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## MYANMAR: LIFTING SANCTIONS IS MORE DIFFICULT THAN IMPOSING SANCTIONS

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The pace of Myanmar's domestic political reforms since the election of a civilian government in March 2011 has been nothing less than breathtaking. Over 700 political prisoners have been released, restrictions on the media and civil society groups have been eased, the right to form labour unions and the right to strike has been legislated, an independent National Human Rights Commission has been established, and an effort is being made to achieve national reconciliation with the country's ethnic minorities through ceasefires and negotiations.

Myanmar's reforms have led the United States, European Union (EU), Australia, Norway and other countries to lift many of their sanctions. But sanction lifting is proving more difficult than imposing sanctions. There are two reasons for this. First, sanctions were imposed over a long period of time and were not part of a consistent strategy. They form a complex web of laws, regulations and government-imposed restrictions. Second, countries that imposed sanctions want to keep them in reserve as a hedge against any backsliding on reforms. Both the U.S. and EU are scrambling to craft strategies to suspend sanctions that will support the political reform process and encourage economic growth. They are under constant pressure by non-governmental organisations and human rights groups not to move too quickly in making concessions.

The rush to lift sanctions was a direct response to Myanmar's conduct of by-elections on April 1<sup>st</sup> to fill 45 vacant seats. The National League for Democracy (NLD), headed by Daw Aung San Suu Kyi, won 43 seats and became the virtual opposition in the parliament. Since the April election, the NLD has taken its place in parliament. Aung San Suu Kyi was received by Myanmar's President Thien Sein and was later permitted to travel abroad for the first time in over two decades.

### The United States and Sanctions

The United States has a particularly complex web of sanctions against Myanmar composed of a combination of Executive Orders and Congressional legislation. One senior Administration official characterised U.S. restrictions on Myanmar as "interlocking and overlapping sanctions... including an executive proclamation and what is called the 2008 JADE Act (Junta's Anti-Democratic Efforts Act that bars the import of Burmese gemstones into the United States)." When asked about the U.S. travel ban, he replied, "There is no travel ban per se. There is no list. There is a travel ban, but there is no list." Secretary of State Hillary Clinton has pledged with respect to Myanmar that the United States will meet "action with action." Immediately after the April elections the United States responded with five initiatives. First, it announced it would nominate an ambassador to Myanmar. Second, the U.S. would lift restrictions on the export of financial services and investment to Myanmar. Third, the United States would establish a full U.S. Agency for International Development (AID) mission in Myanmar. Fourth, the U.S. would withdraw its opposition to the United Nations Development Program setting up a normal country program. And fifth, the U.S. would invite key government officials and reformers to visit the United States while retaining travel bans on "regressive elements."

### What are the difficulties of lifting U.S. sanctions?

In April when senior Obama Administration officials provided background briefings on U.S. policy changes to the press, they revealed that there was no plan to remove existing congressional restrictions on relations with Myanmar. These would continue to remain in place for the foreseeable future. When one senior Administration official was asked how long it would take to ease the restrictions on investment, he replied, "I can't give you a specific timeframe because, frankly, some of these things – lifting sanctions is a challenging process."

The Obama Administration has chosen to issue waivers to existing sanctions where possible. Most notably the U.S. Treasury will now issue general licenses to American companies and private agencies wishing to provide financial services or invest in Myanmar. According to one senior Administration official the U.S. would “try to balance the need for the general licenses with the understanding that we have to be careful and target those who would impede the process we’d all like to see.”

At the same time, American companies doing business will be expected to observe standards of corporate social responsibility that are still in the drafting stage. American companies will be restricted from doing business with individuals and companies complicit in human rights violations. This includes persons on a list of Specially Designated Nationals (SDN). Obama Administration senior officials claim that American companies will be held accountable for their actions and associations if they deal with individuals and companies on the SDN list.

The difficulty with this policy is that U.S. government officials are still working to identify which individuals and commercial enterprises in Myanmar are off limits. U.S. officials have revealed that the list is being revised with names added and deleted constantly. There are no U.S. restrictions on which sectors of the economy American firms can work with. This makes it risky to invest or provide services to companies dealing with timber, oil and gas, gems and banks that have been linked closely with the military.

U.S. development policy specifically targets the poorest and more marginalised members of Myanmar’s society. This raises potential problems for non-profit organisations wishing to work in remote rural regions and ethnic minority areas in particular. These areas are conflict-prone and likely to be under the control of military and security agencies. How can private American agencies avoid working with individuals and agencies who are viewed as “spoilers” by Washington?

#### The European Union Lifts Sanctions

The EU is seemingly in a more complex position regarding sanctions than the United States. The EU too developed a dense matrix of sanctions against Myanmar over the last two decades. The EU’s restrictions include: visa bans on individuals who are members of the military regime, high-ranking members of the Tatmadaw (armed forces), the tourism sector and their family members; an embargo on arms and military equipment sales and the posting of defence attaches; and various economic sanctions (suspension of investments, loans, and non-humanitarian aid, ban on joint ventures, ban on export of equipment, technology and financial and technical services to the logging and timber processing industries; and a ban on the import of logs, timber products, metals, and precious and semi-precious stones). Certain types of humanitarian assistance has been permitted in the past. The United Kingdom remains the largest EU donor to Myanmar.

In addition, Myanmar lost its trade privileges under the Generalised System of Preferences (GSP) in 1997 due to widespread forced labour. The loss of GSP privileges comes under the authority of the EU’s Common Foreign and Security Policy. This is a legal document whose adopting requires unanimous consent.

In order to change the legal instruments governing its sanctions policy the EU needs the consensus of all its members. This is a laborious process that often involves delays and compromise. In a similar fashion to the United States, the EU has chosen to suspend its sanctions but not rescind them altogether. In April 2011, the EU ended the visa ban on travel to Europe by selected members of the elected government of Myanmar. This included individuals who had no affiliation with the military or were essential for “dialogue with the international community.” In January 2012, the visa ban was lifted on the state president, cabinet members and parliamentary speakers.

Most recently, on April 23 this year following the by-elections, the EU suspended its all sanctions against Myanmar, with the exception of the arms embargo and the suspension of trade preferences. This means that European companies are now free to pursue trade and investment opportunities in Myanmar. It should be noted, however, that trade between the EU and Myanmar was never totally prohibited.

#### Australia Too Lifts Sanctions

Australia followed the United States and European Union in imposing sanctions on Myanmar. Australia’s sanctions were mainly directed at financial transactions and travel bans on 126 members of the

government. According to Foreign Minister Bob Carr, “Our sanctions were purely symbolic and didn’t have any serious impact.”

In April 2012, Australia eased its travel ban on members of the Myanmar government by reducing the numbers of persons affected including the state president. On June 7th, Foreign Minister Carr invited both President Thein Sein and Aung San Suu Kyi to visit Australia. On this occasion he also announced the withdrawal of sanctions, the doubling of aid and support for human rights.

Australia’s shift in policy throws open the door for Australian companies to trade and invest in Myanmar. Although they will face competition from their American and European counterparts, Australian companies are thought to be well placed to assist in building regulatory institutions, providing educational and banking services, and developing Myanmar’s agricultural and banking sectors. Foreign Minister Carr has also flagged that the government will expect Australian companies to meet the highest standard of corporate social responsibility including the “OECD’s guidelines for multinational enterprises and the UN’s guiding principles on business and human rights.”

John Blaxland, Australia’s former Defence Attaché to Thailand (also accredited to Myanmar) has suggested that Australia gradually engage with the Tatmadaw because it is “the most powerful and significant institution in the country.” He points out that the Tatmadaw will be central to the resolution of any ongoing conflicts with ethnic minority separatist groups. And the Tatmadaw is the one central institution requiring reform. Blaxland suggests accrediting a permanent military representative to Myanmar and offering slots in “law and leadership training programs” that Australia currently provides to other Southeast Asian states. This suggestion has its merits. Australia is probably the only western country where an exchange of defence attachés is politically feasible. But it is also fraught with peril if the Tatmadaw remains impervious to reform.

Like the U.S. and EU, Australia has publicly announced that if there are any backsliding on reforms sanctions would be imposed again.

The United States, key members of the EU and Australia are in continuing consultation about the course of political reform in Myanmar. Secretary of State Hillary Clinton has described political reform as “irreversible.” Imposing sanctions was the easy bit, now comes the challenge of offering positive incentives to keep up the momentum of reform. Myanmar still has a long way to go. There are an estimated 300 political prisoners to be released, national reconciliation with the ethnic minorities may prove elusive, and the military’s entrenched constitutional role in the political system will need to be altered prior to national elections in 2015. Myanmar also offers a difficult and complex environment for foreign investors. It is one thing for governments to encourage trade and foreign investment, it is another to ensure that the playing ground is level and government decision-making transparent to all.

The current unrest in Rakhine state between Buddhists and Muslims demonstrates that not all of Myanmar’s failings can be sheeted home to the central government. It is easy to react to any government heavy handedness by reimposing sanctions, it is more difficult to stay the course to end the violence and bring about reconciliation. That is why lifting sanctions is more difficult than imposing them.

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#### *About the Author*

**Professor Carlyle A. Thayer** was educated at Brown, Yale and The Australian National University. He is a Southeast Asia regional specialist and has spent his entire career working in a military environment, first with The Royal Military College-Duntroon (1979-85) and then the Australian Defence Force Academy (1985-2010). He may be contacted at: [c.thayer@adfa.edu.au](mailto:c.thayer@adfa.edu.au).

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*Carlyle A. Thayer, June 2012*