

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

MEMORANDUM TO THE COMMITTEE ON WAYS AND MEANS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES ON PROPOSED TARIFF LEGISLATION ¹

[**Date approved:** November 2, 2001]²

Bill No.: H.R. 2722; 107th Congress

Introduced by: Mr. HOUGHTON et al.

Similar and/or related³ bills: H.R. 918, S. 787, S. 1084; all the foregoing of the 107th Congress

Summary of the bill.⁴

The bill would prohibit the importation of diamonds [of heading 7102 or 7113 of the Harmonized Tariff Schedule of the United States,⁵] unless the countries exporting the diamonds to the United States have in place a system of controls on rough diamonds, and would make certain related legal changes.

Effective date: 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.]

¹ International trade analysts: Linda White (202-205-3427) and Selamawit Legesse (202-205-3493); attorney: Jan Summers (202-205-2605).

² 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).

³ "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.

⁴ The product nomenclature is as set forth in the bill. See technical comments for suggested changes (if any).

⁵ 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) ⁶
Jewelers of America	New York, NY	September 18, 2001	Yes ⁷
Campaign to Eliminate Conflict Diamonds	Washington, DC	September 19, 2001	Yes ⁷

*Does the proponent plan **any** further processing or handling⁸ of the subject product after importation to its facilities in the United States (Y/N):* No. The Jewelers of America represents the diamond-containing jewelry industry, but does not process or handle diamonds and diamond jewelry. 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 reportedly financed in part from the international sale of illegally mined diamonds, while at the same time preserving a viable international diamond industry.

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

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

⁶ Non-confidential written responses received prior to approval of this report by the Commission, if any, will be included in appendix C.

⁷ A joint written statement was submitted to Congress by the Campaign to Eliminate Conflict Diamonds and Jewelers of America, see appendix C.

⁸ The phrase “further processing or handling” can include repackaging, storage or warehousing for resale, etc.

The imported product	
Description and uses	Country(s) of origin
<p><u>Natural loose diamonds (heading 7102)</u></p> <p>Diamonds are crystalline forms of carbon and the hardest known mineral. Natural diamonds are extracted from the earth and range in transparency from opaque stone to more pure stones with very high refractive index and light dispersion characteristics. Depending on the stone's degree of purity, designated categories range from impure lower priced industrial quality stones to more pure, higher priced non-industrial (gem) quality stones.</p> <p><u>Nonindustrial (gem) quality diamonds (subheadings 7102.31-7102.39)</u></p> <p>Natural diamonds sorted and graded as gem quality are typically used for articles of ornamentation or adornment, particularly jewelry.</p> <ul style="list-style-type: none"> • 7102.31 -- diamonds in rough form in that they are unworked or simply sawn, cleaved, or bruted, but not yet cut and polished. • 7102.39 -- diamonds worked into a desired form, usually cut and polished with facets to reflect light. 	<p>Diamonds under subheadings 7102.31 and 7102.39 are imported from at least 70 countries. The higher priced imported diamonds are those that are cut and polished into facets. Attached to this report are imports of the subject goods by subheading and by country in descending order of value, sorted by year 2000.</p> <p>See appendix E, attachment A-4.</p>

Description and uses (continue)	Country(s) of origin
<p><u>Diamond-containing jewelry (diamond jewelry)</u></p> <p>No HTS provisions explicitly identify or separately provide for diamond jewelry in the article description.⁹</p> <p><u>Precious metal jewelry which may incorporate diamonds (heading 7113)</u></p> <p>HTS heading 7113 identifies jewelry of precious metal or of metal clad with precious metal, which may incorporate gemstones (the diamonds or other stones are present as a minor constituent). The heading classifies articles according to the type of precious metal used to make the jewelry:</p> <ul style="list-style-type: none"> • 7113.11.50 -- diamonds set in silver jewelry; • 7113.19.21 - 7113.19.50 -- diamonds set in gold or platinum jewelry; and • 7113.20.21 - 7113.20.50 -- diamonds set in base metal clad with precious metal. <p>See appendix B, attachment A-1 notes 2 (a) and attachment A-2.</p> <p><u>Jewelry of precious or semiprecious stones (including diamonds)</u></p> <p>Jewelry of HTS subheading 7116.20.05 includes precious or semiprecious metal articles incorporating gemstones, valued not greater than \$40 per piece. Such jewelry must be found to have the essential character of such stones, with the precious metal being only a minor constituent. See appendix B, attachment A-1 notes 2 (b) and attachment A-3. Jewelry articles classified in HTS subheading 7116.20.15 include precious or semiprecious metal incorporating gemstones, valued over \$40 per piece. Again, the jewelry must have the essential character of such stones. See appendix B, attachment A-1 notes 2(b) and attachment A-3.</p>	<p><u>Diamond jewelry</u></p> <p>Diamond jewelry is imported from more than 50 countries. Reports listing gemstone jewelry imports by the country of origin in descending order of value for 2000 are attached to this document.</p> <p>See appendix E attachment A-4.</p>

⁹ 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.

– 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.*]

HTS numbers used in the bill: 7102.31.00 and 7102.39.00 ¹⁰					
	2002	2003	2004	2005	2006
General rate of duty ¹¹ (AVE) ¹²	Free	Free	Free	Free	Free
Estimated value <i>dutiable</i> imports	0	0	0	0	0
Customs revenue loss	0	0	0	0	0

Additional 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 ¹³					
	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 ¹⁴	\$2.5 billion	\$2.5 billion	\$2.5 billion	\$2.5 billion
Customs revenue loss	\$0-137 million ¹⁵	\$0-137 million	\$0-137 million	\$0-137 million	\$0-137 million

¹⁰ The HTS number is as set forth in the bill. See technical comments for suggested changes (if any).

¹¹ See appendix B for column 1-special and column 2 duty rates.

¹² AVE is ad valorem equivalent expressed as percent. Staged rates may be found at: <http://dataweb.usitc.gov>

¹³ The HTS subheadings listed include all possible HTS numbers under which diamond jewelry could be classified. Customs revenue loss is calculated using HTS subheadings 7113.19.50 and 7116.20.15 because the Commission believes these two HTS subheadings likely account for the majority of diamond jewelry imports into the United States. See technical comments.

¹⁴ See appendix E, attachment A-6, table 1 and appendix E, attachment A-7, table 1.

¹⁵ See appendix E, attachment A-6, table 2 and appendix E, attachment A-7, table 2.

– CONTACTS WITH OTHER FIRMS/ORGANIZATIONS –

Contacts with firms or organizations <i>other than</i> the proponents			
Name of firm	Location contacted (city/state)	Date contacted	Response received? (Yes/No) ¹⁶
Diamond Manufacturers & Importers Assoc. of America	New York, NY	Sept. 14, 2001	Yes
The Diamond Registry	New York, NY	Sept. 14, 2001	No
Diamond Dealers Club	New York, NY	Sept. 14, 2001	Yes
Manufacturing Jewelers & Suppliers of America, Inc.	Providence, RI	Sept. 17, 2001	Yes
Tiffany and Company	New York, NY	Sept. 17, 2001	No
Antwerp Diamond High Council	Antwerp, Belgium	Sept. 17, 2001	No
World Diamond Council	Washington, D.C.	Sept. 17, 2001	No

– 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.]*

¹⁶ 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.

Statements concerning current U.S. production			
Name of product	Name of firm	Location of U.S. production facility	Date received
None.			

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

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

– 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 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:

As indicated above, no HTS provisions separately identify “articles of jewelry of diamonds,” complicating enforcement and compliance, and including all of heading 7113 might require the suspension of liquidation or prohibition of importation of goods falling in certain subheadings covering jewelry that is not set with diamonds. In addition, HTS subheadings 7116.20.05 and 7116.20.15 identify jewelry set with gemstones, including diamonds, where the gemstone is considered to be the major constituent of the jewelry. Therefore, to identify and track all diamond jewelry imported into the United States, and to reduce circumvention of United Nations Security Council Resolutions 55/56, 1173, 1306, and 1344, these HTS subheadings should also be noted in the bill’s definition of the products. Such inclusion would further help to protect U.S. producers of diamond jewelry from being put at a disadvantage relative to foreign competitors exporting such jewelry incorporating “conflict diamonds” to the United States. Thus, it is suggested that the definitions in section 9 of the bill should be modified to indicate the likely HTS subheadings under which jewelry incorporating diamonds may be imported under heading 7113, or in the alternative an exclusion could be for those not covering such jewelry. In addition, HTS subheadings 7116.20.05 and 7116.20.15 should be added to the definition, in order to incorporate all the major HTS subheadings under which diamond jewelry could be classified. One approach would be to strike “or 7113” and to insert instead “or subheadings 7113.11.50, 7113.19.21 through 7113.19.50, 7113.20.21 through 7113.20.50, 7116.20.05, and 7116.20.15”.

We note that the definition of “United States” in section 9(3) extends beyond the definition employed in the HTS. The customs territory of the United States comprises the 50 states, the District of Columbia, and Puerto Rico, according to general note 2 to the HTS. Despite the fact that the definition states it is limited to usage “in the geographic sense,” we would note that the bill’s numerous references to importations might present problems for the Customs Service. That agency’s regulations would not consider a shipment from a third country to an insular possession of the United States to be an importation, resulting in the filing with Customs of an entry and giving it jurisdiction over the shipment. Moreover, because the freely associated states (see general note 10 to the HTS) receive the same treatment as Guam (an insular possession), the bill might likewise present enforcement problems. We would defer to Customs in dealing with such issues.

Because Liberia is mentioned in a similar bill, S.787, and is one of the regions where “conflict diamonds” originate, we suggest that Liberia also be added to the language of section 2(1) of the bill.

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:*¹⁷ n/a

Other technical comments (if any):

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

Although specific HTS provisions identify each kind of loose natural diamond, gem quality diamonds may be imported under other HTS categories and complicate Custom enforcement of the proposed provisions. Unsorted (7102.10) and industrial quality (7102.21 - 7102.29) diamonds may have the same visual characteristics as gem quality diamonds viewed as “conflict diamonds,”¹⁸ making it difficult to monitor trade. Depending on the purity and quality of unsorted and industrial diamonds, which may have the same chemical and physical characteristics as some gem diamonds, technical expertise and possibly laboratory testing may be needed to determine the product type. This factor will likely also arise if it became economically viable to mass-produce clear, uncolored synthetic diamonds of sizes appropriate for jewelry applications. Synthetic gem quality diamonds on the market today are reported to have a distinctive color

¹⁷ 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.

¹⁸ Unsorted diamonds (HTS 7102.10) are natural loose diamonds that have not been examined by diamond experts to determine whether they are industrial or gem quality grade. Technical criteria used to make this determination include size, crystallographic suitability for cutting, purity of crystals, transparency, brilliance, and color.

and are classified in HTS 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).

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.

Rev. 1/4/00

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.]

Dear Ms. Legasse;

As per your office's request I am submitting the following information regarding the Conflict Diamond legislation HR 2722.

MJSA's Board of Directors unanimously endorsed support for the immediate passage of H.R. 2722.

Voted and Passed Sept 21,2001

18 member companies

The Board of Directors at MJSA stated that "Passage of H.R. 2722 by the U.S. Congress will be a giant step in our industry, ensuring that only conflict-free diamonds will be sold in the United States. H.R. 2722 will mandate and assure American retail diamond consumers that the diamonds they are purchasing came from legitimate sources worldwide."

In addition through a posting on the MJSA WEB site an addition 23 member companies "endorse passage" of HR 2722

In closing MJSA is please to report that 40 Member companies endorse the passage of HR 2722

Thank you

Thomas J Rossi
General Manager MJSA
45 Royal Little Drive
Prov. 02904
RI

September 25, 2001

Ms. Linda White
U.S. International Trade Commission
Washington, D.C. 20436

Re: House Proposed Bill H.R.2722/Senate Bill S.1084

The Diamond Manufacturers and Importers Association of America (DMIA) has been an activist leader in the fight to stop the flow of "conflict diamonds" into the legitimate marketplace. We unanimously believe that H.R.2722 and its Senate companion bill S.1084 represent the best possible approach to solving this compelling problem.

The diamond industry has encouraged legislation that would prove effective, enforceable, practical, and yet would not stifle the ability of the legitimate trade to conduct business. H.R. 2722 and S.1084 meet the criteria of being effective and enforceable. By focusing mandatory control system on imports and exports as goods cross international borders, we should have the greatest opportunity to identify those who do not comply and deny them the right to export their diamonds to the U.S., even indirectly. In terms of commercial practicality, H.R. 2722 and S.1084 should accomplish its goal without imposing unnecessary restrictions on legitimate merchants and without creating layers of bureaucratic waste, thus avoiding prohibitive cost increases to consumers. In order to provide the consumer the best possible product at a reasonable price, diamond merchants at all levels of the industry routinely and continuously "mix and match" diamonds from their inventories and re-mix and re-match them to tailor assortments according to varying commercial requirements.

H.R.2722 and S.1084 are the culmination of a collaborative thought process with input from Congress, industry, and the N.G.O. community. These bills meet the challenge of controlling conflict diamonds; they have addressed relevant objections; and they have been designed to be WTO compatible.

It is the diamond industry's hope and desire that all diamonds in the marketplace be free of any connection to funding conflict. For the benefit of the victims in Africa, and to keep diamonds free of this taint, we endorse speedy passage of H.R. 2722 and S.1084.

Jeffrey H. Fischer
President

107TH CONGRESS
1ST SESSION

H. R. 2722

To implement a system of requirements on the importation of diamonds,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2001

Mr. HOUGHTON (for himself, Mr. RANGEL, Mr. HALL of Ohio, Mr. WOLF, Mr. ROYCE, Mr. PAYNE, Mr. EHLERS, Mr. LANTOS, Mr. COOKSEY, Mr. RUSH, Mr. GREENWOOD, Mr. GEORGE MILLER of California, Mr. FLETCHER, Mr. ACKERMAN, Mr. LATOURETTE, Ms. CARSON of Indiana, Mrs. NORTHUP, Mr. BOUCHER, Mr. ROGERS of Michigan, Mr. ALLEN, Mr. SCHAFFER, Mr. DELAHUNT, Mr. WELDON of Florida, Ms. BALDWIN, Mr. UPTON, Mr. McDERMOTT, Mr. DIAZ-BALART, Ms. RIVERS, Mr. ENGLISH, Mr. SNYDER, Mr. UDALL of Colorado, Ms. WOOLSEY, Mr. COYNE, Mr. STARK, Mr. JEFFERSON, Mr. NEAL of Massachusetts, Mr. EVANS, Mr. HOEFFEL, and Mr. LEWIS of Georgia) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To implement a system of requirements on the importation
of 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”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

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

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

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

1 urgently needed to end the trade in conflict dia-
2 monds.

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

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

1 (6) Without effective action to eliminate trade
2 in conflict diamonds, the trade in legitimate dia-
3 monds faces the threat of a consumer backlash that
4 could damage the economies of countries not in-
5 volved in the trade in conflict diamonds and penalize
6 members of the legitimate trade and the people they
7 employ. To prevent that, South Africa and more
8 than 20 other countries are involved in working,
9 through the “Kimberley Process”, toward devising a
10 solution to this problem. As the consumer of a ma-
11 jority of the world’s supply of diamonds, the United
12 States has an obligation to help sever the link be-
13 tween diamonds and conflict and press for imple-
14 mentation of an effective solution.

15 (7) Trade in conflict diamonds could have a se-
16 vere negative impact on the legitimate diamond
17 trade in countries such as Botswana, Namibia,
18 South Africa, and Tanzania.

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

22 **SEC. 3. DEFINITIONS.**

23 In this Act:

24 (1) **DIAMONDS.**—The term “diamonds” means
25 diamonds classified under subheading 7102.31.00 or

1 subheading 7102.39.00 of the Harmonized Tariff
2 Schedule of the United States.

3 (2) GATT 1994.—The term “GATT 1994”
4 means the General Agreement on Tariffs and Trade
5 annexed to the WTO Agreement.

6 (3) POLISHED DIAMONDS.—The term “polished
7 diamonds” means diamonds that are classified under
8 subheading 7102.39.00 of the Harmonized Tariff
9 Schedule of the United States.

10 (4) ROUGH DIAMONDS.—The term “rough dia-
11 monds” means diamonds that are unworked, or sim-
12 ply sawn, cleaved, or bruted, classified under sub-
13 heading 7102.31.00 of the Harmonized Tariff
14 Schedule of the United States.

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

20 (6) WTO AGREEMENT.—The term “WTO
21 Agreement” means the Agreement Establishing the
22 World Trade Organization entered into on April 15,
23 1994.

24 (7) WORLD TRADE ORGANIZATION AND WTO.—
25 The terms “World Trade Organization” and

1 “WTO” mean the organization established pursuant
2 to the WTO Agreement.

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

5 (a) REQUIREMENTS.—

6 (1) ROUGH DIAMONDS.—Rough diamonds may
7 not be imported into the United States from a coun-
8 try unless the country exporting the rough diamonds
9 is implementing a system of controls on the export
10 from, and import into, that country of rough dia-
11 monds that—

12 (A) meets the requirements of paragraph
13 (2), consistent with United Nations General As-
14 sembly Resolution 55/56 adopted on December
15 1, 2000;

16 (B) the President determines to be func-
17 tionally equivalent to the system of controls
18 specified in subparagraph (A); or

19 (C) meets the requirements of an inter-
20 national agreement which requires controls de-
21 scribed in subparagraph (A) and to which the
22 United States is a party.

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

1 (A) Rough diamonds, when exported from
2 the country in which they were extracted, shall
3 be sealed in a secure, transparent container or
4 bag by appropriate government officials of that
5 country.

6 (B) The sealed container or bag described
7 in subparagraph (A) shall include a fully visible
8 document that—

9 (i) certifies the country from which
10 the rough diamonds were extracted;

11 (ii) records a unique export registra-
12 tion number for, and the total carat weight
13 of, the rough diamonds in the container or
14 bag; and

15 (iii) is issued by the government of
16 that country.

17 (C) The country from whose territory the
18 rough diamonds are first exported shall main-
19 tain at least the information on exports of
20 rough diamonds described in subparagraph (B).

21 (D) Any country into whose territory the
22 rough diamonds are first imported prior to
23 polishing or other processing—

24 (i) shall permit importation of the
25 rough diamonds only in a container or bag

1 described in subparagraphs (A) and (B);
2 and

3 (ii) shall verify, on the basis of docu-
4 mentation provided to it by electronic or
5 other reliable means, the legitimacy of the
6 export document included in the sealed
7 container or bag in which the rough dia-
8 monds were shipped, using the information
9 maintained by the country of export.

10 (E) Appropriate government authorities of
11 countries that import rough diamonds shall
12 conduct reasonable physical inspections of a
13 sampling of the sealed containers and bags of
14 rough diamonds to ensure compliance with the
15 requirements of this paragraph.

16 (3) POLISHED DIAMONDS.—Polished diamonds
17 may not be imported into the United States from a
18 country unless the country exporting the
19 diamonds—

20 (A) is implementing a system of controls
21 on the export from, and import into, that coun-
22 try of rough diamonds described in paragraph
23 (1), except that such system shall not be re-
24 quired for those countries that do not import
25 rough diamonds; and

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

6 (4) JEWELRY CONTAINING DIAMONDS.—Jew-
7 elry containing diamonds may not be imported into
8 the United States from a country unless the country
9 exporting the jewelry—

10 (A) is implementing a system of controls
11 on the export and import of rough diamonds
12 described in paragraph (1), except that such
13 system shall not be required for those countries
14 that do not import rough diamonds; and

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

20 (5) EXCLUSIONS.—

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

23 (i) jewelry containing diamonds im-
24 ported by or on behalf of a person for per-

1 sonal use and accompanying a person upon
2 entry into the United States; or

3 (ii) diamonds or jewelry containing
4 diamonds, previously exported from the
5 United States and reimported by the same
6 importer, without having been advanced in
7 value or improved in condition by any
8 process or other means while abroad, if the
9 importer declares that the reimportation of
10 the diamonds or jewelry, as the case may
11 be, satisfies the requirements of this
12 clause.

13 (B) REGULATIONS.—The Secretary of the
14 Treasury is authorized to promulgate regula-
15 tions to ensure that the exclusions described in
16 subparagraph (A) do not become a means to
17 evade the requirements made by this section.

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

21 (c) PRESIDENTIAL ADVISORY COMMISSION.—

22 (1) PURPOSE.—The President shall appoint an
23 advisory commission the purpose of which shall be to
24 make recommendations to the President on the ef-
25 fectiveness of the monitoring system under sub-

1 section (b), and on ways to improve that monitoring
2 system.

3 (2) MEMBERSHIP.—The advisory commission
4 shall be composed of 9 members, 2 of whom shall be
5 representatives of private and voluntary organiza-
6 tions, and 2 of whom shall be representatives of the
7 diamond industry. The remaining members may be
8 appointed from appropriate agencies of the United
9 States and other interested parties.

10 **SEC. 5. ENFORCEMENT.**

11 Diamonds and jewelry containing diamonds imported
12 into the United States in violation of section 4 are subject
13 to the seizure and forfeiture laws, and all criminal and
14 civil laws of the United States shall apply, to the same
15 extent as any other violation of the customs and naviga-
16 tion laws of the United States.

17 **SEC. 6. WAIVER AUTHORITY.**

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

22 (1) determines that the country is cooperating
23 because the country—

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

4 (B) is acting in good faith to establish and
5 enforce a unilateral certification system con-
6 taining the requirements described in section
7 4(a); and

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

10 (b) EVALUATION CRITERIA.—Not later than 180
11 days after the date of enactment of this Act, the Presi-
12 dent, in consultation with the heads of appropriate Fed-
13 eral agencies, shall develop and publish criteria that will
14 be used to evaluate whether or not a country is a cooper-
15 ating country for purposes of subsection (a). Before adopt-
16 ing such criteria in final form, the President shall provide
17 for public notice of, and a period for public comment on,
18 the criteria.

19 **SEC. 7. ANNUAL REPORTS.**

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

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

4 (2) identifying those countries that are imple-
5 menting those controls;

6 (3) identifying those countries that are not im-
7 plementing those controls, and describing the effects
8 of that failure on the trade in diamonds used to sup-
9 port conflict in the country or regions in which the
10 diamonds are extracted; and

11 (4) describing in detail technological develop-
12 ments that allow—

13 (A) the determination of where a diamond
14 was mined; and

15 (B) the marking and tracking of rough
16 and polished diamonds.

17 **SEC. 8. GAO REPORT.**

18 Not later than 3 years after the date of enactment
19 of this Act, the Comptroller General of the United States
20 shall transmit a report to Congress on the effectiveness
21 of the provisions of this Act in preventing the importation
22 of diamonds traded in violation of any system of controls
23 described in section 4(a)(1). The Comptroller General
24 shall include in the report any recommendations on any
25 modifications to this Act that may be necessary.

1 **SEC. 9. STATUTORY CONSTRUCTION.**

2 This Act may not be construed to apply to restric-
3 tions on the importation of diamonds in effect on its date
4 of enactment or to diminish the authority of the President
5 under the International Emergency Economic Powers Act
6 or any other Act to impose restrictions on the importation
7 of diamonds after such date.

8 **SEC. 10. CONSISTENCY OF ACTIONS UNDER THIS ACT WITH**
9 **THE WTO.**

10 (a) **STATUTORY CONSTRUCTION.**—Nothing in this
11 Act requires the Secretary of the Treasury or the Commis-
12 sioner of Customs to take any action that would be a viola-
13 tion of United States obligations under the agreements of
14 the World Trade Organization, as determined in any dis-
15 pute settlement proceeding under the WTO.

16 (b) **SENSE OF CONGRESS.**—It is the sense of Con-
17 gress that, in the event there is a determination in any
18 dispute settlement proceeding under the WTO that this
19 Act, any part of this Act, or any action taken under this
20 Act is inconsistent with United States obligations under
21 the WTO, the United States will take such steps as are
22 necessary to bring itself into conformity with its WTO ob-
23 ligations.

24 **SEC. 11. SENSE OF CONGRESS.**

25 (a) **SENSE OF CONGRESS ON NEGOTIATION OF AN**
26 **INTERNATIONAL TRADE AGREEMENT.**—It is the sense of

1 Congress that the President should take the necessary
2 steps to negotiate an international trade agreement, work-
3 ing in concert with the Kimberley Process referred to in
4 section 2(6), to eliminate the trade in diamonds used to
5 support conflict in the country or regions in which the dia-
6 monds are extracted. Such an agreement should create an
7 effective global certification system covering diamond ex-
8 porting and importing countries, and should include—

9 (1) the requirements described in section 4(a);

10 (2) a requirement that any country from whose
11 territory rough diamonds are exported publish an-
12 nual reports disclosing the names of all entities and
13 individuals who hold mining concessions, licenses to
14 purchase rough diamonds, and licenses to export
15 rough diamonds, as well as the volume and value of
16 such diamonds exported categorized by country of
17 importation; and

18 (3) a requirement that any country into whose
19 territory rough diamonds are imported publish an-
20 nual reports disclosing the source by country of ex-
21 portation of its diamond imports as well as the vol-
22 ume and value of such diamonds for each such coun-
23 try of exportation.

24 (b) SENSE OF CONGRESS REGARDING TRADE IN LE-
25 GITIMATE DIAMONDS.—It is the sense of Congress that

1 the provisions of this Act should not impede the trade in
2 legitimate diamonds with countries which are working con-
3 structively to eliminate trade in conflict diamonds, includ-
4 ing through the negotiation of an effective international
5 trade agreement to eliminate trade in conflict diamonds.

6 **SEC. 12. SENSE OF CONGRESS ON IMPLEMENTATION OF**
7 **THE SYSTEM OF CONTROLS.**

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

14 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

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

20 **SEC. 14. EFFECTIVE DATE.**

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

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