

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.

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

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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