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SENATE

{ REPORT
111-279

APPROVING THE RENEWAL OF IMPORT RESTRICTIONS
CONTAINED IN THE BURMESE FREEDOM AND DEMOC-
RACY ACT OF 2003

AUGUST 5, 2010.—Ordered to be printed

Mr. BAUCUS, from the Committee on Finance,
submitted the following

R E P O R T

[To accompany S.J. Res. 29]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the joint reso-
lution (S.J. Res. 29) approving the renewal of import restrictions
contained in the Burmese Freedom and Democracy Act of 2003,
having considered the same, reports favorably thereon without
amendment and recommends that the joint resolution do pass.

CONTENTS

	Page
I. Report and Other Matters of the Committee	2
A. Report of the Committee on Finance	2
B. Background	2
1. The Government of Burma	2
2. The Burmese Freedom and Democracy Act of 2003	2
3. S.J. Res. 29 Is a "Renewal Resolution" for Purposes of Ex- tending Import Restrictions	4
4. Committee Consideration of S.J. Res. 29	4
5. Report of the U.S. Department of State on the Trade Sanc- tions Against Burma	4
6. Additional International Sanctions Against Burma	8
II. Budgetary Impact of the Joint Resolution	9
III. Regulatory Impact of the Joint Resolution and Other Matters	9
IV. Changes in Existing Law	10

I. REPORT AND OTHER MATTERS OF THE COMMITTEE

A. REPORT OF THE COMMITTEE ON FINANCE

The Committee on Finance, to which was referred the joint resolution (S.J. Res. 29) approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, having considered the same, reports favorably thereon without amendment and recommends that the resolution do pass.

B. BACKGROUND

1. *The Government of Burma*

Burma is governed by the State Peace and Development Council (SPDC), a military junta that took power in September 1988. Since taking power, the junta has violently suppressed pro-democracy movements. International human rights organizations and the U.S. Department of State have reported a pattern of SPDC policies that include the suppression of political and civil liberties, jailing of political prisoners, widespread physical abuses, forced relocation of civilians, conscription of civilians—including children—into military services, and conscription of thousands of civilians for work on economic projects. Recent examples of these human rights abuses are provided below.

In May 2003, a pro-government group of several hundred people assaulted the opposition National League for Democracy (NLD) leader Daw Aung San Suu Kyi and her supporters near Mandalay, Burma's second-largest city. The attackers were members of the United Solidarity Development Association (USDA), an organization affiliated with the SPDC. Some NLD supporters were killed, and others were taken into custody.

In September 2007, the Burmese government engaged in a violent crackdown against Buddhist monks and other Burmese citizens who were demonstrating peacefully against the poor economic conditions in Burma and the repressive policies of the SPDC. The Burmese government also failed to provide adequate humanitarian assistance or allow speedy entry of international aid in response to Cyclone Nargis in May 2008.

In August 2009, the regime convicted Burmese human rights leader and Nobel Prize winner Aung San Suu Kyi of spurious charges of violating the terms of her house arrest, and sentenced her to three years in prison with hard labor, commuting that sentence to 29 months of house arrest. United Nations investigators allege that the Burmese Government has violated Suu Kyi's substantive and procedural rights during the course of her trial. All told, the SPDC continues to hold an estimated 2,100 political prisoners. And, in March 2010, the SPDC announced that it intended to hold national elections this year, but promulgated a series of electoral laws that seem intended to ensure that the elections will not be fair and transparent.

2. *The Burmese Freedom and Democracy Act of 2003*

On June 4, 2003, the Burmese Freedom and Democracy Act of 2003 (the BFDA) was introduced in the U.S. House of Representatives (H.R. 2330) and the U.S. Senate (S. 1182) in response to the attack on Daw Aung San Suu Kyi on May 30, 2003. A revised

version of the legislation was introduced in the Senate (S. 1215) on June 9, 2003. That latter version, S. 1215, passed the Senate with an amendment on June 11, 2003, by a recorded vote of 97–1. In the House, H.R. 2330 passed with an amendment on July 15, 2003, by a recorded vote of 418–2, 1 Present. The Senate then passed the House-passed version of H.R. 2330 without amendment on July 16, 2003, by a recorded vote of 94–1. The legislation was presented to the President on July 22, 2003, and signed into law by the President on July 28, 2003 (Pub. L. 108–61).

The BFDA bans the importation of any article that is a product of Burma. The BFDA allows the President to lift these import restrictions if he certifies to Congress that (1) the SPDC has made substantial progress to end human rights violations, including rapes, and no longer systematically violates workers' rights, including forced and child labor, and conscription of child soldiers; (2) the SPDC has made substantial progress toward implementing a democratic government, including by releasing political prisoners, by allowing freedom of speech, press, association, and religion, and by reaching agreement with the NLD for a democratically elected civilian government; and (3) Burma has not been designated as a country that has failed to abide by its obligations under international counternarcotics agreements and to take other effective counternarcotics measures. In addition to the import ban, the BFDA also freezes the assets of the Burmese regime and its officials held by U.S. financial institutions, directs the Secretary of the Treasury to instruct the U.S. representatives to international financial institutions to oppose loans or other assistance to Burma, and authorizes the President to deny visas to the leaders of the Burmese regime.

In July 2008, Congress amended the BFDA when it passed the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (JADE Act). The JADE Act was introduced in the House on October 18, 2007, and passed by voice vote on December 11, 2007. The Senate passed an amended version of the bill on December 19, 2007. After resolving the differences between the two bills, the revised legislation was passed by the House on July 15, 2008 by voice vote and by the Senate on July 22, 2008 by Unanimous Consent. The President signed the legislation into law on July 29, 2008. The JADE Act amends the import restrictions of the BFDA by prohibiting the importation into the United States of jewelry from any country that contains jadeite or rubies mined in Burma. The JADE Act also imposes additional financial and visa sanctions on members of the SPDC or USDA and their immediate family members.

Pursuant to section 9(b) of the BFDA, the import ban expires after 1 year unless a new joint resolution approving a 1-year renewal of the import ban is enacted into law prior to the anniversary of the date of enactment of the BFDA. The current import ban remains in effect through July 28, 2010.

As originally enacted, section 9(b)(3) also limited the imposition of import restrictions to a maximum of 3 years from the date of enactment, or until 2006. In 2006, a joint resolution was introduced to extend this period to a maximum of 6 years from the date of enactment, or until 2009. Specifically, H.J. Res. 86 was introduced in the House on May 19, 2006, and S.J. Res. 38 was introduced in the

Senate on May 26, 2006. The House passed H.J. Res. 86 on July 11, 2006 by voice vote. H.J. Res. 86 was placed on the Senate calendar on July 26, 2006 and passed without amendment by voice vote. The President signed the joint resolution on August 1, 2006 (Pub. L. 109–251).

In 2009, S.J. Res. 17 was introduced to extend the limitation on the import restrictions for an additional three years, to a maximum of 9 years from the date of enactment, or until 2012. A similar resolution (H.J. Res. 56), which included budgetary offsets, was passed by the House on July 21, 2009, by voice vote. H.J. Res. 56 was received by the Senate on July 22, 2009, and passed by Unanimous Consent on July 23, 2009. The resolution was signed by the President on July 28, 2009 (Pub. L. 111–42).

On May 5, 2010, S.J. Res. 29 was introduced to renew the import ban for another year, in accordance with section 9(b) of the BFDA. On May 11, 2010, a companion resolution, H.J. Res. 83, was introduced in the House of Representatives.

3. S.J. Res. 29 Is a “Renewal Resolution” for Purposes of Extending Import Restrictions

As described above, the import restrictions in the BFDA may be renewed for a 1-year period if Congress approves a “renewal resolution,” which section 9(c)(1) defines as a joint resolution whose sole matter after the resolving clause is language to renew the import restrictions for 1 year. Section 9(c)(2)(B) applies the expedited procedures set forth in section 152(b), (c), (d), (e), and (f) of the Trade Act of 1974 (19 U.S.C. 2192(b), (c), (d), (e), and (f)), to Finance Committee and floor consideration of a renewal resolution. S.J. Res. 29 meets the definition of “renewal resolution” under section 9(c)(1) of the BFDA.

S.J. Res. 29 was introduced and approved by the Finance Committee before receipt of H.J. Res. 83 from the House. After the Committee reported the Senate measure, the vote on passage in the Senate was on the House-passed measure. The Senate approved H.J. Res. 83 by a vote of 99 to one on July 22, 2010.

4. Committee Consideration of S.J. Res. 29

The Committee considered S.J. Res. 29 in open executive session on June 30, 2010. With a quorum present, the Committee approved S.J. Res. 29, without amendment, by a roll call vote, 22 ayes, one nay.

Ayes: Baucus, Rockefeller, Conrad, Bingaman, Kerry, Lincoln, Wyden, Schumer, Stabenow, Cantwell, Nelson, Menendez, Carper, Grassley, Hatch Snowe, Kyl, Bunning, Crapo, Roberts, Ensign, Cornyn (proxy).

Nays: Enzi.

The Chairman reported the resolution to the Senate on July 14, 2010.

5. Report of the U.S. Department of State on the Trade Sanctions Against Burma

On April 21, 2010, the U.S. Department of State submitted to Congress a report regarding the trade sanctions against Burma, as required by section 8(b)(3) of the BFDA. At the request of the Chairman, that report was made a part of the record of the Com-

mittee's consideration of S.J. Res. 29. The State Department report is reprinted below:

UNITED STATES DEPARTMENT OF STATE,
Washington, DC, April 21, 2010.

Hon. MAX BAUCUS,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The enclosed report reviews measures to promote human rights and democracy in Burma and assesses the effectiveness of the trade provisions in the Burmese Freedom and Democracy Act of 2003 (P.L. 108-61) to improve conditions in Burma and advance U.S. policy objectives. This report also discusses the importance of maintaining the import ban contained in the Act.

We hope this information is useful to you. Please do not hesitate to contact us if we may be of further assistance in this matter.

Sincerely,

RICHARD R. VERMA,
Assistant Secretary, Legislative Affairs.

Enclosure: As stated.

REPORT ON U.S. ECONOMIC SANCTIONS AGAINST BURMA

INTRODUCTION AND SUMMARY

Pursuant to section 8(b)(3) of the Burmese Freedom and Democracy Act of 2003, (Pub. L. 108-61) (the BFDA), and in view of the impending expiration of the import ban contained in the BFDA, as amended by the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (Pub. L. 110-286) (the JADE Act) this report reviews bilateral and multilateral measures to promote human rights and democracy in Burma and assesses the effectiveness of the BFDA's trade provisions relative to the improvement of conditions in Burma and the furtherance of U.S. policy objectives.

During this reporting period (July 2009 to March 2010), the Administration completed its Burma policy review. The review was undertaken to find the best ideas to influence the regime because, as Secretary Clinton noted, neither sanctions nor efforts to engage the regime alone have proven successful in influencing the authorities in Burma. The review reaffirmed the Administration's fundamental goals in Burma: we support a unified, peaceful, prosperous, and democratic nation. To achieve these goals, the Administration has pursued senior-level dialogue with the Burmese government and has announced plans to expand humanitarian assistance directly to Burma's people. Sanctions remain an important element of our strategy and there will be no change to the sanctions regime until Burmese authorities take concrete steps to address core concerns. Given the absence of concrete progress by the Burmese government on respect for human rights, release of political prisoners, transition to democracy via inclusive dialogue, and an end to conflict with ethnic minorities, the State Department supports a renewal resolution to maintain the import ban.

BILATERAL AND MULTILATERAL MEASURES

During the reporting period, the United States intensified its efforts to promote human rights and democracy in Burma through diplomatic engagement with key stakeholders in Southeast Asia and beyond by supporting U.N. action on Burma and by delivering a direct message on these issues to the Burmese regime through senior-level engagement. The United States continued to lead efforts in the international community to ensure that others echo the call for Burmese authorities to begin a dialogue with the democratic opposition and ethnic minority representatives on a transition to democracy. The U.S. embassy in Rangoon maintained regular contact with representatives of democratic parties including the National League for Democracy and its allies, civil society, and ethnic minority groups, and used every interaction with Burmese officials to advocate respect for human rights and encourage political reform.

Senior U.S. officials encouraged their counterparts in the region and other like-minded states to press the regime to take concrete and credible actions toward national reconciliation and democratic transition. The European Union, Australia, and Canada maintain financial and trade sanctions against the Burmese regime, including targeted financial sanctions against senior junta members and their inner circle of supporters.

The United States has consistently pushed for the United Nations, including the U.N. Security Council, Human Rights Council, and the U.N. Secretary General's Good Offices Mission to keep pressure on the regime. On September 28, 2009, Secretary of State Clinton briefed the Secretary General's Group of Friends on the conclusions of the policy review and advocated a unified position on the need for dialogue and support for those working for democracy in Burma. The United States co-sponsored resolutions on the human rights situation in Burma in the General Assembly's Third Committee and in the Human Rights Council. On March 15, following a February trip to Burma, U.N. Special Rapporteur Tomas Ojea Quintana presented his report to the Human Rights Council and recommended that U.N. institutions consider establishment of a Commission of Inquiry for Burma to investigate whether human rights abuses there amount to war crimes or crimes against humanity. The United States is considering his recommendations carefully, including the Commission of Inquiry.

The United States continues active efforts to identify regime officials and cronies who should be subject to sanctions. To date, the United States has sanctioned 17 persons providing financial and other support to the regime and certain family members, and 41 companies. The United States also maintains a broad travel ban on key regime officials, their family members, and their supporters.

EFFECTS OF SANCTIONS ON SITUATION IN BURMA

U.S. economic sanctions have made it more difficult and more costly for the Burmese regime and its financial supporters to continue profiting from its repressive policies. Senior Burmese officials, such as the Foreign Minister, have publicly complained about sanctions and called for them to be lifted. Influential businessmen in Rangoon with connections to the regime have increasingly com-

plained about the detrimental effects sanctions have had on their business operations and personal lives. Between July 1, 2009 and March 26, 2010, 58 transactions totaling approximately \$1,770,000 and involving Burmese individuals or entities were reported to the Treasury Department as blocked.

During the reporting period, the Treasury Department issued 14 licenses authorizing the release of blocked funds or otherwise prohibited transactions to allow, for example, NGOs to conduct assistance-related transactions, including agricultural development, microfinance, and education projects. In the aftermath of Cyclone Nargis, which devastated Burma in May 2008, the Department of the Treasury issued General License 14, which, as subsequently amended, continues to provide a broad authorization for funds transfers in support of humanitarian and religious activities in Burma.

Although the United States and others continue to look at ways to target sanctions against the Burmese authorities, growing trade with countries in the region and increased income from the exploitation of oil and natural gas deposits enable the regime to retain power. According to the Economist Intelligence Unit, Burma's GDP grew roughly 1.8 percent in 2009, due primarily to rising prices for petroleum and agricultural exports. According to Burma's Central Statistical Organization (CSO), total trade in 2009 (up to November) reached \$9.4 billion, with exports of \$5.6 billion and imports of \$3.8 billion. Nevertheless, foreign investment falls well below potential investment levels, as the Burmese business climate continues to worsen. Notably, during the reporting period the regime began a wide-scale sell-off of state assets including some state-owned enterprises and valuable real estate, via a process that lacked transparency. It is too soon to gauge the effects of this privatization on Burma's economy or long-term development.

The regime continued to commit grave human rights abuses during this reporting period. The military regime severely restricted and frequently violated freedoms of assembly, expression, association, movement, and religion. Human rights abuses have included custodial abuses and deaths, disappearances, rape, torture, recruitment of child soldiers, and forced labor. The government continued to infiltrate and covertly and overtly monitor meetings and activities of vitally all non-governmental organizations, including religious organizations. Although the regime released more than 100 political prisoners during the reporting period, it continued to arrest, detain, and convict activists on politically-motivated charges. The regime continues to hold an estimated 2,100 political prisoners, including democratic opposition leader Aung San Suu Kyi, who was convicted in August 2009 on spurious charges of violating the terms of her house arrest. She was sentenced to three years in prison with hard labor, which was commuted to 18 months of house arrest. The United States condemned these actions against her and urged many other countries to join us in doing so.

In March 2010 the regime established an Election Commission under the control of the SPDC and promulgated a series of electoral laws and by-laws that appear to ensure the elections planned for 2010 will not be transparent, inclusive or credible. The United States has expressed deep concern over these laws, and urged the regime to engage in genuine political dialogue with all stakeholders

and to release all political prisoners unconditionally. Furthermore, we have called on countries around the world to deliver a similar message to the Burmese government.

EFFECTS OF SANCTIONS ON BROADER U.S. INTERESTS

Sanctions targeting regime leaders and their financial supporters send a clear signal to the regime and to the Burmese people of our support for a transition to democracy. Many individuals in the Burmese democracy movement support U.S. sanctions. However, some academics, exiled Burmese, and independent Burmese business people argue that U.S. sanctions will continue to have only limited economic impact so long as Burma continues to enjoy the benefits of trade and investment from China, India, ASEAN members, and other countries.

The trade-related and financial sanctions implemented pursuant to the BFDA and Executive Orders 13047, 13310, 13448, and 13464 have had a limited impact on U.S. relations with other nations. Although some foreign businesses and their representative embassies have complained about the impact of sanctions, those investing in Burma since 2003 have done so recognizing the difficult operating environment and overall poor economic climate created by the regime.

The regulations and restrictions contained in the JADE Act, amending the BFDA to (i) prohibit the importation of jadeite and rubies mined or extracted from Burma, and articles of jewelry containing jadeite or rubies mined or extracted from Burma, and (ii) regulate the importation of jadeite and rubies mined or extracted from a country other than Burma, and articles of jewelry containing jadeite or rubies mined or extracted from a country other than Burma have an impact on other countries that process jadeite and rubies. Thailand, specifically, has expressed strong concern over the negative impact the JADE Act provisions have had on its ruby-processing and jewelry manufacturing industry. It is in such processing and manufacture that the majority of the value is added to the final imported product.

CONCLUSION

The Administration's support for Burma's democracy movement remains firm. The United States continues to work within the U.N. and with countries in Southeast Asia and beyond to promote a peaceful transition to democracy. Economic sanctions are one important tool for exerting pressure on the regime to respect the will of the Burmese people and to cooperate with the international community's efforts to facilitate a genuine dialogue with democratic and ethnic minority representatives on a transition to democracy. The Administration believes we must send a consistent message to Burma's generals that in the absence of concrete progress in key areas of democracy and human rights, sanctions will remain in place. The Department of State supports renewal of the import ban in the Burmese Freedom and Democracy Act, as amended by the JADE Act.

6. Additional International Sanctions Against Burma

The international community has joined with the United States in protesting human rights conditions in Burma. The European

Union, Australia, and Canada each maintain financial and trade sanctions against the Burmese regime. All three continue to impose restrictions on Burmese imports, focusing on gems and timber, as well as targeted financial sanctions against senior Burmese government members and their inner circle of supporters. In May 2008, the United Nations Security Council issued a Presidential Statement that called on the Burmese Government to hold a free and fair constitutional referendum, and to allow greater humanitarian aid to enter the country.

II. BUDGETARY IMPACT OF THE JOINT RESOLUTION

CBO ESTIMATE FOR H.J. RES. 83

[Estimate is in millions of dollars]

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
Changes in Revenues													
Section 1: Renewal of import ban	*	-2	0	0	0	0	0	0	0	0	0	-2	-2
Section 3: Corporate timing shift	0	0	0	0	0	153	-153	0	0	0	0	153	0
Total Revenues	*	-2	0	0	0	153	-153	0	0	0	0	151	-2
Changes in Outlays													
Section 2: Customs user fees	0	0	0	0	0	0	0	0	-3	-7	0	0	10
Net Increase or Decrease (-) In the Deficit													
Total Budgetary effect ^a	*	2	0	0	0	-153	153	0	-3	-7	0	-151	-8

^a Negative numbers indicate a reduction in the deficit; positive numbers indicate the opposite.

Source: Congressional Budget Office and Joint Committee on Taxation.

Note: * denotes a revenue loss of less than \$500,000.

III. REGULATORY IMPACT OF THE JOINT RESOLUTION AND OTHER MATTERS

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that the resolution will not significantly regulate any individuals or businesses, will not affect the personal privacy of individuals, and will result in no significant additional paperwork.

The following information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-04). The Committee has reviewed the provisions of S.J. Res. 29 as approved by the Committee on June 30, 2010. In accordance with the requirement of Pub. L. 104-04, the Committee has determined that the bill contains no intergovernment mandates, as defined in the UMRA, and would not affect the budgets of state, local, or tribal governments.

IV. CHANGES IN EXISTING LAW

Pursuant to paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds no changes in existing law made by S.J. Res. 29, as ordered reported.



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