to have produced unintended consequences for private enterprise which could have been foreseen if the necessary research had been carried out. The consequences of the sanctions have been dramatic.

Women are the victims: Employment in the private garment businesses has decreased drastically, and female unemployment has risen sharply. From 1999 to 2001, the Myanmar garment industry employed around 350,000 people, mostly women. In 2010, only 55,000 women are still recorded as being employed. What happened to the rest? Where could they hope to find new jobs other than as prostitutes in Thailand? A small number of Myanmar companies may have moved to Thailand’s border provinces employing Myanmar economic migrants there.

A middle class – represented by small and medium size companies – has been hindered, not helped by the withdrawal of GSP. If the stated goal of GSP policy was to contribute to the eradication of poverty, its withdrawal is contradictory. It can be safely assumed that the majority of people running their small and medium size businesses are by no means supportive of the military Government.

Nobody benefits politically. The GSP withdrawal has not pushed the government into democratic reforms or into combating forced labor within the army. The agreement with the ILO – the “Supplementary Understanding” to investigate locally cases of forced labor – may arguably be the product of other processes, but not of GSP pressure. On the other hand, the climate of mutual suspicion and confrontation associated with sanctions means that the EU has actually lost leverage with the military authorities. Forced labor may continue within the armed forces – with or without the GSP. Almost fifteen years of economic sanctions have left Brussels with no more tools.⁸ The assertion of a “balanced policy” with sanctions, aid and dialogue does hardly stand the test.⁹

What to Do Next?

It is obvious that Myanmar’s economic and social problems cannot be solved by GSP reinstatement alone. The country has been traumatized throughout its history: colonial oppression was followed by Japanese occupation. Independence in 1948 saw civil unrest, ethnic conflict and a military takeover in 1962. The “transition” in 1974 from a military government to a Socialist-inspired military government in civilian habit ruined the economy. The 1988 military takeover led to the 1990 elections, but not to a legitimate system of government. All these decades saw ethnic insurgency, declining governance and increased poverty. In short, the country has never been at peace with itself.

Limited economic liberalization has occurred since the early 1990s. But bad macroeconomic governance persists, e.g. in rice export policies, in the absence of a generalized taxation system which could gradually lead to more public investments in health and education, and in the lack of a national, integrated socio-economic plan. Myanmar appears to be in a difficult, if not impossible position to remedy the situation on its own.

Western sanctions have not helped. “Sanctions freeze a situation that does not appear to contain the seeds of its own resolution.”¹⁰ “Government repression, corruption and mismanagement bear primary responsibility for this situation. But Western governments – in their attempt to defeat the regime by isolating it – have sacrificed opportunities to promote economic reform... and have weakened the West’s ability to influence the changes underway in the



country.”¹¹

There is little objective basis that just a little more pressure, or more sanctions, might change this situation.¹² Even the most critical of all advocacy groups, the UK-based Burma Campaign, admits the lack of impact of the GSP withdrawal (still, they overlook the “collateral damage” done to workers).¹³ The negative effects of withholding the EU’s GSP are felt only in the private garments and fisheries businesses, and – regarding textiles – mostly by women who have little political voice. Such results of a fallacious policy could and should be avoided.

Would the reinstatement of European GSP privileges help remedy?

Sadly, the straightforward answer is no. The consequences of the GSP withdrawal have been dramatic, as described above. But, today a new “equilibrium” has been reached at a lower level, and to the disadvantage of Myanmar’s middle class, and to the detriment of sound labor policies.

Trade between the European Union and Myanmar has come to a halt. Today’s trade figures are simply insignificant:

- The EU’s share in Myanmar’s external trade has decreased from 16% of all exports (2004) to 3.8% (2008), with a total export value of €168m.
- In the same period, Myanmar’s imports from the EU have decreased from 3.2% to 2.4%, with a total import value of €115m.
- While there is no formal EU trade boycott, many European banks simply do not want to bother with the – perceived or real – difficulties of checking possible legal obligations. The “atmospheric” boycott has become stronger than the legal one.
- Trade patterns have developed differently: China, Thailand, Singapore and India absorb around 85% of all Myanmar exports. Undocumented – legal and illegal – border trade is estimated by researchers to reach significant levels.
- Domestic policies are not helpful either: internal market barriers are commonplace, with local commanders, local militias, ethnic groups, local communities and many more entities claiming a share of transiting merchandise. As a remnant of earlier socialist days, an export tax of 10% is hindering exports.¹⁴

Giving GSP privileges back to the country may only marginally help to get a middle class back on its feet. But huge obstacles remain. Still, there is merit in looking at the European GSP.

Possible Solutions

A Quick Fix Would Need Political Courage

A simple option would be to officially check the facts as reported and – if indeed found solid – to reinstate the GSP with no further ado, thus removing the unintended consequences of an ill-conceived policy.

How likely is such a demarche?

The EU Council of Ministers, the European Parliament and the European Commission would need to acknowledge that the established facts do not support any more restrictive measures which hits the wrong target and does not achieve the intended result.

Only those selling an ideology have difficulties admitting to being wrong. Proceeding in this direction would require political honesty – i.e. to do the right thing – in combination with political courage – i.e. to defend the right thing in public. This will not be easy. The argument may prevail that reinstating the GSP would amount to “lifting sanctions” or to “recognize” a military government.

An Alternative Solution Would Be More Complicated

Moreover, it would require a measure of diplomacy. It would make the GSP part of a negotiated deal. The EU could offer to the government of Myanmar the resumption of GSP benefits, in the framework of the ongoing global GSP review. EU leverage needs to be created. The GSP could become a bargaining chip to that effect, but not a unilateral carrot.

There is a window of opportunity on both the Myanmar and the European side. The government of Myanmar is preparing elections in late 2010. They may not be as inclusive as one may wish. Similar to the UK – where prisoners are excluded from voting – Myanmar citizens in prison are being excluded from running as candidates and from being members of political parties. This provision prevents the approx. 2,000 political prisoners from being part of the process.



The EU is launching its global GSP review, as the current system will end in 2011. The European Commission is tasked to investigate in all beneficiary countries whether the system works or whether a “graduation” is needed, i.e. an adaptation to grant more, or to withdraw partially some concessions. The EU Council of Ministers and the European Parliament will subsequently decide on a Commission proposal.

So far, the EU has repeatedly stated it would “respond positively or negatively to developments on the ground”. One could rightly question whether the Myanmar Gov has ever understood the subtlety of the message that it had to move first to get sanctions removed. A concrete offer of putting GSP benefits back in place, to be introduced as a result of the ongoing global review, avoids this ambiguity.

Following the elections, the EU must be prepared to respond to a new government, and to undertake incremental steps in policy development. The GSP option is therefore a concrete possibility to communicate unambiguously that a normalization of relations is possible. For once, the EU would lead the way.

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The opinions expressed in this Policy Brief are those of the authors and do not necessarily reflect the views of the Institute for Security and Development Policy or its sponsors.

Endnotes

¹ The European Commission’s Directorate General for Trade has published this well readable overview: http://trade.ec.europa.eu/doclib/docs/2009/march/tradoc_142662.pdf

² <http://ec.europa.eu/trade/wider-agenda/development/generalised-system-of-preferences/everything-but-arms>

³ <http://trade.ec.europa.eu/doclib/press/index.cfm?id=545&serie=330&langId=en>

⁴ All statistics are to be found on the European Commission website: <http://ec.europa.eu/trade/wider-agenda/development/generalised-system-of-preferences>

⁵ For ease of reference, see the Regulation (<http://www.legaltext.eu/text/en/T40857.htm>) in the annex.

⁶ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_124409.pdf

⁷ http://www.ilo.org/global/What_we_do/Officialmeetings/gb/lang--en/WCMS_125065/index.htm

⁸ Most remarkable is the EU’s focus on punitive sanctions. One could question the wisdom of this strategy – why has never an attempt been undertaken to establish channels of dialogue, leading to a minimum of trust? Such could have allowed holding the government to account in cases of wrongdoing.

⁹ Aid does not make up for sanctions: aid is helping poor and vulnerable communities and individuals. Sanctions address a government in full control of the political agenda and neither impressed by Western sanctions nor by Western aid. Moreover, aid is insignificant when compared to other situations of poverty: OECD reported in 2007 that each Burmese citizen received only US\$4 per head per year in aid from all external funding sources, compared with an average among OECD’s list of 38 “fragile states” of US\$42, including US\$47 for Cambodia and US\$68 for Laos. Aid received for Cyclone Nargis relief (140,000 people dead), was less than one-tenth of aid provided to the victims of the 2004 tsunami when 220,000 people died. The Haiti Pledging Conference raised over US\$5 billion for recovery from the January 12 earthquake. After the Myanmar Cyclone, a Post-Nargis Partnership Conference raised US\$88 million.

¹⁰ International Crisis Group Myanmar, “Sanctions, Engagement or Another Way Forward?”, Asia Report N°78, April 26, 2004; <http://www.crisisgroup.org/home/index.cfm?l=1&id=2677>

¹¹ International Crisis Group Myanmar, “Burma/Myanmar After Nargis – time to normalise aid relations”, Asia Report N° 161, October 28, 2008; <http://www.crisisgroup.org/home/index.cfm?id=5734&l=1>

¹² International Crisis Group Myanmar: “Sanctions, Engagement or Another Way Forward?”, Asia Report N°78, 26 April 2004; <http://www.crisisgroup.org/home/index.cfm?l=1&id=2677>

¹³ Burma Campaign UK – The Case For Sanctions, http://www.burmacampaign.org.uk/case_for_sanctions.html, Current EU measures against Burma include: ... An arms embargo ... A ban on non-humanitarian aid ... An end to GSP trade privileges - *Again, no significant economic impact on the regime.* ...

¹⁴ http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113423.pdf



Appendix

Council Regulation (EC) No 552/97 of 24 March 1997 temporarily withdrawing access to generalized tariff preferences from the Union of Myanmar
<http://www.legaltext.ee/text/en/T40857.htm>

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3281/94 of 19 December 1994 applying a four-year scheme of generalized tariff preferences (1995 to 1998) in respect of certain industrial products originating in developing countries (1), and in particular Article 12 (3) thereof,

Having regard to Council Regulation (EC) No 1256/96 of 20 June 1996 applying multiannual schemes of generalized tariff preferences from 1 July 1996 to 30 June 1999 in respect of certain agricultural products originating in developing countries (2), and in particular Article 12 (3) thereof,

Having regard to the proposals from the Commission (3),

Having regard to the opinion of the European Parliament (4),

Having regard to the opinion of the Economic and Social Committee (5),

Whereas pursuant to Regulation (EC) No 3281/94 and Regulation (EC) No 1256/96 the Union of Myanmar (hereafter referred to as 'Myanmar') is a beneficiary of generalized tariff preferences;

Whereas Article 9 of Regulation (EC) No 3281/94 and Article 9 of Regulation (EC) No 1256/96 provide that the preferences in question may be temporarily withdrawn in whole or in part in circumstances including the practice of any form of forced labour as defined in the Geneva Conventions of 25 September 1926 and 7 September 1956 and International Labour Organization (ILO) Conventions Nos 29 and 105;

Whereas on 7 June 1995 the International Confederation of Free Trade Unions (ICFTU) and the European Trade Union Confederation (ETUC) made a joint complaint to the Commission under Article 9 of Regulation (EC) No 3281/94 and called for Myanmar to be temporarily withdrawn from the Community scheme of generalized tariff preferences because of its use of forced labour;

Whereas on 2 January 1997 the ICFTU and the ETUC notified the Commission that they were extending the scope of the joint complaint lodged under Regulation (EC) No 3281/94, with a view to obtaining the withdrawal of Myanmar's preferential entitlement also under Regulation (EC) No 1256/96;

Whereas the Commission examined the complaint of 7 June 1995 in consultation with the Generalized Preferences Committee; whereas the evidence put forward by the complainants was judged sufficient to justify the opening of an investigation, and whereas the **Commission decided by a Notice of 16 January 1996 (6) that an investigation should take place;**

Whereas the Myanmar authorities were formally notified of the opening of the investigation; whereas they denied that the practices referred to in the complaint constituted forced labour, citing the exceptions in Article 2 (2) of ILO Convention No 29, and claiming that those exceptions covered the 1907 Town Act and the 1908 Village Act, which allow the population to be made to carry out works and services; whereas that interpretation has been challenged by the ILO, whose competent bodies have called for the immediate repeal of the laws in question in order to ensure compliance with the letter and the spirit of Convention No 29;

Whereas the written and oral statements collected by the Commission during the course of the investigation conducted in consultation with the Generalized Preferences Committee corroborate the allegations contained in the complaint; whereas it has emerged that **the authorities in Myanmar have routinely used forced labour, not only for military operations but also for civilian and military infrastructure building projects, backed by coercion and frequently violent reprisals;**

Whereas, seeking to add to the information it had gathered during the investigation, the Commission requested the authorities of Myanmar to cooperate with that investigation by allowing a fact-finding team into the country; whereas this request was denied and since the conditions in Article 11 (5) of Regulation (EC) No 3281/94 are thus fulfilled the findings of the investigation could be based on the information available;

Whereas the **evidence gathered during the Commission's investigation of the initial complaint by the ICFTU and ETUC and the resulting conclusions are broad enough in scope to provide a valid basis for examining the extended complaint** lodged by those or-



ganizations on 2 January 1997, **thus rendering a specific investigation of the agricultural sector unnecessary**; whereas the requirements of Article 9 (2) of Regulation (EC) No 1256/96 have thus been met and the conditions laid down in Article 11 (5) of that Regulation have been fulfilled;

Whereas the information available thus provides sufficient grounds to conclude that withdrawal of Myanmar's access to the scheme of generalized preferences for which it is eligible is justified;

Whereas the findings of the investigation have been reported to the Generalized Preferences Committee in accordance with Article 12 (1) of Regulation (EC) No 3281/94;

Whereas the fact that the **practices condemned have been routine and widespread means that a complete withdrawal of access to the arrangements is warranted**;

Whereas in the light of the foregoing, **the generalized tariff preferences applicable to industrial and agricultural products originating in Myanmar should be temporarily withdrawn until it has been established that the practices in question have been brought to an end**;

Whereas goods in shipment to the European Community should be excluded from this withdrawal of preferences, provided that they were dispatched before the date of entry into force of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The Union of Myanmar's access to the tariff preferences granted by Regulation (EC) No 3281/94 and Regulation (EC) No 1256/96 is hereby temporarily withdrawn.

Article 2

The Council, acting by qualified majority, on a proposal from the Commission, shall bring the application of this Regulation to an end in the light of a Commission report on forced labour in Myanmar, showing that the practices mentioned in Article 9 (1), first indent of Regulation (EC) No 3281/94 and Article 9 (1), first indent of Regulation (EC) No 1256/96 which have caused the withdrawal of access to generalized tariff preferences from Myanmar no longer exist.

Article 3

This Regulation shall enter into force on the seventh day following that of its publication in the Official Journal of

the European Communities.

It shall not apply to products proven to have been dispatched to the European Community before that date.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 24 March 1997.

For the Council

The President

H. VAN MIERLO

(1) OJ No L 348, 31.12.1994, p. 1. Regulation as amended by Regulation (EC) No 2948/95 (OJ No L 308, 21.12.1995, p. 32).

(2) OJ No L 160, 29.6.1996, p. 1. Regulation as amended by Regulation (EC) No 2448/96 (OJ No L 333, 21.12.1996, p. 12).

(3) OJ No C 35, 4.2.1997, p. 14 and OJ No C 80, 13.3.1997, p. 18.

(4) Opinion delivered on 14 March 1997 (not yet published in the Official Journal).

(5) Opinion delivered on 27 February 1997 (not yet published in the Official Journal).

(6) OJ No C 15, 20.1.1996, p. 3.

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