

108TH CONGRESS
1ST SESSION

S. 760

To implement effective measures to stop trade in conflict diamonds, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 1, 2003

Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. DEWINE, Mr. DURBIN, Mr. GREGG, Mr. BINGAMAN, Mr. FEINGOLD, Ms. SNOWE, Mr. ROCKEFELLER, Mr. SANTORUM, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To implement effective measures to stop trade in conflict
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 Diamond Trade
5 Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Funds derived from the sale of rough dia-
9 monds are being used by rebels and state actors to

1 finance military activities, overthrow legitimate gov-
2 ernments, subvert international efforts to promote
3 peace and stability, and commit horrifying atrocities
4 against unarmed civilians. During the past decade,
5 more than 6,500,000 people from Sierra Leone, An-
6 gola, and the Democratic Republic of the Congo
7 have been driven from their homes by wars waged
8 in large part for control of diamond mining areas.
9 A million of these are refugees eking out a miserable
10 existence in neighboring countries, and tens of thou-
11 sands have fled to the United States. Approximately
12 3,700,000 people have died during 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 and humanitarian advocates,
18 the diamond trade as represented by the World Dia-
19 mond Council, and the United States Government
20 have been working to block the trade in conflict dia-
21 monds. Their efforts have helped to build a con-
22 sensus that action is urgently needed to end the
23 trade in conflict diamonds.

24 (4) The United Nations Security Council has
25 acted at various times under chapter VII of the

1 Charter of the United Nations to address threats to
2 international peace and security posed by conflicts
3 linked to diamonds. Through these actions, it has
4 prohibited all states from exporting weapons to cer-
5 tain countries affected by such conflicts. It has fur-
6 ther required all states to prohibit the direct and in-
7 direct import of rough diamonds from Sierra Leone
8 unless the diamonds are controlled under specified
9 certificate of origin regimes and to prohibit abso-
10 lutely the direct and indirect import of rough dia-
11 monds from Liberia.

12 (5) In response, the United States implemented
13 sanctions restricting the importation of rough dia-
14 monds from Sierra Leone to those diamonds accom-
15 panied by specified certificates of origin and fully
16 prohibiting the importation of rough diamonds from
17 Liberia. The United States is now taking further ac-
18 tion against trade in conflict diamonds.

19 (6) Without effective action to eliminate trade
20 in conflict diamonds, the trade in legitimate dia-
21 monds faces the threat of a consumer backlash that
22 could damage the economies of countries not in-
23 volved in the trade in conflict diamonds and penalize
24 members of the legitimate trade and the people they
25 employ. To prevent that, South Africa and more

1 than 30 other countries are involved in working,
2 through the “Kimberley Process”, toward devising a
3 solution to this problem. As the consumer of a ma-
4 jority of the world’s supply of diamonds, the United
5 States has an obligation to help sever the link be-
6 tween diamonds and conflict and press for imple-
7 mentation of an effective solution.

8 (7) Failure to curtail the trade in conflict dia-
9 monds or to differentiate between the trade in con-
10 flict diamonds and the trade in legitimate diamonds
11 could have a severe negative impact on the legiti-
12 mate diamond trade in countries such as Botswana,
13 Namibia, South Africa, and Tanzania.

14 (8) Initiatives of the United States seek to re-
15 solve the regional conflicts in sub-Saharan Africa
16 which facilitate the trade in conflict diamonds.

17 (9) The Interlaken Declaration on the Kim-
18 berley Process Certification Scheme for Rough Dia-
19 monds of November 5, 2002, states that Partici-
20 pants will ensure that measures taken to implement
21 the Kimberley Process Certification Scheme for
22 Rough Diamonds will be consistent with inter-
23 national trade rules.

24 **SEC. 3. DEFINITIONS.**

25 In this Act:

1 (1) CONTROLLED THROUGH THE KIMBERLEY
2 PROCESS CERTIFICATION SCHEME.—An importation
3 or exportation of rough diamonds is “controlled
4 through the Kimberley Process Certification
5 Scheme” if it is an importation from the territory of
6 a Participant or exportation to the territory of a
7 Participant of rough diamonds that is—

8 (A) carried out in accordance with the
9 Kimberley Process Certification Scheme, as set
10 forth in regulations promulgated by the Presi-
11 dent; or

12 (B) controlled under a system determined
13 by the President to meet substantially the
14 standards, practices, and procedures of the
15 Kimberley Process Certification Scheme.

16 (2) EXPORTING AUTHORITY.—The term “ex-
17 porting authority” means 1 or more entities des-
18 ignated by a Participant from whose territory a
19 shipment of rough diamonds is being exported as
20 having the authority to validate the Kimberley Proc-
21 ess Certificate.

22 (3) IMPORTING AUTHORITY.—The term “im-
23 porting authority” means 1 or more entities des-
24 ignated by a Participant into whose territory a ship-
25 ment of rough diamonds is imported as having the

1 authority to enforce the laws and regulations of the
2 Participant regulating imports, including the
3 verification of the Kimberley Process Certificate ac-
4 companying the shipment.

5 (4) KIMBERLEY PROCESS CERTIFICATE.—The
6 term “Kimberley Process Certificate” means a for-
7 gery resistant document of a Participant that dem-
8 onstrates that an importation or exportation of
9 rough diamonds has been controlled through the
10 Kimberley Process Certification Scheme and con-
11 tains the minimum elements set forth in Annex I of
12 the Kimberley Process Certification Scheme.

13 (5) KIMBERLEY PROCESS CERTIFICATION
14 SCHEME.—The term “Kimberley Process Certifi-
15 cation Scheme” means those standards, practices,
16 and procedures of the international certification
17 scheme for rough diamonds presented in the docu-
18 ment entitled “Kimberley Process Certification
19 Scheme” referred to in the Interlaken Declaration
20 on the Kimberley Process Certification Scheme for
21 Rough Diamonds of November 5, 2002.

22 (6) PARTICIPANT.—The term “Participant”
23 means a state, customs territory, or regional eco-
24 nomic integration organization identified by the Sec-
25 retary of State.

1 (7) PERSON.—The term “person” means an in-
2 dividual or entity.

3 (8) ROUGH DIAMOND.—The term “rough dia-
4 mond” means any diamond that is unworked or sim-
5 ply sawn, cleaved, or bruted and classifiable under
6 subheading 7102.10, 7102.21, or 7102.31 of the
7 Harmonized Tariff Schedule of the United States.

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

13 (10) UNITED STATES PERSON.—The term
14 “United States person” means—

15 (A) any United States citizen or any alien
16 admitted for permanent residence into the
17 United States;

18 (B) any entity organized under the laws of
19 the United States or any jurisdiction within the
20 United States (including its foreign branches);
21 and

22 (C) any person in the United States.

1 **SEC. 4. MEASURES FOR THE IMPORTATION AND EXPOR-**
2 **TATION OF ROUGH DIAMONDS.**

3 (a) PROHIBITION.—The President shall prohibit the
4 importation into, or exportation from, the United States
5 of any rough diamond, from whatever source, that has not
6 been controlled through the Kimberley Process Certifi-
7 cation Scheme.

8 (b) WAIVER.—The President may waive the require-
9 ments set forth in subsection (a) with respect to a par-
10 ticular country for periods of not more than 1 year each,
11 if, with respect to each such waiver—

12 (1) the President determines and reports to
13 Congress that such country is taking effective steps
14 to implement the Kimberley Process Certification
15 Scheme; or

16 (2) the President determines that the waiver is
17 in the national interests of the United States, and
18 reports such determination to Congress, together
19 with the reasons therefor.

20 **SEC. 5. REGULATORY AND OTHER AUTHORITY.**

21 (a) IN GENERAL.—The President is authorized to
22 and shall as necessary issue such proclamations, regula-
23 tions, licenses, and orders, and conduct such investiga-
24 tions, as may be necessary to carry out this Act.

25 (b) RECORDKEEPING.—Any United States person
26 seeking to export from or import into the United States

1 any rough diamonds shall keep a full record of, in the form
2 of reports or otherwise, complete information relating to
3 any act or transaction to which any prohibition imposed
4 under section 4(a) applies. The President may require
5 such person to furnish such information under oath, in-
6 cluding the production of books of account, records, con-
7 tracts, letters, memoranda, or other papers, in the custody
8 or control of such person.

9 (c) OVERSIGHT.—The President shall require the ap-
10 propriate Government agency to conduct annual reviews
11 of the standards, practices, and procedures of any entity
12 in the United States that issues Kimberley Process Certifi-
13 cates for the exportation from the United States of rough
14 diamonds to determine whether such standards, practices,
15 and procedures are in accordance with the Kimberley
16 Process Certification Scheme. The President shall trans-
17 mit to Congress a report on each annual review under this
18 subsection.

19 **SEC. 6. IMPORTING AND EXPORTING AUTHORITIES.**

20 (a) IN THE UNITED STATES.—For purposes of this
21 Act—

22 (1) the importing authority shall be the United
23 States Bureau of Customs and Border Protection or,
24 in the case of a territory or possession of the United

1 States with its own customs administration, analo-
2 gous officials; and

3 (2) the exporting authority shall be the Bureau
4 of the Census.

5 (b) OF OTHER COUNTRIES.—The Secretary of State
6 shall publish in the Federal Register a list of all Partici-
7 pants, and all exporting authorities and importing authori-
8 ties of Participants. The Secretary shall update the list
9 as necessary.

10 **SEC. 7. STATEMENT OF POLICY.**

11 Congress supports the policy that the President take
12 appropriate steps to promote and facilitate the adoption
13 by the international community of the Kimberley Process
14 Certification Scheme implemented under this Act.

15 **SEC. 8. ENFORCEMENT.**

16 (a) IN GENERAL.—In addition to the enforcement
17 provisions set forth in subsection (b)—

18 (1) a civil penalty of not to exceed \$10,000 may
19 be imposed on any person who violates, or attempts
20 to violate, any license, order, or regulation issued
21 under this Act; and

22 (2) whoever willfully violates, or willfully at-
23 tempts to violate, any license, order, or regulation
24 issued under this Act shall, upon conviction, be fined
25 not more than \$50,000, or, if a natural person, may

1 be imprisoned for not more than 10 years, or both;
2 and any officer, director, or agent of any corporation
3 who willfully participates in such violation may be
4 punished by a like fine, imprisonment, or both.

5 (b) **IMPORT VIOLATIONS.**—The civil and criminal
6 customs laws and penalties of the United States, includ-
7 ing seizure and forfeiture, that apply to merchandise im-
8 ported in violation of such laws shall apply with respect
9 to rough diamonds imported in violation of this Act.

10 **SEC. 9. TECHNICAL ASSISTANCE.**

11 The President may direct the appropriate agencies of
12 the United States Government to make available technical
13 assistance to countries seeking to implement the Kim-
14 berley Process Certification Scheme.

15 **SEC. 10. SENSE OF CONGRESS.**

16 (a) **ONGOING PROCESS.**—It is the sense of Congress
17 that the Kimberley Process Certification Scheme, officially
18 launched on January 1, 2003, is an ongoing process. The
19 President should work with Participants to strengthen the
20 Kimberley Process Certification Scheme through the adop-
21 tion of measures for the sharing of statistics on the pro-
22 duction of and trade in rough diamonds, and for moni-
23 toring the effectiveness of the Kimberley Process Certifi-
24 cation Scheme in stemming trade in diamonds the impor-

1 tation or exportation of which is not controlled through
2 the Kimberley Process Certification Scheme.

3 (b) STATISTICS AND REPORTING.—It is the sense of
4 Congress that under Annex III to the Kimberley Process
5 Certification Scheme, Participants recognized that reliable
6 and comparable data on the international trade in rough
7 diamonds are an essential tool for the effective implemen-
8 tation of the Kimberley Process Certification Scheme.
9 Therefore, the executive branch should continue to—

10 (1) keep and publish statistics on imports and
11 exports of rough diamonds under subheadings
12 7102.10.00, 7102.21, and 7102.31.00 of the Har-
13 monized Tariff Schedule of the United States;

14 (2) make these statistics available for analysis
15 by interested parties and by Participants; and

16 (3) take a leadership role in negotiating a
17 standardized methodology among Participants for
18 reporting statistics on imports and exports of rough
19 diamonds.

20 (c) KIMBERLEY PROCESS IMPLEMENTATION COORDI-
21 NATING COMMITTEE.—It is the sense of Congress that the
22 President should establish a Kimberley Process Implemen-
23 tation Coordinating Committee to coordinate the imple-
24 mentation of this Act. The Committee should be composed
25 of the following individuals or their designee:

1 (1) The Secretary of the Treasury and the Sec-
2 retary of State, who shall be co-chairpersons.

3 (2) The Secretary of Commerce.

4 (3) The United States Trade Representative.

5 (4) The Secretary of Homeland Security.

6 (5) A representative of any other agency the
7 President deems appropriate.

8 **SEC. 11. REPORTS.**

9 (a) ANNUAL REPORTS.—Not later than 1 year after
10 the date of enactment of this Act and every 12 months
11 thereafter for such period as this Act is in effect, the
12 President shall transmit to Congress a report—

13 (1) describing actions taken by countries that
14 have exported rough diamonds to the United States
15 during the preceding 12-month period to control the
16 exportation of the diamonds through the Kimberley
17 Process Certification Scheme;

18 (2) describing whether there is statistical infor-
19 mation or other evidence that would indicate efforts
20 to circumvent the Kimberley Process Certification
21 Scheme, including cutting rough diamonds for the
22 purpose of circumventing the Kimberley Process
23 Certification Scheme; and

24 (3) identifying each country that, during the
25 preceding 12-month period, exported rough dia-

1 monds to the United States and was exporting rough
2 diamonds not controlled through the Kimberley
3 Process Certification Scheme, if the failure to do so
4 has significantly increased the likelihood that those
5 diamonds not so controlled are being imported into
6 the United States.

7 (b) SEMIANNUAL REPORTS.—For each country iden-
8 tified in subsection (a)(2), the President, during such pe-
9 riod as this Act is in effect, shall, every 6 months after
10 the initial report in which the country was identified,
11 transmit to Congress a report that explains what actions
12 have been taken by the United States or such country
13 since the previous report to ensure that diamonds the ex-
14 portation of which was not controlled through the Kim-
15 berley Process Certification Scheme are not being im-
16 ported from that country into the United States. The re-
17 quirement to issue a semiannual report with respect to a
18 country under this subsection shall remain in effect until
19 such time as the country is controlling the importation and
20 exportation of rough diamonds through the Kimberley
21 Process Certification Scheme.

22 **SEC. 12. GAO REPORT.**

23 Not later than 24 months after the effective date of
24 this Act, the Comptroller General of the United States
25 shall transmit a report to Congress on the effectiveness

1 of the provisions of this Act in preventing the importation
2 or exportation of rough diamonds that is prohibited under
3 section 4. The Comptroller General shall include in the
4 report any recommendations on any modifications to this
5 Act that may be necessary.

6 **SEC. 13. EFFECTIVE DATE.**

7 This Act shall take effect on the date on which the
8 President certifies to Congress that—

9 (1) an applicable waiver that has been granted
10 by the World Trade Organization is in effect; or

11 (2) an applicable decision in a resolution adopt-
12 ed by the United Nations Security Council pursuant
13 to Chapter VII of the Charter of the United Nations
14 is in effect.

15 This Act shall thereafter remain in effect during those pe-
16 riods in which, as certified by the President to Congress,
17 an applicable waiver or decision referred to in paragraph
18 (1) or (2) is in effect.

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