

BURMESE FREEDOM AND DEMOCRACY ACT OF 2003

[Public Law 108–61, Enacted July 28, 2003; 50 U.S.C. 1701 note]

[As Amended Through P.L. 112–163, August 10, 2012]

【Currency: This publication is a compilation of the text of Public Law 108–61. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

AN ACT To sanction the ruling Burmese military junta, to strengthen Burma's democratic forces and support and recognize the National League of Democracy as the legitimate representative of the Burmese people, and for other purposes.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Burmese Freedom and Democracy Act of 2003”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The State Peace and Development Council (SPDC) has failed to transfer power to the National League for Democracy (NLD) whose parliamentarians won an overwhelming victory in the 1990 elections in Burma.

(2) The SPDC has failed to enter into meaningful, political dialogue with the NLD and ethnic minorities and has dismissed the efforts of United Nations Special Envoy Razali bin Ismail to further such dialogue.

(3) According to the State Department's “Report to the Congress Regarding Conditions in Burma and U.S. Policy Toward Burma” dated March 28, 2003, the SPDC has become “more confrontational” in its exchanges with the NLD.

(4) On May 30, 2003, the SPDC, threatened by continued support for the NLD throughout Burma, brutally attacked NLD supporters, killed and injured scores of civilians, and arrested democracy advocate Aung San Suu Kyi and other activists.

(5) The SPDC continues egregious human rights violations against Burmese citizens, uses rape as a weapon of intimidation and torture against women, and forcibly conscripts child-soldiers for the use in fighting indigenous ethnic groups.

(6) The SPDC is engaged in ethnic cleansing against minorities within Burma, including the Karen, Karenni, and Shan people, which constitutes a crime against humanity and

has directly led to more than 600,000 internally displaced people living within Burma and more than 130,000 people from Burma living in refugee camps along the Thai-Burma border.

(7) The ethnic cleansing campaign of the SPDC is in sharp contrast to the traditional peaceful coexistence in Burma of Buddhists, Muslims, Christians, and people of traditional beliefs.

(8) The SPDC has demonstrably failed to cooperate with the United States in stopping the flood of heroin and methamphetamines being grown, refined, manufactured, and transported in areas under the control of the SPDC serving to flood the region and much of the world with these illicit drugs.

(9) The SPDC provides safety, security, and engages in business dealings with narcotics traffickers under indictment by United States authorities, and other producers and traffickers of narcotics.

(10) The International Labor Organization (ILO), for the first time in its 82-year history, adopted in 2000, a resolution recommending that governments, employers, and workers organizations take appropriate measures to ensure that their relations with the SPDC do not abet the government-sponsored system of forced, compulsory, or slave labor in Burma, and that other international bodies reconsider any cooperation they may be engaged in with Burma and, if appropriate, cease as soon as possible any activity that could abet the practice of forced, compulsory, or slave labor.

(11) The SPDC has integrated the Burmese military and its surrogates into all facets of the economy effectively destroying any free enterprise system.

(12) Investment in Burmese companies and purchases from them serve to provide the SPDC with currency that is used to finance its instruments of terror and repression against the Burmese people.

(13) On April 15, 2003, the American Apparel and Footwear Association expressed its “strong support for a full and immediate ban on U.S. textiles, apparel and footwear imports from Burma” and called upon the United States Government to “impose an outright ban on U.S. imports” of these items until Burma demonstrates respect for basic human and labor rights of its citizens.

(14) The policy of the United States, as articulated by the President on April 24, 2003, is to officially recognize the NLD as the legitimate representative of the Burmese people as determined by the 1990 election.

(15) The United States must work closely with other nations, including Thailand, a close ally of the United States, to highlight attention to the SPDC’s systematic abuses of human rights in Burma, to ensure that nongovernmental organizations promoting human rights and political freedom in Burma are allowed to operate freely and without harassment, and to craft a multilateral sanctions regime against Burma in order to pressure the SPDC to meet the conditions identified in section 3(a)(3) of this Act.

SEC. 3. BAN AGAINST TRADE THAT SUPPORTS THE MILITARY REGIME OF BURMA.**(a) GENERAL BAN.—**

(1) **IN GENERAL.**—Notwithstanding any other provision of law, until such time as the President determines and certifies to Congress that Burma has met the conditions described in paragraph (3), beginning 30 days after the date of the enactment of this Act, the President shall ban the importation of any article that is a product of Burma.

(2) **BAN ON IMPORTS FROM CERTAIN COUNTRIES.**—The import restrictions contained in paragraph (1) shall apply to, among other entities—

(A) the SPDC, any ministry of the SPDC, a member of the SPDC or an immediate family member of such member;

(B) known narcotics traffickers from Burma or an immediate family member of such narcotics trafficker;

(C) the Union of Myanmar Economics Holdings Incorporated (UMEHI) or any company in which the UMEHI has a fiduciary interest;

(D) the Myanmar Economic Corporation (MEC) or any company in which the MEC has a fiduciary interest;

(E) the Union Solidarity and Development Association (USDA); and

(F) any successor entity for the SPDC, UMEHI, MEC, or USDA.

(3) **CONDITIONS DESCRIBED.**—The conditions described in this paragraph are the following:

(A) The SPDC has made substantial and measurable progress to end violations of internationally recognized human rights including rape, and the Secretary of State, after consultation with the ILO Secretary General and relevant nongovernmental organizations, reports to the appropriate congressional committees that the SPDC no longer systematically violates workers rights, including the use of forced and child labor, and conscription of child-soldiers.

(B) The SPDC has made measurable and substantial progress toward implementing a democratic government including—

(i) releasing all political prisoners;

(ii) allowing freedom of speech and the press;

(iii) allowing freedom of association;

(iv) permitting the peaceful exercise of religion;

and

(v) bringing to a conclusion an agreement between the SPDC and the democratic forces led by the NLD and Burma's ethnic nationalities on the transfer of power to a civilian government accountable to the Burmese people through democratic elections under the rule of law.

(C) Pursuant to section 706(2) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107-228), Burma has not been designated as a country that has

failed demonstrably to make substantial efforts to adhere to its obligations under international counternarcotics agreements and to take other effective counternarcotics measures, including, but not limited to (i) the arrest and extradition of all individuals under indictment in the United States for narcotics trafficking, (ii) concrete and measurable actions to stem the flow of illicit drug money into Burma's banking system and economic enterprises, and (iii) actions to stop the manufacture and export of methamphetamines.

(4) APPROPRIATE CONGRESSIONAL COMMITTEES.—In this subsection, the term “appropriate congressional committees” means the Committees on Foreign Relations and Appropriations of the Senate and the Committees on International Relations and Appropriations of the House of Representatives.

(b) WAIVER AUTHORITIES.—The President may waive the restrictions described in this section or section 3A (b)(1) or (c)(1) for any or all articles that are subject to such restrictions if the President determines and notifies the Committees on Appropriations, Finance, and Foreign Relations of the Senate and the Committees on Appropriations, International Relations, and Ways and Means of the House of Representatives that to do so is in the national interest of the United States.

SEC. 3A. PROHIBITION ON IMPORTATION OF JADEITE AND RUBIES FROM BURMA AND ARTICLES OF JEWELRY CONTAINING JADEITE OR RUBIES FROM BURMA.

(a) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Ways and Means and the Committee on Foreign Affairs of the House of Representatives; and

(B) the Committee on Finance and the Committee on Foreign Relations of the Senate.

(2) BURMESE COVERED ARTICLE.—The term “Burmese covered article” means—

(A) jadeite mined or extracted from Burma;

(B) rubies mined or extracted from Burma; or

(C) articles of jewelry containing jadeite described in subparagraph (A) or rubies described in subparagraph (B).

(3) NON-BURMESE COVERED ARTICLE.—The term “non-Burmese covered article” means—

(A) jadeite mined or extracted from a country other than Burma;

(B) rubies mined or extracted from a country other than Burma; or

(C) articles of jewelry containing jadeite described in subparagraph (A) or rubies described in subparagraph (B).

(4) JADEITE; RUBIES; ARTICLES OF JEWELRY CONTAINING JADEITE OR RUBIES.—

(A) JADEITE.—The term “jadeite” means any jadeite classifiable under heading 7103 of the Harmonized Tariff Schedule of the United States (in this paragraph referred to as the “HTS”).

(B) RUBIES.—The term “rubies” means any rubies classifiable under heading 7103 of the HTS.

(C) ARTICLES OF JEWELRY CONTAINING JADEITE OR RUBIES.—The term “articles of jewelry containing jadeite or rubies” means—

(i) any article of jewelry classifiable under heading 7113 of the HTS that contains jadeite or rubies; or

(ii) any article of jadeite or rubies classifiable under heading 7116 of the HTS.

(5) UNITED STATES.—The term “United States”, when used in the geographic sense, means the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(b) PROHIBITION ON IMPORTATION OF BURMESE COVERED ARTICLES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, until such time as the President determines and certifies to the appropriate congressional committees that Burma has met the conditions described in section 3(a)(3), beginning 60 days after the date of the enactment of the Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act of 2008, the President shall prohibit the importation into the United States of any Burmese covered article.

(2) REGULATORY AUTHORITY.—The President is authorized to, and shall as necessary, issue such proclamations, regulations, licenses, and orders, and conduct such investigations, as may be necessary to implement the prohibition under paragraph (1).

(3) OTHER ACTIONS.—Beginning on the date of the enactment of this Act, the President shall take all appropriate actions to seek the following:

(A) The issuance of a draft waiver decision by the Council for Trade in Goods of the World Trade Organization granting a waiver of the applicable obligations of the United States under the World Trade Organization with respect to the provisions of this section and any measures taken to implement this section.

(B) The adoption of a resolution by the United Nations General Assembly expressing the need to address trade in Burmese covered articles and calling for the creation and implementation of a workable certification scheme for non-Burmese covered articles to prevent the trade in Burmese covered articles.

(c) REQUIREMENTS FOR IMPORTATION OF NON-BURMESE COVERED ARTICLES.—

(1) IN GENERAL.—Except as provided in paragraph (2), until such time as the President determines and certifies to the appropriate congressional committees that Burma has met the conditions described in section 3(a)(3), beginning 60 days after the date of the enactment of the Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act of 2008, the President shall require as a condition for the importation into the United States of any non-Burmese covered article that—

(A) the exporter of the non-Burmese covered article has implemented measures that have substantially the same effect and achieve the same goals as the measures described in clauses (i) through (iv) of paragraph (2)(B) (or their functional equivalent) to prevent the trade in Burmese covered articles; and

(B) the importer of the non-Burmese covered article agrees—

(i) to maintain a full record of, in the form of reports or otherwise, complete information relating to any act or transaction related to the purchase, manufacture, or shipment of the non-Burmese covered article for a period of not less than 5 years from the date of entry of the non-Burmese covered article; and

(ii) to provide the information described in clause (i) within the custody or control of such person to the relevant United States authorities upon request.

(2) EXCEPTION.—

(A) IN GENERAL.—The President may waive the requirements of paragraph (1) with respect to the importation of non-Burmese covered articles from any country with respect to which the President determines and certifies to the appropriate congressional committees has implemented the measures described in subparagraph (B) (or their functional equivalent) to prevent the trade in Burmese covered articles.

(B) MEASURES DESCRIBED.—The measures referred to in subparagraph (A) are the following:

(i) With respect to exportation from the country of jadeite or rubies in rough form, a system of verifiable controls on the jadeite or rubies from mine to exportation demonstrating that the jadeite or rubies were not mined or extracted from Burma, and accompanied by officially-validated documentation certifying the country from which the jadeite or rubies were mined or extracted, total carat weight, and value of the jadeite or rubies.

(ii) With respect to exportation from the country of finished jadeite or polished rubies, a system of verifiable controls on the jadeite or rubies from mine to the place of final finishing of the jadeite or rubies demonstrating that the jadeite or rubies were not mined or extracted from Burma, and accompanied by officially-validated documentation certifying the country from which the jadeite or rubies were mined or extracted.

(iii) With respect to exportation from the country of articles of jewelry containing jadeite or rubies, a system of verifiable controls on the jadeite or rubies from mine to the place of final finishing of the article of jewelry containing jadeite or rubies demonstrating that the jadeite or rubies were not mined or extracted from Burma, and accompanied by officially-validated

documentation certifying the country from which the jadeite or rubies were mined or extracted.

(iv) Verifiable recordkeeping by all entities and individuals engaged in mining, importation, and exportation of non-Burmese covered articles in the country, and subject to inspection and verification by authorized authorities of the government of the country in accordance with applicable law.

(v) Implementation by the government of the country of proportionate and dissuasive penalties against any persons who violate laws and regulations designed to prevent trade in Burmese covered articles.

(vi) Full cooperation by the country with the United Nations or other official international organizations that seek to prevent trade in Burmese covered articles.

(3) REGULATORY AUTHORITY.—The President is authorized to, and shall as necessary, issue such proclamations, regulations, licenses, and orders and conduct such investigations, as may be necessary to implement the provisions under paragraphs (1) and (2).

(d) INAPPLICABILITY.—

(1) IN GENERAL.—The requirements of subsection (b)(1) and subsection (c)(1) shall not apply to Burmese covered articles and non-Burmese covered articles, respectively, that were previously exported from the United States, including those that accompanied an individual outside the United States for personal use, if they are reimported into the United States by the same person, without having been advanced in value or improved in condition by any process or other means while outside the United States.

(2) ADDITIONAL PROVISION.—The requirements of subsection (c)(1) shall not apply with respect to the importation of non-Burmese covered articles that are imported by or on behalf of an individual for personal use and accompanying an individual upon entry into the United States.

(e) ENFORCEMENT.—Burmese covered articles or non-Burmese covered articles that are imported into the United States in violation of any prohibition of this Act or any other provision law shall be subject to all applicable seizure and forfeiture laws and criminal and civil laws of the United States to the same extent as any other violation of the customs laws of the United States.

(f) SENSE OF CONGRESS.—

(1) IN GENERAL.—It is the sense of Congress that the President should take the necessary steps to seek to negotiate an international arrangement-similar to the Kimberley Process Certification Scheme for conflict diamonds-to prevent the trade in Burmese covered articles. Such an international arrangement should create an effective global system of controls and should contain the measures described in subsection (c)(2)(B) (or their functional equivalent).

(2) KIMBERLEY PROCESS CERTIFICATION SCHEME DEFINED.—In paragraph (1), the term “Kimberley Process Certification Scheme” has the meaning given the term in section 3(6) of the

Clean Diamond Trade Act (Public Law 108–19; 19 U.S.C. 3902(6)).

(g) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008, the President shall transmit to the appropriate congressional committees a report describing what actions the United States has taken during the 60-day period beginning on the date of the enactment of such Act to seek—

(A) the issuance of a draft waiver decision by the Council for Trade in Goods of the World Trade Organization, as specified in subsection (b)(3)(A);

(B) the adoption of a resolution by the United Nations General Assembly, as specified in subsection (b)(3)(B); and

(C) the negotiation of an international arrangement, as specified in subsection (f)(1).

(2) UPDATE.—The President shall make continued efforts to seek the items specified in subparagraphs (A), (B), and (C) of paragraph (1) and shall promptly update the appropriate congressional committees on subsequent developments with respect to these efforts.

(h) GAO REPORT.—Not later than 14 months after the date of the enactment of the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008, the Comptroller General of the United States shall submit to the appropriate congressional committees a report on the effectiveness of the implementation of this section. The Comptroller General shall include in the report any recommendations for improving the administration of this Act.

SEC. 4. FREEZING ASSETS OF THE BURMESE REGIME IN THE UNITED STATES.

(a) REPORTING REQUIREMENT.—Not later than 60 days after the date of enactment of this Act, the President shall take such action as is necessary to direct, and promulgate regulations to the same, that any United States financial institution holding funds belonging to the SPDC or the assets of those individuals who hold senior positions in the SPDC or its political arm, the Union Solidarity Development Association, shall promptly report those funds or assets to the Office of Foreign Assets Control.

(b) ADDITIONAL AUTHORITY.—The President may take such action as may be necessary to impose a sanctions regime to freeze such funds or assets, subject to such terms and conditions as the President determines to be appropriate.

(c) DELEGATION.—The President may delegate the duties and authorities under this section to such Federal officers or other officials as the President deems appropriate.

SEC. 5. LOANS AT INTERNATIONAL FINANCIAL INSTITUTIONS.

(a) OPPOSITION TO ASSISTANCE TO BURMA.—The Secretary of the Treasury shall instruct the United States executive director to each appropriate international financial institution in which the United States participates, to oppose, and vote against the extension by such institution of any loan or financial or technical assist-

ance to Burma until such time as the conditions described in section 3(a)(3) are met.

(b) **LICENSES FOR HUMANITARIAN OR RELIGIOUS ACTIVITIES IN BURMA.**—Notwithstanding any other provision of law, the Secretary of the Treasury is authorized to issue multi-year licenses for humanitarian or religious activities in Burma.

SEC. 6. EXPANSION OF VISA BAN.

(a) **IN GENERAL.**—

(1) **VISA BAN.**—The President is authorized to deny visas and entry to the former and present leadership of the SPDC or the Union Solidarity Development Association.

(2) **UPDATES.**—The Secretary of State shall coordinate on a biannual basis with representatives of the European Union to allow officials of the United States and the European Union to ensure a high degree of coordination of lists of individuals banned from obtaining a visa by the European Union for the reason described in paragraph (1) and those banned from receiving a visa from the United States.

(b) **PUBLICATION.**—The Secretary of State shall post on the Department of State's website the names of individuals whose entry into the United States is banned under subsection (a).

SEC. 7. CONDEMNATION OF THE REGIME AND DISSEMINATION OF INFORMATION.

Congress encourages the Secretary of State to highlight the abysmal record of the SPDC to the international community and use all appropriate fora, including the Association of Southeast Asian Nations Regional Forum and Asian Nations Regional Forum, to encourage other states to restrict financial resources to the SPDC and Burmese companies while offering political recognition and support to Burma's democratic movement including the National League for Democracy and Burma's ethnic groups.

SEC. 8. SUPPORT DEMOCRACY ACTIVISTS IN BURMA.

(a) **IN GENERAL.**—The President is authorized to use all available resources to assist Burmese democracy activists dedicated to nonviolent opposition to the regime in their efforts to promote freedom, democracy, and human rights in Burma, including a listing of constraints on such programming.

(b) **REPORTS.**—

(1) **FIRST REPORT.**—Not later than 3 months after the date of enactment of this Act, the Secretary of State shall provide the Committees on Appropriations and Foreign Relations of the Senate and the Committees on Appropriations and International Relations of the House of Representatives a comprehensive report on its short- and long-term programs and activities to support democracy activists in Burma, including a list of constraints on such programming.

(2) **REPORT ON RESOURCES.**—Not later than 6 months after the date of enactment of this Act, the Secretary of State shall provide the Committees on Appropriations and Foreign Relations of the Senate and the Committees on Appropriations and International Relations of the House of Representatives a report identifying resources that will be necessary for the recon-

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struction of Burma, after the SPDC is removed from power, including—

- (A) the formation of democratic institutions;
- (B) establishing the rule of law;
- (C) establishing freedom of the press;
- (D) providing for the successful reintegration of military officers and personnel into Burmese society; and
- (E) providing health, educational, and economic development.

(3) **REPORT ON TRADE SANCTIONS.**—Not later than 90 days before the date on which the import restrictions contained in section 3(a)(1) are to expire, the Secretary of State, in consultation with the United States Trade Representative and the heads of appropriate agencies, shall submit to the Committees on Appropriations, Finance, and Foreign Relations of the Senate, and the Committees on Appropriations, International Relations, and Ways and Means of the House of Representatives, a report on—

(A) bilateral and multilateral measures undertaken by the United States Government and other governments to promote human rights and democracy in Burma;

(B) the extent to which actions related to trade with Burma taken pursuant to this Act have been effective in—

(i) improving conditions in Burma, including human rights violations, arrest and detention of democracy activists, forced and child labor, and the status of dialogue between the SPDC and the NLD and ethnic minorities;

(ii) furthering the policy objections of the United States toward Burma; and

(C) the impact of actions relating to trade take pursuant to this Act on other national security, economic, and foreign policy interests of the United States, including relations with countries friendly to the United States.

SEC. 9. DURATION OF SANCTIONS.

(a) **TERMINATION BY REQUEST FROM DEMOCRATIC BURMA.**—The President may terminate any provision in this Act upon the request of a democratically elected government in Burma, provided that all the conditions in section 3(a)(3) have been met.

(b) **CONTINUATION OF IMPORT SANCTIONS.**—

(1) **EXPIRATION.**—The import restrictions contained in section 3(a)(1) shall expire 1 year from the date of enactment of this Act unless renewed under paragraph (2) of this section.

(2) **RESOLUTION BY CONGRESS.**—The import restrictions contained in section 3(a)(1) may be renewed annually for a 1-year period if, prior to the anniversary of the date of enactment of this Act, and each year thereafter, a renewal resolution is enacted into law in accordance with subsection (c).¹

¹ Congress renewed the import restrictions contained in sec. 3(a)(1) of the Burmese Freedom and Democracy Act of 2003 in Public Law 108–272 (118 Stat. 818; approved July 7, 2004), Public Law 109–39 (119 Stat. 409; July 27, 2005), Public Law 109–251 (120 Stat. 654, approved August 1, 2006), Public Law 110–52 (121 Stat. 264; approved August 1, 2007), Public Law 110–287 (122 Stat. 2649, approved July 29, 2008), Public Law 111–42 (123 Stat. 1963; approved July 28, 2009), and Public Law 111–210 (124 Stat. 2256; approved July 27, 2010).

(3) LIMITATION.—The import restrictions contained in section 3(a)(1) may be renewed for a maximum of twelve years from the date of the enactment of this Act.

(4) RULE OF CONSTRUCTION.—For purposes of this subsection, any reference to section 3(a)(1) shall be deemed to include a reference to section 3A (b)(1) and (c)(1).

(c) RENEWAL RESOLUTIONS.—

(1) IN GENERAL.—For purposes of this section, the term “renewal resolution” means a joint resolution of the 2 Houses of Congress, the sole matter after the resolving clause of which is as follows: “That Congress approves the renewal of the import restrictions contained in section 3(a)(1) and section 3A (b)(1) and (c)(1) of the Burmese Freedom and Democracy Act of 2003.”.

(2) PROCEDURES.—

(A) IN GENERAL.—A renewal resolution—

(i) may be introduced in either House of Congress by any member of such House at any time within the 90-day period before the expiration of the import restrictions contained in section 3(a)(1) and section 3A (b)(1) and (c)(1); and

(ii) the provisions of subparagraph (B) shall apply.

(B) EXPEDITED CONSIDERATION.—The provisions of section 152(b), (c), (d), (e), and (f) of the Trade Act of 1974 (19 U.S.C. 2192 (b), (c), (d), (e), and (f)) apply to a renewal resolution under this Act as if such resolution were a resolution described in section 152(a) of the Trade Act of 1974.