

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

MEMORANDUM TO THE COMMITTEE ON FINANCE OF THE UNITED STATES
SENATE ON PROPOSED TARIFF LEGISLATION ¹

[Date approved: March 4, 2002]²

Bill No.: S. 787; 107th Congress

Introduced by: Mr. GREGG³

Similar and/or related⁴ bills: H.R. 918 and S.1084; 107th Congress

Summary of the bill:⁵

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,⁶ unless the countries exporting the diamonds to the United States have in place a system of controls on rough diamonds.

Effective: Title I: Six months after the date of enactment
Title II: 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)

¹ International trade analyst: 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 Since introducing S.787, Senator Judd Gregg has signed on to related bill S.1084, which was drafted as a compromise between H.R. 918 and S.787. Telephone conversation with Ms. Sue Hardesty, Senator Richard Durbin's office, Aug. 6, 2001. See signatures to U.S. Senate letter requesting cosponsors for S.1084, appendix F.

⁴ "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.

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

⁶ See appendix A for definitions of tariff and trade agreement terms.

information about the domestic industry (if any); and (5) technical comments.]

– THE PROPONENT AND THE IMPORTED PRODUCT –

The proponent firm/organization(s)			
Name of firm	Location contacted (city/state)	Date contacted	Response received? (Yes/No) ⁷
Not applicable ⁸			

*Does the proponent plan **any** further processing or handling⁹ of the subject product after importation to its facilities in the United States (Y/N):* Not applicable.

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

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

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

⁸ Currently, Senator Judd Gregg is the only sponsor of this bill (S.787). Voice message from Katherine Hennessey, staff member on the Commerce, Justice, State, and the Judiciary Subcommittee Chaired by Senator Gregg, August 10, 2001. Senator Gregg, who introduced this bill, signed onto related bill S. 1084 which was drafted as a compromise between H.R. 918 and this bill (S. 787). See appendix F.

⁹ 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>¹⁰</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. Gem quality diamonds 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 is a list of imported diamonds under each subheading by country in descending order of value, sorted by year 2000.</p> <p>See appendix E, attachment A-4.</p>

¹⁰ As stated in Bill S.787, Sec. 102 Definitions, diamonds are composed of carbon crystallized in the isometric system with a hardness of 10 on the Mohs scale. However, the purity level of each diamond stone varies with the amount and kind of imperfections and inclusions. Inclusions are defined as a crystal, fragment of another substance, or a minute cavity filled with gas or liquid enclosed in a crystal.

Description and uses (continue)	Country(s) of origin
<p><u>Diamond jewelry</u></p> <p>There are no HTS provisions that explicitly identify diamond jewelry as part of the item's product description.¹¹</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 incorporating gemstones. For diamond jewelry to be classified under this heading, the diamond must be present in the jewelry as a minor constituent. The heading classifies articles according to the type of precious metal the jewelry is made out of. The HTS subheadings and annotations that apply to diamond jewelry under HTS heading 7113 are as follows:</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 articles classified under HTS subheading 7116.20.05 include precious or semiprecious metal incorporating gemstones, valued not greater than \$40 per piece. Diamond jewelry can be classified under this HTS subheading only if the diamond is present as a major constituent of the jewelry. In addition, the total value of the diamond jewelry must not be greater than \$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 include precious or semiprecious metal incorporating gemstones, valued over \$40 per piece. Diamond jewelry can be classified under this HTS subheading only if the diamond is present as a major constituent of the jewelry. 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>

¹¹ 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 number used in the bill: 7102.31.00¹²					
	2002	2003	2004	2005	2006
 					
General rate of duty ¹³ (AVE) ¹⁴	Free	Free	Free	Free	Free
Estimated value <i>dutiable</i> imports	0	0	0	0	0
Customs revenue loss	0	0	0	0	0

HTS number recommended by the Commission: 7102.39.00¹⁵					
	2002	2003	2004	2005	2006
 					
General rate of duty (AVE)	Free	Free	Free	Free	Free
Estimated value <i>dutiable</i> imports	0	0	0	0	0
Customs revenue loss	0	0	0	0	0

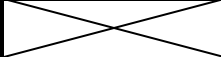
¹² The HTS number is as set forth in the bill . See technical comments for suggested changes.

¹³ See appendix B for column 1-special and column 2 duty rates.

¹⁴ AVE is ad valorem equivalent expressed as percent. Staged rates may be found at: <http://dataweb.usitc.gov>

¹⁵ If a different HTS number is recommended, see technical comments.

**Additional HTS numbers recommended by the Commission: 7113.1150, 7113.19.21 -
7113.19.50,
7113.20.21 - 7113.20.50, 7116.20.05, and 7116.20.15 ¹⁶**

	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 ¹⁷	\$2.5 billion	\$2.5 billion	\$2.5 billion	\$2.5 billion
Customs revenue loss	\$0-137 million ¹⁸	\$0-136 million	\$0-136 million	\$0-136 million	\$0-136 million

¹⁶ The HTS subheadings listed include all possible HTS numbers under which identify 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. See technical comments.

¹⁷ See appendix E, attachment A-6, table 1 and appendix E, attachment A-7, table 1.

¹⁸ 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) ¹⁹
Manufacturing Jewelers & Suppliers of America	Providence, RI	May 16, 2001	Yes
Tiffany and Company	New York, NY	June 6, 2001	Yes
Jewelers of America	New York, NY	June 19, 2001	No
Antwerp Diamond High Council	Antwerp, Belgium	July 2, 2001	Yes
Physicians for Human Rights	Washington, DC	July 2, 2001	Yes
Diamond Manufacturers & 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
World Vision	Washington, DC	July 9, 2001	No

¹⁹ 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.

– 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.			

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** 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:

The Commission recommends listing each HTS item that applies to the “conflict diamond” issue as discussed in the bill (sections 102 and 103):

Loose Diamonds

Subheadings 7102.31.00
7102.39.00

Diamond Jewelry

Subheadings 7113.11.50
7113.19.21 - 7113.19.50
7113.20.21 - 7113.20.50

7116.20.05 - 7116.20.15

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:²⁰

The stated intent of S. 787 is to prohibit U.S. imports of “conflict diamonds,” which include rough and worked gem diamonds and jewelry incorporating such diamonds as explained in Sections 102 and 103 of the bill. However, HTS 7102.31.000 for rough gem diamonds is the only nomenclature item that the bill specifically identifies. For clarification purposes and to facilitate implementation and enforcement of the

²⁰ 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.

proposed legislation, the Commission suggests listing all HTS items under which “conflict diamond” products would be imported into the United States as noted in the nomenclature change section above.

There is no HTS number that specifically identifies diamond jewelry. However, there are several HTS subheadings that cover diamond jewelry, and the Commission believes those HTS numbers should be identified in the Bill to insure that conflict diamonds will not enter the United States. HTS heading 7113 covers “articles or jewelry and parts thereof, of precious metal or clad with precious metal.” The product descriptions of certain subheadings under heading 7113 specifically exclude jewelry incorporating gemstones, while other subheadings are silent on the issue of whether or not diamond jewelry is covered by the specific provisions. Theoretically, diamond jewelry could be classified in the following subheadings under heading 7113: 7113.11.50, 7113.19.21 - 7113.19.50 and, 7113.20.21 - 7113.20.50.²¹

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 to the United States, these HTS subheadings should also be noted in the definition of the products covered by the Bill. Including these HTS subheadings with this report would help prevent the entry of diamond jewelry into the United States from countries that do not abide by the United Nations’ Council Resolutions 1173, 1306, and 1344, as the Bill intends to do. U.S. producers of diamond jewelry would be put at a disadvantage if foreign competitors were allowed to export jewelry incorporating conflict diamonds to the United States.

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 there are specific HTS items that identify each kind of loose natural diamond, unsorted (7102.10) and industrial quality (7102.21 - 7102.29) may have the same visual characteristics as the gem quality diamonds that are associated with the “conflict diamond” issue. This factor can make it difficult to monitor the trade of conflict diamonds. Depending on the purity quality of the unsorted and industrial diamond, it 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. Gem quality synthetic diamonds on the market today are reported to have a distinct color and are classified under 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).

²¹ According to the U.S. Customs Service National Import Specialist, most diamond jewelry enters under subheading 7113.19.50.

In addition, since the Democratic Republic of the Congo is mentioned in related/similar bills H.R. 918 and S. 1084 and is one of the regions where conflict diamonds originate, we suggest the Democratic Republic of the Congo also be included in 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.

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.]

July 2,2001
Salam Legesse

As requested by your office, I am enclosing some brief comments regarding the Conflict Diamonds Legislation introduced by Representative Tony Hall (DOH) HR 918 “ The Clean Diamonds Act”.

Manufacturers, Jewelers and Suppliers of America Inc located in Providence Rhode Island currently represent over 1,700 members in the United States of America. The primary mission of MJSA is to act as the representative of the jewelry manufactures. Our members interface with all aspects of precious, semi-precious, findings and gemstones from throughout the world. The issue of Conflict Diamonds has had overwhelming support from our membership. The entire association / membership all fell compelled to tackle this most thorny issue.

This 2001 congressional session has seen the introduction of two pieces of Conflict Diamonds Legislation . Senate bill number S787 and house bill number HR919.

MJSA had reviewed both pieces of legislation and had made a determination of fact to support the House version HR919.

However in the closing weeks of June 2001 a compromise piece of legislation was introduced by Senators Durbin(D-IL) ,Feingold (D-WI) and Dewine(R-OH) S1084 Clean Diamonds Act, .MJSA along with other segments of the Jewelry industry has agreed to support S-1084 in its entirety.

Therefore MJSA has withdrawn its support for HR-919 and will now fully support Senate bill number S-1084.

Thank you for this opportunity to comment on this most important matter.

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

Dear Selam,

The HRD, representing the Belgian diamond sector, is a member of the World Diamond Council (WDC).

As such, we support the Bill S.1084, introduced by Senators Durbin, Feingold and DeWine.

This bill is a consensus measure between the Bill of Rep. Hall and Senator Gregg, endorsed by both politicians, the diamond industry and the NGO's. It combines we believe strong measures with efficiency.

I remain at your disposal for any further comments.

Sincerely,

Youri STEVERLYNCK
Director Corporate Affairs HRD
Antwerp Diamond High Council

HR 918 and S 787

Dear Selam:

As we discussed Tiffany and Company supports effective U.S. legislation designed to end the trade in so-called conflict diamonds by restricting the import of such items into the United States.

Of the two bills, Tiffany believes that S 787 is the more appropriate and likely to be more effective. However, with certain modifications HR 918 could be made acceptable.

Several features of HR 918 are unacceptable: first, the provision in Section 3 requiring that the number of rough diamonds contained in the sealed container is unworkable, unnecessary and likely to lead to significant delays in processing transactions; second, the provisions for a labeling system for consumers at the point of sale will hurt the U.S. retail industry; third, the bill contains limited flexibility with respect to how the President will implement the import bans provided under the bill and risks challenges under international law, particularly the WTO; and fourth, the findings contained in the bill are inaccurate and harmful to the legitimate industry.

Tiffany stress that HR 918 could, with minor modifications, be made acceptable and that prompt action to enact and enforce a workable is both desirable and necessary to protect the integrity of the diamond jewelry industry in the U.S.

Sincerely,

Patrick B. Dorsey, Senior Vice President, Secretary and General Counsel

To: Selamawit Legesse
From: Holly Burkhalter
Cc:
Subject: diamond legislation
Attachment: hollyb2.vcf

Date: 7/5/2001 1:40 PM

To whom it may concern:

Physicians for Human Rights, a nongovernmental organization that coordinates the Campaign to Eliminate Conflict Diamonds, has the following views on legislation introduced in the House and Senate on conflict diamonds: Our campaign was consulted extensively as HR918 was written, and also had conversations with Senator Gregg's staff as S.787 was developed. Either bill, if enacted, would help push along the international process for developing a regimen for controlling the diamond trade. HR918 is the stronger bill, requiring that countries wishing to export diamonds into the US market have in place the Kimberley regimen, whereas S.787 has a looser standard and no deadline by which the formal regimen is required. There are other important differences as well. S.787 excludes diamond jewelry -- a loophole that we view as potentially dangerous. The penalties for violators are lower in S.787, and the bill does not address EXIM Bank and OPIC funding for diamond operations abroad. Nonetheless, both make a valuable contribution by focusing on the problem of conflict diamonds and suggesting a system by which the President identifies appropriate countries on the basis of their participation in or cooperation with the international system that we support. Both bills have been largely superceded by S.1084, which was introduced in the United States Senate by Senators Durbin, Dewine and Feingold on June 21. This bill represents a compromise between the human rights non-governmental groups that make up the Campaign to Eliminate Conflict Diamonds and the diamond industry. It bridges the differences between the ngo-supported HR918 and the industry-supported S.787 and is acceptable to both sides. The bill S.1084 is likely to be more acceptable to the executive branch than either of the other two in that it includes presidential waiver authority, and it addresses concerns about WTO compatibility. We in the human rights and humanitarian community welcome the support of the diamond industry for strong legislation in the form of S.1084, and expect that a House companion bill will be introduced in the near future.

107TH CONGRESS
1ST SESSION

S. 787

To prohibit the importation of diamonds from countries that have not become signatories to an international agreement establishing a certification system for exports and imports of rough diamonds or that have not unilaterally implemented a certification system meeting the standards set forth herein.

IN THE SENATE OF THE UNITED STATES

APRIL 26, 2001

Mr. GREGG introduced the following bill; which was referred to the Committee on Finance

A BILL

To prohibit the importation of diamonds from countries that have not become signatories to an international agreement establishing a certification system for exports and imports of rough diamonds or that have not unilaterally implemented a certification system meeting the standards set forth herein.

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 “Conflict Diamonds Act
5 of 2001”.

1 **TITLE I—PROHIBITION ON IM-**
2 **PORTATION OF CONFLICT**
3 **DIAMONDS**

4 **SEC. 101. FINDINGS.**

5 The Congress finds that:

6 (1) The use of funds from illegitimate diamond
7 trade to support conflicts in Africa has had dev-
8 astating effects on the peoples of the regions in-
9 volved in those conflicts.

10 (2) U.N. Security Council Resolution 1173 of
11 June 12, 1998, requires the United States and all
12 other U.N. members to take the necessary measures
13 to prohibit the direct or indirect importation from
14 Angola to their territory of all diamonds that are not
15 controlled through the Certificate of Origin regime
16 of the Government of Unity and National Reconcili-
17 ation (GURN).

18 (3) U.N. Security Council Resolution 1306 of
19 July 5, 2000, requires the United States and all
20 other U.N. members to take the necessary measures
21 to prohibit the direct or indirect importation of all
22 rough diamonds from Sierra Leone into their terri-
23 tory that are not controlled by the Government of
24 Sierra Leone through its Certificate of Origin re-
25 gime.

1 (4) U.N. Security Council Resolution 1344 of
2 March 8, 2001, requires the United States and all
3 other U.N. members to take the necessary measures
4 to prevent the direct or indirect import of all rough
5 diamonds from Liberia, whether or not such dia-
6 monds originated in Liberia.

7 (5) Effective compliance with U.N. Security
8 Council Resolutions 1173, 1306, and 1344 is nec-
9 essary to eliminate trade in conflict diamonds.

10 (6) Although the President of the United States
11 has issued Executive Orders to implement Resolu-
12 tion 1173 and Resolution 1306, additional measures
13 are needed to ensure compliance with, and prevent
14 circumvention of, those resolutions.

15 (7) Further measures are needed to prevent
16 rough diamonds originating in other rebel-controlled
17 conflict areas from entering the global stream of
18 commerce in which legitimate diamonds are sold.

19 (8) The resolution of the United Nations Gen-
20 eral Assembly approved on December 1, 2000, pro-
21 vides important guidance on devising effective and
22 pragmatic measures to address the problem of con-
23 flict diamonds.

24 (9) Since legitimate diamond trade is of great
25 economic importance to developing countries in Afri-

1 ca, no law should be enacted, nor regulation or other
2 measure implemented, that would impede legitimate
3 diamond trade or diminish confidence in the integ-
4 rity of the legitimate diamond industry.

5 **SEC. 102. DEFINITIONS.**

6 (a) The term “diamond” means a natural mineral
7 consisting of essentially pure carbon crystallized in the iso-
8 metric system with a hardness of 10 on the Mohs scale,
9 a specific gravity of approximately 3.52, and a refractive
10 index of 2.42.

11 (b) The term “rough diamond” means a diamond
12 that is unworked or simply sawn, cleaved or bruted, as
13 described in Harmonized Tariff Schedule of the United
14 States subheading 7102.31.0000.

15 (c) The term “conflict diamond” means a diamond
16 that has at any time been in the possession of any person
17 belonging to or associated with armed insurgents, rebel
18 forces, or any other movement using violence against civil-
19 ians or internationally recognized governments.

20 **SEC. 103. RESTRICTIONS ON THE IMPORTATION OF DIA-**
21 **MONDS.**

22 (a) No person may enter into the customs territory
23 of the United States or aid or abet an attempt to enter
24 any diamond, including any diamond set in jewelry, that
25 has been mined in, or mined and set in, and exported di-

1 rectly from, the Republic of Sierra Leone, the Republic
2 of Angola, or the Republic of Liberia except for a diamond
3 or a diamond set in jewelry—

4 (1) the country of origin of which has been cer-
5 tified as the Republic of Sierra Leone by the inter-
6 nationally recognized government of that country, in
7 accordance with United Nations Security Council
8 Resolution 1306 of July 5, 2000; or

9 (2) the country of origin of which has been cer-
10 tified as the Republic of Angola by the internation-
11 ally recognized government of that country, in ac-
12 cordance with United Nations Security Council Res-
13 olution 1173 of June 12, 1998.

14 (b) No person may enter into the customs territory
15 of the United States or aid or abet an attempt to enter
16 any diamond directly from a country that: is subject to
17 a United Nations Security Council resolution similar to
18 those identified in subsection (a) or that is not a signatory
19 to an international agreement that establishes a certifi-
20 cation system for exports and imports of rough diamonds,
21 that has not unilaterally implemented such a system, or
22 that is not a “cooperating country” as defined in sub-
23 section (c) of section 105 of this Act.

1 **SEC. 104. PROHIBITION OF OTHER IMPORTS TO PREVENT**
2 **CIRCUMVENTION OF U.N. RESOLUTIONS.**

3 The President of the United States is authorized to
4 prohibit the importation of diamonds or diamond jewelry
5 exported from any country except for rough diamonds
6 whose country of origin has been certified as either the
7 Republic of Angola or the Republic of Sierra Leone under
8 the Certificate of Origin regimes described in section 103
9 (a) (1) or (2), if there are reasonable grounds to believe
10 that such prohibition is necessary to carry out U.N. Secu-
11 rity Council Resolution 1173, 1306, or 1344, or any other
12 Resolution banning the exportation or importation of con-
13 flict diamonds.

14 **SEC. 105. IMPLEMENTING MEASURES.**

15 (a) The Secretary of the Treasury of the United
16 States is authorized to make such rules and regulations
17 as may be necessary to carry out the provisions of this
18 Act. The public will be notified and given an opportunity
19 of at least 30 days to comment on all proposed rules and
20 regulations before they take effect.

21 (b) These regulations will provide that an importer
22 is entitled to rely on the country of origin marking that
23 is required under 19 U.S.C. § 1304. However, nothing in
24 this Act shall be construed to override an importer's duty
25 to exercise reasonable care.

1 (c) No later than six months after the date of enact-
2 ment of this Act, the Secretary of the Treasury will issue
3 a list of countries that are signatories to the international
4 agreement described in title II, have unilaterally imple-
5 mented a certification system containing the elements de-
6 scribed in subsection (b) of section 203, or are found to
7 be “cooperating” countries as defined in this subsection.
8 The Secretary of the Treasury will revise and update this
9 list as necessary. For purposes of this subsection, the Sec-
10 retary of the Treasury will find that a country is “cooper-
11 ating” if it is acting in good faith to establish and enforce
12 a unilateral certification system meeting the standards de-
13 scribed in subsection (b) of section 203 or taking action
14 to ensure that it is not facilitating trade in conflict dia-
15 monds. The Secretary of the Treasury, in consultation
16 with appropriate agencies, shall develop and publish cri-
17 teria that will be used to evaluate whether a country will
18 be deemed a cooperating country. These criteria will be
19 subject to public notice and comment before adoption in
20 final form.

21 (d) The Secretary of the Treasury may extend co-
22 operating country status for more than six months after
23 the initial designation, but shall provide to Congress an
24 explanation of the reasons for why such an extension is
25 necessary.

1 (e) The President of the United States shall ensure
2 that implementation of and compliance with title I of this
3 Act is monitored by appropriate agencies or by an inde-
4 pendent body.

5 **SEC. 106. PENALTIES FOR NONCOMPLIANCE.**

6 (a) CIVIL AND CRIMINAL PENALTIES.—Any person
7 who enters or introduces into the commerce of the United
8 States, attempts to enter or introduce, or aids or abets
9 an attempt to enter or introduce, merchandise in violation
10 of title I of this Act or the implementing regulations for
11 title I will be subject to civil and criminal penalties in ef-
12 fect under the customs laws of the United States, as set
13 forth in title 19 of the United States Code. The same ad-
14 ministrative procedures and defenses that apply under
15 title 19 of the United States Code will apply to penalties
16 that are sought to be assessed under this subsection.

17 (b) SEIZURE.—If the Customs Service has reasonable
18 cause to believe that a person has violated the provisions
19 of subsection (a) of this section and that seizure is essen-
20 tial to prevent the introduction of merchandise into the
21 customs territory of the United States whose importation
22 is prohibited by title I of this Act, then such merchandise
23 may be seized. Within a reasonable time after any such
24 seizure is made, the Customs Service will issue to the per-
25 son concerned a written statement containing the reasons

1 for the seizure. A person may seek relief from seizure
2 under the procedures and standards prescribed in 19
3 U.S.C. § 1618 and the Customs Service regulations that
4 implement that provision.

5 (c) COURT OF INTERNATIONAL TRADE PRO-
6 CEEDINGS.—

7 (1) JURISDICTION.—Section 1582 of title 28,
8 United States Code, is amended by amending para-
9 graph (1) to read as follows:

10 “(1) to recover a civil penalty under section
11 592, 593A, 641(b)(6), 641(d)(2)(A), 704(i)(2), or
12 734(i)(2) of the Tariff Act of 1930.”.

13 (2) STANDARD OF REVIEW.—Notwithstanding
14 any other provision of law, in any proceeding com-
15 menced by the United States in the Court of Inter-
16 national Trade for the recovery of any monetary
17 penalty under this section, all issues, including the
18 amount of any penalty, shall be tried de novo.

19 (d) PROCEEDS FROM FINES AND SEIZED GOODS.—
20 The proceeds derived from penalties and seizures under
21 title I of this Act will, in addition to amounts otherwise
22 available for such purposes, be available only for programs
23 to assist the victims of conflicts involving illicitly traded
24 diamonds.

1 **SEC. 107. REPORT TO CONGRESS.**

2 The President of the United States will report to
3 Congress no later than 180 days after enactment of this
4 Act and annually thereafter on the implementing meas-
5 ures taken to carry out the provisions of this title and
6 their effectiveness in stopping imports of conflict dia-
7 monds into the United States.

8 **TITLE II—NEGOTIATION OF AN**
9 **INTERNATIONAL AGREEMENT**
10 **TO ELIMINATE TRADE IN**
11 **CONFLICT DIAMONDS**

12 **SEC. 201. FINDINGS.**

13 The Congress finds that:

14 (1) The most effective and desirable means of
15 eliminating international trade in conflict diamonds
16 is through international cooperative efforts involving
17 governments, the private sector, civil society, and ap-
18 propriate international organizations.

19 (2) The initiatives of the world diamond indus-
20 try, as reflected in the Resolution of the World Fed-
21 eration of Diamond Bourses and the International
22 Diamond Manufacturers Association in Antwerp on
23 July 19, 2000, as well as the efforts of the South
24 African-led Working Group on African Diamonds
25 and the World Diamond Council in developing pro-
26 posals for a global certification system for rough dia-

1 monds, are important efforts at international co-
2 operation and may provide effective mechanisms
3 that could be incorporated in an international agree-
4 ment to eliminate trade in conflict diamonds.

5 (3) Eliminating imports of rough diamonds
6 from countries where conflict diamonds are mined,
7 transshipped, or subsequently shipped into countries
8 where cutting and polishing occur is the most effec-
9 tive way to eliminate trade in conflict diamonds.

10 **SEC. 202. SENSE OF CONGRESS—NEGOTIATION OF INTER-**
11 **NATIONAL AGREEMENT.**

12 It is the sense of the Congress that the President
13 should engage in negotiations on and seek to conclude an
14 international agreement to eliminate trade in conflict dia-
15 monds as soon as possible. The system implementing this
16 agreement shall be transparent and subject to independent
17 verification and monitoring. Participants in such an agree-
18 ment should include all countries that either export or im-
19 port diamonds or diamond jewelry.

20 **SEC. 203. OVERALL NEGOTIATING OBJECTIVE OF THE**
21 **UNITED STATES AND ESSENTIAL ELEMENTS**
22 **OF AN INTERNATIONAL AGREEMENT.**

23 (a) The overall negotiating objective of the United
24 States is to establish an effective global certification sys-
25 tem covering the major exporting and importing countries

1 of rough diamonds that will eliminate trade in conflict dia-
2 monds.

3 (b) The elements of an effective global certification
4 system for rough diamonds that the United States should
5 seek in its negotiations are as follows:

6 (1) Rough diamonds, when exported from the
7 country in which they were extracted, must be sealed
8 in a secure, transparent container or bag by appro-
9 priate government officials of that country.

10 (2) The sealed container described in paragraph
11 (1) must include a fully visible government docu-
12 ment certifying the country of extraction and record-
13 ing a unique export registration number and the
14 total carat weight of the rough diamonds enclosed.

15 (3) A database containing information de-
16 scribed in paragraph (2) must be established for
17 rough diamond exports in each exporting country,
18 including countries engaged in the re-export of
19 rough diamonds.

20 (4) No country may allow importation of rough
21 diamonds unless they are sealed in a secure, trans-
22 parent container that includes a fully visible docu-
23 ment that states a unique export registration num-
24 ber for such container and the total carat weight of
25 the rough diamonds enclosed. The legitimacy of such

1 document must be verified by electronic or other re-
2 liable means with the database maintained in the
3 country of export.

4 (5) Provisions shall be made for physical in-
5 spection of sealed containers of rough diamonds by
6 appropriate authorities.

7 (6) Diamonds may be freely imported and ex-
8 ported from a country that implements and enforces
9 a rough diamond certification system that contains
10 the elements specified in paragraphs (1) through
11 (5), or a system that is its functional equivalent,
12 provided that the country of extraction need only be
13 specified when rough diamonds are exported from
14 such country and need not be specified when rough
15 diamonds are exported from a country that imple-
16 ments and enforces such a rough diamond certifi-
17 cation system.

18 **SEC. 204. CONSULTATIONS WITH CONGRESS.**

19 The President of the United States shall consult peri-
20 odically with Congress in developing and negotiating pro-
21 posals for an international agreement as described in sec-
22 tions 202 and 203.

23 **SEC. 205. REPORT TO CONGRESS.**

24 The President of the United States will provide a
25 written report to Congress no later than 180 days after

1 enactment of this Act and annually thereafter on the
2 progress made towards concluding an international agree-
3 ment and the progress of the signatories to that agree-
4 ment in implementing it, including which countries are not
5 implementing it and the effects of their actions on trade
6 in conflict diamonds. Each report shall also describe any
7 technological advances that permit determining a dia-
8 mond's origin, marking a diamond, and tracking it.

9 **SEC. 206. IMPLEMENTING LEGISLATION.**

10 The President of the United States will submit to
11 Congress a draft bill implementing the provisions of any
12 agreement that is negotiated no later than 60 calendar
13 days after entering into that agreement.

14 **SEC. 207. EFFECTIVE DATE.**

15 Title I will apply with respect to articles entered, or
16 withdrawn from warehouse for consumption, six months
17 after the date of enactment of this Act. Title II will take
18 effect on the date of enactment of this Act.

19 **TITLE III—OTHER PROVISIONS**

20 **SEC. 301. AUTHORIZATION OF APPROPRIATIONS.**

21 Such sums as may be necessary are hereby author-
22 ized to be appropriated to implement the provisions of this
23 Act, including such sums as are necessary to assist the
24 governments of Sierra Leone and Angola to establish and
25 maintain a diamond certification system.

1 **SEC. 302. SEVERABILITY.**

2 If any provision of this Act or the application of such
3 provision to any person or circumstance is held invalid,
4 it is the intent of Congress that the remainder of this Act
5 and application of such provision to other persons or cir-
6 cumstances will not be affected thereby.

7 **SEC. 303. GAO REPORT.**

8 The General Accounting Office shall report to Con-
9 gress on the effectiveness of this Act no later than three
10 years after the date of enactment of this Act.

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