

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, DC 20436

MEMORANDUM TO THE COMMITTEE ON FINANCE OF THE UNITED STATES  
SENATE ON PROPOSED TARIFF LEGISLATION <sup>1</sup>

[**Date approved:** September 19, 2001]<sup>2</sup>

**Bill No.:** S. 1084; 107<sup>th</sup> Congress

Introduced by: Mr. DURBIN et al.

Similar and/or related<sup>3</sup> bills: H.R. 918 and S. 787; 107<sup>th</sup> Congress<sup>4</sup>

Summary of the bill:<sup>5</sup>

The bill, among other things, would prohibit the importation of diamonds of heading 7102 or 7113 of the Harmonized Tariff Schedule of the United States and of certain jewelry,<sup>6</sup> unless the countries exporting the diamonds into the United States have in place a system of controls on shipments of rough diamonds.

Effective: The date that is six months after the date of enactment.

Through: n/a

Retroactive effect: None.

*[The remainder of this memorandum is organized in five parts: (1) information about the bill's proponent(s) and the product which is the subject of this bill; (2) information about the bill's revenue effect; (3) contacts by Commission staff during preparation of this memorandum; (4) information about the domestic industry (if any); and (5) technical comments.]*

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<sup>1</sup> International trade analyst: Linda White (202-205-3427) and Selamawit Legesse (202-205-3493); attorney: Jan Summers (202-205-2605).

<sup>2</sup> Access to an electronic copy of this memorandum is available at <http://www.usitc.gov/billrpts.htm>. Access to a paper copy is available at the Commission's Law Library (202-205-3287) or at the Commission's Main Library (202-205-2630).

<sup>3</sup> "Similar bills" are bills in the other House, in the current Congress, which address, at least in part, the substance of this bill. "Related bills" are bills in the **same** House, in the current Congress, but which are either earlier (or later) in time than the bill which is the subject of this memorandum.

<sup>4</sup> Senator Judd Gregg, who introduced related bill S.787, has indicated support for S.1084. Telephone conversation with Sue Hardesty, Senator Richard Durbin's office, Aug. 6, 2001. See signatures to U.S. Senate letter requesting cosponsors for S.1084, appendix F.

<sup>5</sup> The product nomenclature is as set forth in the bill. See technical comments for suggested changes.

<sup>6</sup> See appendix A for definitions of tariff and trade agreement terms.



– THE PROPONENT AND THE IMPORTED PRODUCT –

The proponent firm/organization(s)			
Name of firm	Location contacted (city/state)	Date contacted	Response received? (Yes/No) <sup>7</sup>
The World Diamond Council	Washington, D.C.	August 7, 2001	Yes <sup>8</sup>
The Campaign to Eliminate Conflict Diamonds	Washington, D.C.	August 7, 2001	Yes <sup>8</sup>

*Does the proponent plan any further processing or handling<sup>9</sup> of the subject product after importation to its facilities in the United States (Y/N):* No. The World Diamond Council represents the diamond and diamond-containing jewelry industries, but does not process or handle diamonds. The Campaign to Eliminate Conflict Diamonds represents a number of international human rights groups and is concerned with addressing social issues. The proponents collaborated in the drafting of this bill to address social concerns related to the “conflict diamonds” issue. The collective interest of these groups is to reduce the human suffering caused by armed rebellion that is financed in part from the international sale of illegally mined diamonds, while at the same time preserving a viable international diamond industry.

The United States does not mine natural diamonds on a commercial scale. Rough and cut diamonds are imported for further processing and are incorporated into jewelry.

*If “Yes,” provide location of this facility if different from above (city/state):* n/a

*If “No,” provide location of proponent’s headquarters or other principal facility if different from above (city/state):* n/a

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<sup>7</sup> Non-confidential written responses received prior to approval of this report by the Commission, if any, will be included in appendix C.

<sup>8</sup> A joint press release was issued by both The World Diamond Council and The Campaign to Eliminate Conflict Diamonds, appendix C.

<sup>9</sup> The phrase “further processing or handling” can include repackaging, storage or warehousing for resale, etc.

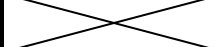
<b>The imported product</b>	
Description and uses	Country(s) of origin
<p><u>Natural loose diamonds (heading 7102):</u> Diamonds are crystalline forms of carbon and the hardest known mineral. Natural diamonds are extracted from the earth and range in transparency from opaque stones to purer stones with very high refractive index and light dispersion characteristics. Depending on a stone's degree of purity, it may fall in designated categories ranging from impure lower priced industrial quality stones to purer, higher priced non-industrial (gem) quality stones.</p> <p><u>Nonindustrial (gem) quality diamonds (subheadings 7102.31-7102.39):</u> This product group includes natural diamonds sorted and graded as being of gem quality. Gem quality diamonds are typically used for articles of ornamentation or adornment, particularly jewelry. The products include:</p> <ul style="list-style-type: none"> <li>• 7102.31--diamonds in rough form in that they are unworked or simply sawn, cleaved, or bruted, but not yet cut and polished.</li> <li>• 7102.39--diamonds worked into a desired form, usually cut and polished with facets to reflect light.</li> <li>•</li> </ul> <p><u>Diamond jewelry:</u> No HTS provision explicitly identifies diamond jewelry as part of the provision's product description.<sup>10</sup></p> <p><u>Precious metal jewelry which may incorporate diamonds (heading 7113):</u> HTS heading 7113 includes jewelry of precious metal or of metal clad with precious metal incorporating gemstones. For diamond jewelry to be classified under this heading, the diamond can be present in the jewelry only as a minor constituent. The heading classifies articles according to the type of precious metal from which the jewelry is made. The subheadings that apply to diamond jewelry under heading 7113 are as follows:</p> <ul style="list-style-type: none"> <li>• 7113.11.50--diamonds set in silver jewelry;</li> <li>• 7113.19.21-7113.19.50--diamonds set in gold or platinum jewelry; and</li> <li>• 7113.20.21-7113.20.50--diamonds set in base metal clad with precious metal.</li> </ul> <p>See appendix B, attachment A-1 notes 2 (a) and attachment A-2.</p> <p>[continued on next page]</p>	<p>Diamonds of HTS subheadings 7102.31 and 7102.39 are imported from at least 70 countries. The higher priced diamonds are cut and polished into facets. Attached is a list of diamond imports by subheading, sorted by country in descending order of value for year 2000. See appendix E, attachment A-4.</p> <p><u>Diamond jewelry</u> is imported from more than 50 countries. Data on gemstone jewelry imports by country of origin in descending order of value for 2000 are attached to this document.</p> <p>See appendix E attachment A-4.</p>

<sup>10</sup> These articles of jewelry include bracelets, necklaces, rings, brooches, earrings, chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignias, cigarette cases, powder boxes, chain purses, and pill boxes.

Description and uses (continue)	Country(s) of origin
<p><u>Jewelry of precious or semiprecious stones (including diamonds)</u>: Jewelry articles classified under HTS subheading 7116.20.05 are those having the essential character of such stones and valued not over \$40 per piece, and include articles containing precious or semiprecious metal with such stones. For diamond jewelry to fall under this HTS subheading, the diamond (or diamond plus other such stones) must be a major constituent of the jewelry. In addition, the total customs value of the jewelry must not exceed \$40 per piece. See appendix B, attachment A-1 notes 2 (b) and attachment A-3.</p> <p>Jewelry articles classified under HTS subheading 7116.20.15 must likewise have the essential character of such gemstones and can contain precious or semiprecious metal; the goods are valued over \$40 per piece. Again, for diamond jewelry to fall under this HTS subheading, the diamond (or diamond and other gemstones) must be a major constituent of the jewelry. See appendix B, attachment A-1 notes 2(b) and attachment A-3.</p>	

– EFFECT ON CUSTOMS REVENUE –

*[Note: This section is divided in two parts. The first table addresses the effect on customs revenue based on the duty rate for the HTS number set out in the bill. The second table addresses the effect on customs revenue based on the duty rate for the HTS number recommended by the Commission (if a different number has been recommended). Five-year estimates are given based on Congressional Budget Office “scoring” guidelines. If the indicated duty rate is subject to “staging” during the duty suspension period, the rate for each period is stated separately.]*

<b>HTS numbers used in the bill: 7102.31.00 and 7102.39.00 <sup>11</sup></b>					
	2002	2003	2004	2005	2006
General rate of duty <sup>12</sup> (AVE) <sup>13</sup>	Free	Free	Free	Free	Free
Estimated value <i>dutiable</i> imports	0	0	0	0	0
Customs revenue loss	0	0	0	0	0

<sup>11</sup> The HTS numbers are as set forth in the bill. See technical comments for suggested changes (if any).

<sup>12</sup> See appendix B for column 1-special and column 2 duty rates.

<sup>13</sup> AVE is ad valorem equivalent expressed as percent. Staged rates may be found at: <http://dataweb.usitc.gov>

<b>HTS numbers recommended by the Commission: 7113.11.50, 7113.19.21 - 7113.19.50, 7113.20.21 - 7113.20.50, 7116.20.05, and 7116.20.15 <sup>14</sup></b>					
	2002	2003	2004	2005	2006
General rate of duty (AVE)	5.5%	5.5%	5.5%	5.5%	5.5%
Estimated value <i>dutiable</i> imports	\$2.5 billion <sup>15</sup>	\$2.5 billion	\$2.5 billion	\$2.5 billion	\$2.5 billion
Customs revenue loss	\$0-137 million <sup>16</sup>	\$0-137 million	\$0-137 million	\$0-137 million	\$0-137 million

– CONTACTS WITH OTHER FIRMS/ORGANIZATIONS –

<b>Contacts with firms or organizations <i>other than the proponents</i></b>			
Name of firm	Location contacted (city/state)	Date contacted	Response received? (Yes/No) <sup>17</sup>
Manufacturing Jewelers & Suppliers of America	Providence, RI	May 16, 2001	Yes
Antwerp Diamond High Council	Antwerp, Belgium	July 2, 2001	Yes
Diamond Manufacturing & Importers Assoc. of America	New York, NY	July 5, 2001	No
The Diamond Registry	New York, NY	July 9, 2001	No
Diamond Dealers Club	New York, NY	July 9, 2001	No

<sup>14</sup> The HTS subheadings listed include all possible HTS number under which diamond jewelry could be classified. Customs revenue loss is calculated using HTS subheadings 7113.19.50 and 7116.20.15. These HTS subheadings are selected to calculate the customs revenue loss because the Commission believes these two HTS subheadings should account for the majority of diamond jewelry imports into the United States. The figures would represent a range of revenue that could be lost, depending upon which supplier countries would fail to comply with the proposed statutory requirements. See technical comments.

<sup>15</sup> See appendix E, attachment A-6, table 1 and appendix E, attachment A-7, table 1.

<sup>16</sup> See appendix E, attachment A-6, table 2 and appendix E, attachment A-7, table 2.

<sup>17</sup> Non-confidential written responses received prior to approval of this report by the Commission, if any, will be included in appendix D. Only statements submitted in connection with **this** bill will be included in the appendix.

Contacts with firms or organizations <i>other than</i> the proponents			
Jewelers of America	New York, NY	August 2, 2001	Yes

– THE DOMESTIC INDUSTRY –

*[Note: This section is divided in two parts. The first part lists non-confidential written submissions received by the Commission which assert that **the imported product itself** is produced in the United States and freely offered for sale under standard commercial terms. The second part lists non-confidential written submissions received by the Commission which assert either that (1) the imported product will be produced in the United States in the future; or (2) another product which **may compete** with the imported product is (or will be) produced in the United States and freely offered for sale under standard commercial terms. All submissions received by the Commission in connection with this bill prior to approval of the report will be included in appendix D. The Commission cannot, in the context of this memorandum, make any statement concerning the validity of these claims.]*

Statements concerning current U.S. production			
Name of product	Name of firm	Location of U.S. production facility	Date received
None (pertains to diamonds).			

Statements concerning “future” or “competitive” U.S. production			
Name of product	Name of firm	Location of U.S. production facility	Date received
None (pertains to diamonds).			

– TECHNICAL COMMENTS –

*[The Commission notes that references to HTS numbers in temporary duty suspensions (i.e., proposed amendments to subchapter II of chapter 99 of the HTS) should be limited to **eight** rather than ten digits. Ten-digit numbers are established by the Committee for Statistical Annotation of Tariff Schedules pursuant to 19 U.S.C. 1484(f) and are not generally referenced in statutory enactments.]*

*Recommended changes to the nomenclature in the bill:*

Because the bill intends to control trade in both diamonds and jewelry containing diamonds, it is suggested that the definitions in section 3 of the bill be expanded by adding a definition of “jewelry containing diamonds”—at least with a list of the HTS subheadings, so that section 4 can be administered as intended. The bill correctly identifies the provisions covering loose diamonds (subheadings 7102.31.00 and 7102.39.00); a new definition of “jewelry containing diamonds” as being jewelry of a type classifiable in subheadings 7113.11.50, 7113.19.21 through 7113.19.50, 7113.20.50,<sup>18</sup> inclusive, 7113.20.21 through 7113.20.50, inclusive, 7116.20.06 and 7116.20.15, where such jewelry contains diamonds that, if imported separately, would fall in heading 7102. (The latter reference could be narrowed to subheading 7102.39.00, if desired, so as to specify only unmounted and unset gem-quality diamonds; however, a reference to the entire heading might discourage circumvention.)

We note that section 4(a) requires only that a country “is implementing” (at whatever stage and with whatever results) a system of controls on the importation and exportation of diamonds and diamond jewelry. A change to the words “has implemented” or the addition of a certification and review authority (perhaps to be given to the U.S. Trade Representative) might tighten the requirement.

*Recommended changes to any CAS numbers in the bill (if given):* None.

*Recommended changes to any Color Index names in the bill (if given):* None.

*Basis for recommended changes to the HTS number used in the bill:*<sup>19</sup> (see above)

*Other technical comments (if any):*

We note that it would be feasible to seek separate 6-digit international Harmonized System subheadings for articles of jewelry of diamonds; such additional provisions might help with trade monitoring and with the enforcement of this U.N. policy. It would likewise be possible to establish U.S. 8-digit HTS subheadings to identify articles of jewelry containing diamonds separately from the goods of existing rate lines.

Although there are specific provisions that identify each kind of loose natural diamond, it may be noted that unsorted (7102.10) and industrial quality (7102.21 - 7102.29) diamonds may have the same visual characteristics as the gem quality diamonds associated with the “conflict diamond” issue. This factor can make it difficult to monitor the trade in “conflict diamonds.” Depending on the purity and quality of unsorted and industrial diamonds, they may have the same chemical and physical characteristics as some gem diamonds, requiring technical expertise and possibly the use of laboratory testing to determine the kind of imported diamond product. This issue will likely also arise should it become economically viable to mass produce clear, uncolored synthetic diamonds of sizes appropriate for jewelry application. Synthetic gem quality diamonds on the market today are reported to have a distinct color and are classified under

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<sup>18</sup> According to the Customs Service National Import Specialist, most diamond jewelry enters under subheading 7113.19.50.

<sup>19</sup> The Commission may express an opinion concerning the HTS classification of a product to facilitate the Committee’s consideration of the bill, but the Commission also notes that, by law, the U.S. Customs Service is the only agency authorized to issue a binding ruling on this question. The Commission believes that the U.S. Customs Service should be consulted prior to enactment of the bill.



subheadings 7104.20.00 (rough synthetic precious or semi-precious stones) and 7104.90.10 (worked synthetic precious or semi-precious stones suitable for the manufacture of jewelry).

In addition, because Liberia is mentioned in the related bill, S.787, and is one of the regions where “conflict diamonds” originate, we suggest Liberia also be added to the “findings” provisions of this bill.

## APPENDIX A

### TARIFF AND TRADE AGREEMENT TERMS

In the **Harmonized Tariff Schedule of the United States** (HTS), chapters 1 through 97 cover all goods in trade and incorporate in the tariff nomenclature the internationally adopted Harmonized Commodity Description and Coding System through the 6-digit level of product description. Subordinate 8-digit product subdivisions, either enacted by Congress or proclaimed by the President, allow more narrowly applicable duty rates; 10-digit administrative statistical reporting numbers provide data of national interest. Chapters 98 and 99 contain special U.S. classifications and temporary rate provisions, respectively. The HTS replaced the Tariff Schedules of the United States (TSUS) effective January 1, 1989.

Duty rates in the **general** subcolumn of HTS column 1 are normal trade relations rates, many of which have been eliminated or are being reduced as concessions resulting from the Uruguay Round of Multilateral Trade Negotiations. Column 1-general duty rates apply to all countries except those listed in HTS general note 3(b) (Afghanistan, Cuba, Laos, North Korea, and Vietnam) plus Serbia and Montenegro, which are subject to the statutory rates set forth in **column 2**. Specified goods from designated general-rate countries may be eligible for reduced rates of duty or for duty-free entry under one or more preferential tariff programs. Such tariff treatment is set forth in the **special** subcolumn of HTS rate of duty column 1 or in the general notes. If eligibility for special tariff rates is not claimed or established, goods are dutiable at column 1-general rates. The HTS does not enumerate those countries as to which a total or partial embargo has been declared.

The **Generalized System of Preferences** (GSP) affords nonreciprocal tariff preferences to developing countries to aid their economic development and to diversify and expand their production and exports. The U.S. GSP, enacted in title V of the Trade Act of 1974 for 10 years and extended several times thereafter, applies to merchandise imported on or after January 1, 1976 and before the close of September 30, 2001. Indicated by the symbol "A", "A\*", or "A+" in the special subcolumn, the GSP provides duty-free entry to eligible articles the product of and imported directly from designated beneficiary developing countries, as set forth in general note 4 to the HTS.

The **Caribbean Basin Economic Recovery Act** (CBERA) affords nonreciprocal tariff preferences to developing countries in the Caribbean Basin area to aid their economic development and to diversify and expand their production and exports. The CBERA, enacted in title II of Public Law 98-67, implemented by Presidential Proclamation 5133 of November 30, 1983, and amended by the Customs and Trade Act of 1990, applies to merchandise entered, or withdrawn from warehouse for consumption, on or after January 1, 1984. Indicated by the symbol "E" or "E\*" in the special subcolumn, the CBERA provides duty-free entry to eligible articles, and reduced-duty treatment to certain other articles, which are the product of and imported directly from designated countries, as set forth in general note 7 to the HTS.

Free rates of duty in the special subcolumn followed by the symbol "IL" are applicable to products of Israel under the **United States-Israel Free Trade Area Implementation Act** of 1985 (IFTA), as provided in general note 8 to the HTS.

Preferential nonreciprocal duty-free or reduced-duty treatment in the special subcolumn followed by the symbol "J" or "J\*" in parentheses is afforded to eligible articles the product of designated beneficiary countries under the **Andean Trade Preference Act** (ATPA), enacted as title II of Public Law 102-182 and implemented by Presidential Proclamation 6455 of July 2, 1992 (effective July 22, 1992), as set forth in general note 11 to the HTS.

Preferential free rates of duty in the special subcolumn followed by the symbol "CA" are applicable to eligible goods of Canada, and rates followed by the symbol "MX" are applicable to eligible goods of Mexico, under the **North American Free Trade Agreement**, as provided in general note 12 to the HTS and implemented effective January 1, 1994 by Presidential Proclamation 6641 of December 15, 1993. Goods must originate in the NAFTA region under rules set forth in general note 12(t) and meet other requirements of the note and applicable regulations.

Other special tariff treatment applies to particular **products of insular possessions** (general note 3(a)(iv)), **products of the West Bank and Gaza Strip** (general note 3(a)(v)), goods covered by the **Automotive Products Trade Act** (APTA) (general note 5) and the **Agreement on Trade in Civil Aircraft** (ATCA) (general note 6), **articles imported from freely associated states** (general note 10), **pharmaceutical products** (general note 13), and **intermediate chemicals for dyes** (general note 14).

The **General Agreement on Tariffs and Trade 1994** (GATT 1994), pursuant to the Agreement Establishing the World Trade Organization, is based upon the earlier GATT 1947 (61 Stat. (pt. 5) A58; 8 UST (pt. 2) 1786) as the primary multilateral system of disciplines and principles governing international trade. Signatories' obligations under both the 1994 and 1947 agreements focus upon most-favored-nation treatment, the maintenance of scheduled concession rates of duty, and national treatment for imported products; the GATT also provides the legal framework for customs valuation standards, "escape clause" (emergency) actions, antidumping and countervailing duties, dispute settlement, and other measures. The results of the Uruguay Round of multilateral tariff negotiations are set forth by way of separate schedules of concessions for each participating contracting party, with the U.S. schedule designated as Schedule XX. Pursuant to the **Agreement on Textiles and Clothing** (ATC) of the GATT 1994, member countries are phasing out restrictions on imports under the prior "Arrangement Regarding International Trade in Textiles" (known as the **Multifiber Arrangement** (MFA)). Under the MFA, which was a departure from GATT 1947 provisions, importing and exporting countries negotiated bilateral agreements limiting textile and apparel shipments, and importing countries could take unilateral action in the absence or violation of an agreement. Quantitative limits had been established on imported textiles and apparel of cotton, other vegetable fibers, wool, man-made fibers or silk blends in an effort to prevent or limit market disruption in the importing countries. The ATC establishes notification and safeguard procedures, along with other rules concerning the customs treatment of textile and apparel shipments, and calls for the eventual complete integration of this sector into the GATT 1994 over a ten-year period, or by Jan. 1, 2005.

**APPENDIX B**

**SELECTED PORTIONS OF THE  
HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES**

*[Note: Appendix may not be included in the electronic version of this memorandum.]*

## **APPENDIX C**

### **STATEMENTS SUBMITTED BY THE PROPONENTS**

*[Note: Appendix C may not be included in the electronic version of this memorandum posted on the Commission's web site if an electronic copy of the statement was not received by the Commission.]*

## **APPENDIX D**

### **STATEMENTS SUBMITTED BY OTHER FIRMS/ORGANIZATIONS**

*[Note: Appendix D may not be included in the electronic version of this memorandum posted on the Commission's web site if an electronic copy of the statement was not received by the Commission.]*

107TH CONGRESS  
1ST SESSION

# S. 1084

To prohibit the importation into the United States of diamonds unless the countries exporting the diamonds have in place a system of controls on rough diamonds, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 21, 2001

Mr. DURBIN (for himself, Mr. DEWINE, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To prohibit the importation into the United States of diamonds unless the countries exporting the diamonds have in place a system of controls on rough diamonds, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Clean Diamonds Act”.

5       **SEC. 2. FINDINGS.**

6       Congress finds the following:

7               (1) Diamonds are being used by rebels and dic-  
8       tators to finance military activities, overthrow legiti-

1       mate governments, subvert international efforts to  
2       promote peace and stability, and commit horrifying  
3       atrocities against unarmed civilians. During the past  
4       decade, more than 6,500,000 people from Sierra  
5       Leone, Angola, and the Democratic Republic of the  
6       Congo have been driven from their homes by wars  
7       waged in large part for control of diamond mining  
8       areas. A million of these are refugees eking out a  
9       miserable existence in neighboring countries, and  
10      tens of thousands have fled to the United States.  
11      Approximately 3,700,000 people have died during  
12      these wars.

13           (2) The countries caught in this fighting are  
14      home to nearly 70,000,000 people whose societies  
15      have been torn apart not only by fighting but also  
16      by terrible human rights violations.

17           (3) Human rights advocates, the diamond trade  
18      as represented by the World Diamond Council, and  
19      the United States Government recently began work-  
20      ing to block the trade in conflict diamonds. Their ef-  
21      forts have helped to build a consensus that action is  
22      urgently needed to end the trade in conflict dia-  
23      monds.

24           (4) The United Nations Security Council, act-  
25      ing under chapter VII of the Charter of the United

1 Nations, has prohibited all states from importing  
2 diamonds from, and exporting weapons to, certain  
3 countries affected by diamond-related conflicts. Un-  
4 fortunately, diamond smugglers continue funding  
5 rebel movements, which has led in turn to regional  
6 destabilization, arms proliferation, and other activi-  
7 ties which are a potential threat to the essential se-  
8 curity interests of the United States, and the United  
9 Nations sanctions have not been sufficiently effective  
10 to achieve their goals. In order to put an end to this  
11 emergency situation in international relations, to  
12 maintain international peace and security, and to  
13 protect its essential security interests, and pursuant  
14 to its obligations under the United Nations Charter,  
15 the United States must take action against this il-  
16 licit trade and smuggling of conflict diamonds.

17 (5) Articles XX and XXI of GATT 1994 allow  
18 WTO member countries to take measures to deal  
19 with situations such as that presented by the current  
20 trade in conflict diamonds without violating their  
21 WTO obligations.

22 (6) Without effective action to eliminate trade  
23 in conflict diamonds, the trade in legitimate dia-  
24 monds faces the threat of a consumer backlash that  
25 could damage the economies of countries not in-



1       involved in the trade in conflict diamonds and penalize  
2       members of the legitimate trade and the people they  
3       employ. To prevent that, South Africa and more  
4       than 20 other countries are involved in working,  
5       through the “Kimberley Process”, toward devising a  
6       solution to this problem. As the consumer of a ma-  
7       jority of the world’s supply of diamonds, the United  
8       States has an obligation to help sever the link be-  
9       tween diamonds and conflict and press for imple-  
10      mentation of an effective solution.

11 **SEC. 3. DEFINITIONS.**

12       In this Act:

13           (1) **DIAMONDS.**—The term “diamonds” means  
14       diamonds classified under subheading 7102.31.00 or  
15       subheading 7102.39.00 of the Harmonized Tariff  
16       Schedule of the United States.

17           (2) **GATT 1994.**—The term “GATT 1994”  
18       means the General Agreement on Tariffs and Trade  
19       annexed to the WTO Agreement.

20           (3) **POLISHED DIAMONDS.**—The term “polished  
21       diamonds” means diamonds that are classified under  
22       subheading 7102.39.00 of the Harmonized Tariff  
23       Schedule of the United States.

24           (4) **ROUGH DIAMONDS.**—The term “rough dia-  
25       monds” means diamonds that are unworked, or sim-

1 ply sawn, cleaved, or bruted, classified under sub-  
2 heading 7102.3100 of the Harmonized Tariff Sched-  
3 ule of the United States.

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

9 (6) WTO AGREEMENT.—The term “WTO  
10 Agreement” means the Agreement Establishing the  
11 World Trade Organization entered into on April 15,  
12 1994.

13 (7) WORLD TRADE ORGANIZATION AND WTO.—  
14 The terms “World Trade Organization” and  
15 “WTO” mean the organization established pursuant  
16 to the WTO Agreement.

17 **SEC. 4. REQUIREMENTS FOR THE IMPORTATION OF DIA-**  
18 **MONDS.**

19 (a) REQUIREMENTS.—

20 (1) ROUGH DIAMONDS.—Rough diamonds may  
21 not be imported into the United States from a coun-  
22 try unless the country exporting the rough diamonds  
23 is implementing—

24 (A) a system of controls on the export  
25 from, and import into, that country of rough

1 diamonds that meets the requirements of para-  
2 graph (2), consistent with United Nations Gen-  
3 eral Assembly Resolution 55/56 adopted on De-  
4 cember 1, 2000, or consistent with an inter-  
5 national agreement which requires such controls  
6 and to which the United States is a party; or

7 (B) a system of controls that the President  
8 determines to be functionally equivalent to the  
9 system of controls specified in subparagraph  
10 (A).

11 (2) SYSTEM OF CONTROLS.—The system of  
12 controls referred to in paragraph (1)(A) shall in-  
13 clude the following requirements:

14 (A) Rough diamonds, when exported from  
15 the country in which they were extracted, shall  
16 be sealed in a secure, transparent container or  
17 bag by appropriate government officials of that  
18 country.

19 (B) The sealed container or bag described  
20 in subparagraph (A) shall include a fully visible  
21 document that—

22 (i) certifies the country from which  
23 the rough diamonds were extracted;

24 (ii) records a unique export registra-  
25 tion number for, and the total carat weight

1 of, the rough diamonds in the container or  
2 bag; and

3 (iii) is issued by the government of  
4 that country.

5 (C) The country from whose territory the  
6 rough diamonds are first exported shall main-  
7 tain at least the information on exports of  
8 rough diamonds described in subparagraph (B).

9 (D) Any country into whose territory the  
10 rough diamonds are first imported prior to  
11 polishing or other processing—

12 (i) shall permit importation of the  
13 rough diamonds only in a container or bag  
14 described in subparagraphs (A) and (B);  
15 and

16 (ii) shall verify, on the basis of docu-  
17 mentation provided to it by electronic or  
18 other reliable means, the legitimacy of the  
19 export document included in the sealed  
20 container or bag in which the rough dia-  
21 monds were shipped, using the information  
22 maintained by the country of export.

23 (E) Appropriate government authorities of  
24 countries that import rough diamonds shall  
25 conduct reasonable physical inspections of a

1           sampling of the sealed containers and bags of  
2           rough diamonds to ensure compliance with the  
3           requirements of this paragraph.

4           (3) POLISHED DIAMONDS.—Polished diamonds  
5           may not be imported into the United States from a  
6           country unless the country exporting the  
7           diamonds—

8                   (A) is implementing a system of controls  
9                   on the export from, and import into, that coun-  
10                  try of rough diamonds described in paragraph  
11                  (1), except that such system shall not be re-  
12                  quired for those countries that do not import  
13                  rough diamonds; and

14                   (B) requires that its own imports of dia-  
15                  monds originate from countries that have imple-  
16                  mented a system of controls on the export and  
17                  import of rough diamonds described in para-  
18                  graph (1).

19           (4) JEWELRY CONTAINING DIAMONDS.—Jew-  
20           elry containing diamonds may not be imported into  
21           the United States from a country unless the country  
22           exporting the jewelry—

23                   (A) is implementing a system of controls  
24                   on the export and import of rough diamonds  
25                   described in paragraph (1), except that such

1 system shall not be required for those countries  
2 that do not import rough diamonds; and

3 (B) requires that its own imports of dia-  
4 monds originate from countries that have imple-  
5 mented a system of controls on the export and  
6 import of rough diamonds described in para-  
7 graph (1).

8 (5) EXCLUSIONS.—

9 (A) IN GENERAL.—The provisions of this  
10 subsection do not apply to—

11 (i) jewelry containing diamonds im-  
12 ported by or on behalf of a person for per-  
13 sonal use and accompanying a person upon  
14 entry into the United States; or

15 (ii) diamonds or jewelry containing  
16 diamonds, previously exported from the  
17 United States and reimported by the same  
18 importer, without having been advanced in  
19 value or improved in condition by any  
20 process or other means while abroad, if the  
21 importer declares that the reimportation of  
22 the diamonds or jewelry, as the case may  
23 be, satisfies the requirements of this  
24 clause.

1 (B) REGULATIONS.—The Secretary of the  
2 Treasury is authorized to promulgate regula-  
3 tions to ensure that the exclusions described in  
4 subparagraph (A) do not become a means to  
5 evade the requirements made by this section.

6 (b) MONITORING.—The President shall ensure that  
7 any system of controls described in subsection (a)(1) is  
8 monitored by appropriate agencies of the United States.

9 (c) PRESIDENTIAL ADVISORY COMMISSION.—

10 (1) PURPOSE.—The President shall appoint an  
11 advisory commission the purpose of which shall be to  
12 make recommendations to the President on the ef-  
13 fectiveness of the monitoring system under sub-  
14 section (b), and on ways to improve that monitoring  
15 system.

16 (2) MEMBERSHIP.—The advisory commission  
17 shall be composed of 9 members, 2 of whom shall be  
18 representatives of private and voluntary organiza-  
19 tions, and 2 of whom shall be representatives of the  
20 diamond industry. The remaining members may be  
21 appointed from appropriate agencies of the United  
22 States and other interested parties.

23 **SEC. 5. ENFORCEMENT.**

24 (a) IN GENERAL.—Diamonds imported into the  
25 United States in violation of section 4 are subject to sei-

1 zure and forfeiture laws, and all criminal and civil laws  
2 of the United States shall apply to the same extent as  
3 any other violation of the customs and navigation laws of  
4 the United States.

5 (b) PROHIBITING TRANSACTIONS IN CERTAIN PROP-  
6 ERTY.—

7 (1) IN GENERAL.—The President may exercise  
8 the authorities under the International Emergency  
9 Economic Powers Act (50 U.S.C. 1701 et seq.) to  
10 prohibit transactions involving any property de-  
11 scribed in paragraph (2) or to prohibit any trans-  
12 action by a person subject to the jurisdiction of the  
13 United States with respect to such property.

14 (2) PROPERTY COVERED.—Property described  
15 in this paragraph is property owned or controlled by  
16 a person that exports diamonds to the United States  
17 from a country that fails to meet the requirements  
18 of section 4(a).

19 (3) PENALTIES.—The penalties provided in sec-  
20 tion 206 of the International Emergency Economic  
21 Powers Act shall apply to violations of licenses, or-  
22 ders, or regulations issued under this subsection to  
23 the same extent as such penalties apply with respect  
24 to violations under that Act.



1           (c) PROCEEDS FROM FINES AND FORFEITED  
2 GOODS.—Notwithstanding any other provision of law, the  
3 proceeds derived from fines imposed for violations of sec-  
4 tion 4(a), and from the seizure and forfeiture of goods  
5 imported in violation of section 4(a), shall, in addition to  
6 amounts otherwise available for such purposes, be avail-  
7 able only for—

8           (1) the Leahy War Victims Fund administered  
9       by the United States Agency for International De-  
10      velopment or any successor program to assist victims  
11      of foreign wars; and

12          (2) grants under section 131 of the Foreign As-  
13      sistance Act of 1961 (22 U.S.C. 2152a).

14 **SEC. 6. LIMITATIONS ON OPIC AND EXPORT-IMPORT BANK.**

15       (a) OPIC.—The Overseas Private Investment Cor-  
16      poration may not insure, reinsure, guarantee, or finance  
17      any investment in connection with a project involving the  
18      mining, polishing or other processing, or sale of diamonds  
19      in a country that fails to meet the requirements of section  
20      4(a).

21       (b) EXPORT-IMPORT BANK.—The Export-Import  
22      Bank of the United States may not guarantee, insure, ex-  
23      tend credit, or participate in an extension of credit in con-  
24      nection with the export of any goods to a country for use  
25      in an enterprise involving the mining, polishing or other

1 processing, or sale of diamonds in a country that fails to  
2 meet the requirements of section 4(a).

3 **SEC. 7. WAIVER AUTHORITY.**

4 (a) **WAIVER AUTHORITY.**—The President may at any  
5 time waive the applicability of this Act with respect to a  
6 country for a period of not more than 6 months if the  
7 President, before granting the waiver—

8 (1) determines that the country is cooperating  
9 because the country—

10 (A) is making significant progress toward  
11 concluding an international agreement such as  
12 the one described in section 12; or

13 (B) is acting in good faith to establish and  
14 enforce a unilateral certification system con-  
15 taining the requirements described in section  
16 4(a); and

17 (2) transmits that determination, with the rea-  
18 sons therefor, to Congress.

19 (b) **EVALUATION CRITERIA.**—Not later than 180  
20 days after the date of enactment of this Act, the Presi-  
21 dent, in consultation with the heads of appropriate Fed-  
22 eral agencies, shall develop and publish criteria that will  
23 be used to evaluate whether or not a country is a cooper-  
24 ating country for purposes of subsection (a). Before adopt-  
25 ing such criteria in final form, the President shall provide

1 for public notice and a period for public comment on the  
2 criteria.

3 **SEC. 8. ANNUAL REPORTS.**

4 Not later than 6 months after the date of the enact-  
5 ment of this Act, and not later than September 30 of each  
6 subsequent calendar year, the President shall transmit to  
7 Congress a report—

8 (1) describing and evaluating the effectiveness  
9 of any system of controls on trade in diamonds de-  
10 scribed in section 4(a)(1);

11 (2) identifying those countries that are imple-  
12 menting those controls;

13 (3) identifying those countries that are not im-  
14 plementing those controls, and describing the effects  
15 of that failure on the trade in diamonds used to sup-  
16 port conflict in the country or regions in which the  
17 diamonds are extracted; and

18 (4) describing in detail technological develop-  
19 ments that allow—

20 (A) the determination of where a diamond  
21 was mined; and

22 (B) the marking and tracking of rough  
23 and polished diamonds.

1 **SEC. 9. GAO REPORT.**

2 Not later than 3 years after the date of enactment  
3 of this Act, the Comptroller General of the United States  
4 shall transmit a report to Congress on the effectiveness  
5 of the provisions of this Act in preventing the importation  
6 of diamonds traded in violation of any system of controls  
7 described in section 4(a)(1). The Comptroller General  
8 shall include in the report any recommendations on any  
9 modifications to this Act that may be necessary.

10 **SEC. 10. STATUTORY CONSTRUCTION.**

11 This Act may not be construed to apply to restric-  
12 tions on the importation of diamonds in effect on its date  
13 of enactment or to diminish the authority of the President  
14 under the International Emergency Economic Powers Act  
15 or any other Act to impose restrictions on the importation  
16 of diamonds after such date.

17 **SEC. 11. CONSISTENCY OF ACTIONS UNDER THIS ACT WITH**  
18 **THE WTO.**

19 (a) **STATUTORY CONSTRUCTION.**—Nothing in this  
20 Act requires the Secretary of the Treasury or the Commis-  
21 sioner of Customs to take any action that would be a viola-  
22 tion of United States obligations under the agreements of  
23 the World Trade Organization (WTO), as determined in  
24 a WTO dispute settlement proceeding.

25 (b) **SENSE OF CONGRESS.**—It is the sense of Con-  
26 gress that, in the event there is a determination in a WTO

1 dispute settlement proceeding that this Act, any part of  
2 this Act, or any action taken under this Act is inconsistent  
3 with United States obligations under the WTO, the United  
4 States will take such steps as are necessary to bring itself  
5 into conformity with its WTO obligations.

6 **SEC. 12. SENSE OF CONGRESS ON NEGOTIATION OF AN**  
7 **INTERNATIONAL AGREEMENT.**

8 It is the sense of Congress that the President should  
9 take the necessary steps to negotiate an international  
10 agreement, working in concert with the Kimberley Process  
11 referred to in section 2(6), to eliminate the trade in dia-  
12 monds used to support conflict in the country or regions  
13 in which the diamonds are extracted. Such an agreement  
14 should create an effective global certification system cov-  
15 ering diamond exporting and importing countries, and  
16 should include—

- 17 (1) the requirements described in section 4(a);  
18 (2) a requirement that any country from whose  
19 territory rough diamonds are exported publish an-  
20 nual reports disclosing the names of all entities and  
21 individuals who hold mining concessions, licenses to  
22 purchase rough diamonds, and licenses to export  
23 rough diamonds, as well as the volume and value of  
24 such diamonds exported categorized by country of  
25 importation; and

1           (3) a requirement that any country into whose  
2           territory rough diamonds are imported publish an-  
3           nual reports disclosing the source by country of ex-  
4           portation of its diamond imports as well as the vol-  
5           ume and value of such diamonds for each such coun-  
6           try of exportation.

7   **SEC. 13. SENSE OF CONGRESS ON IMPLEMENTATION OF**  
8                           **THE SYSTEM OF CONTROLS.**

9           It is the sense of Congress that companies involved  
10          in diamond extraction and trade should make financial  
11          contributions to countries seeking to implement any sys-  
12          tem of controls described in section 4(a)(1), if those coun-  
13          tries would have financial difficulty implementing that sys-  
14          tem of controls.

15   **SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

16          There is authorized to be appropriated to the Presi-  
17          dent \$5,000,000 for fiscal year 2002 to provide assistance  
18          to countries seeking to implement any system of controls  
19          described in section 4(a)(1), if those countries would have  
20          financial difficulty implementing that system of controls.

21   **SEC. 15. EFFECTIVE DATE.**

22          This Act shall take effect 6 months after its date of  
23          enactment.

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