

Presidential Documents

Title 3—**The President****Proclamation 8294****To Implement Amendments to the Burmese Freedom and Democracy Act of 2003**

By the President of the United States of America

A Proclamation

1. Section 3A(b)(1) of the Burmese Freedom and Democracy Act of 2003 (Public Law 108–61) (the “Burmese Freedom and Democracy Act”), as amended by section 6(a) of the Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act of 2008 (Public Law 110–286) (the “JADE Act”), directs the President to prohibit the importation of jadeite and rubies mined or extracted from Burma, as well as the importation of articles of jewelry containing jadeite and rubies mined or extracted from Burma (Burmese covered articles), until such time as the President determines and certifies to the appropriate congressional committees that Burma has met the conditions described in section 3(a)(3) of the Burmese Freedom and Democracy Act.

2. Sections 3A(c)(1) and 3A(c)(2) of the Burmese Freedom and Democracy Act, as amended, set forth certain conditions for the importation of jadeite and rubies mined or extracted from countries other than Burma, as well as for the importation of articles of jewelry containing jadeite and rubies mined or extracted from countries other than Burma (non-Burmese covered articles).

3. Section 3A(c)(2) of the Act, as amended, also permits the President to waive the conditions for importation set forth in section 3A(c)(1) of non-Burmese covered articles from any country with respect to which the President determines and certifies to the appropriate congressional committees that the country has implemented certain measures to prevent the trade in Burmese covered articles. 4. In order to implement the prohibitions on the importation of Burmese covered articles and the conditions for importation of non-Burmese covered articles set forth in sections 3A(b)(1), 3A(c)(1), and 3A(c)(2) of the Burmese Freedom and Democracy Act, as amended, it is necessary to modify the Harmonized Tariff Schedule of the United States (HTS) to include an additional U.S. Note to chapter 71.

5. Section 604 of the Trade Act of 1974, as amended (the “1974 Act”) (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of relevant provisions of that Act, or other acts affecting import treatment, and of actions taken thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

6. Sections 3A(b)(2) and 3A(c)(3) of the Burmese Freedom and Democracy Act, as amended, authorize the President to issue such proclamations, regulations, licenses, and orders, and conduct such investigations, as may be necessary to implement the prohibition on Burmese covered articles set forth in section 3A(b)(1) of that Act and the conditions for importation of non-Burmese covered articles set forth in sections 3A(c)(1) and 3A(c)(2) of that Act.

7. I have determined that it is appropriate to authorize the Secretary of the Treasury and the Secretary of Homeland Security, pursuant to sections 3A(b)(2) and 3A(c)(3) of the Burmese Freedom and Democracy Act, as amended, to issue regulations, licenses, and orders, and conduct such investigations

as may be necessary, to implement the prohibition on importation of Burmese covered articles set forth in section 3A(b)(1) of that Act and the conditions for importation of non-Burmese covered articles set forth in sections 3A(c)(1) and 3A(c)(2) of that Act. I further determine that it is appropriate to authorize the Secretary of the Treasury and the Secretary of Homeland Security to redelegate, as necessary, any of these functions to other officers and agencies of the United States Government consistent with applicable law.

8. I have determined that it is appropriate to authorize the Secretary of the Treasury, in consultation with the Secretary of State, to perform the functions set forth in section 3A(c)(2)(A) of the Burmese Freedom and Democracy Act, as amended, relating to the issuance waivers of the conditions for importation set forth in section 3A(c)(1) of non-Burmese covered articles from any country that has implemented certain measures to prevent the trade in Burmese covered articles. I further determine that it is appropriate to authorize the Secretary of the Treasury to redelegate, as necessary, any of these functions to other officers and agencies of the United States Government consistent with applicable law.

9. Section 3A(b)(3)(A) of the Burmese Freedom and Democracy Act, as amended, directs the President to take all appropriate actions to seek issuance of a draft waiver decision by the Council for Trade in Goods of the World Trade Organization (WTO) granting a waiver of the applicable WTO obligations with respect to the provisions of section 3A of the Burmese Freedom and Democracy Act, as amended, and any measures taken to implement it.

10. I have determined that it is appropriate to authorize the United States Trade Representative to perform the functions specified in section 3A(b)(3)(A) of the Burmese Freedom and Democracy Act, as amended.

11. Section 3A(b)(3)(B) of the Burmese Freedom and Democracy Act, as amended, directs the President to take all appropriate actions to seek the adoption of a resolution by the United Nations General Assembly expressing the need to address trade in Burmese covered articles and calling for the creation and implementation of a workable certification scheme for non-Burmese covered articles to prevent the trade in Burmese covered articles.

12. I have determined that it is appropriate to authorize the Secretary of State to perform the functions specified in section 3A(b)(3)(B) of the Burmese Freedom and Democracy Act, as amended.

13. Section 3A(g) of the Burmese Freedom and Democracy Act, as amended, directs the President to, not later than January 26, 2009, transmit to the appropriate congressional committees a report describing what actions the United States has taken during the 60-day period beginning on the date of the enactment of the JADE Act to seek (i) the issuance of a draft waiver decision by the Council for Trade in Goods of the WTO, as specified in section 3A(b)(3)(A) of the Burmese Freedom and Democracy Act, as amended; (ii) the adoption of a resolution by the United Nations General Assembly, as specified in section 3A(b)(3)(B) of that Act; and (iii) the negotiation of an international arrangement, as specified in section 3A(f)(1) of that Act.

14. I have determined that it is appropriate to authorize the Secretary of State, in consultation with the United States Trade Representative, to perform the functions specified in section 3A(g) of the Burmese Freedom and Democracy Act, as amended.

15. Under section 3(b) of the Burmese Freedom and Democracy Act, as amended by section 6(c) of the JADE Act, the President may waive the restrictions described above if the President determines and notifies the Committees on Appropriations, Finance, and Foreign Relations of the Senate and the Committees on Appropriations, Foreign Affairs, and Ways and Means of the House of Representatives that to do so is in the national interest of the United States.

16. I have determined that it is appropriate to authorize the Secretary of State to perform the functions and authorities specified in section 3(b) of the Burmese Freedom and Democracy Act, as amended.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including sections 3 and 3A of the Burmese Freedom and Democracy Act, as amended by section 6 of the JADE Act, section 604 of the 1974 Act, and section 301 of title 3, United States Code, do proclaim that:

(1) In order to implement the prohibition on the importation of Burmese covered articles and the conditions for the importation of non-Burmese covered articles provided for in sections 3A(b)(1) and 3A(c)(1) of the Burmese Freedom and Democracy Act, as amended, an additional U.S. Note as set forth in the Annex to this proclamation is included in chapter 71 of the HTS.

(2) Beginning on September 27, 2008, the importation into the United States of any Burmese covered article shall be prohibited, except as provided for (i) in section 3A(d) of the Burmese Freedom and Democracy Act, as amended; (ii) in regulations, orders, directives, or licenses that may be issued pursuant to this proclamation and section 3A(b)(2) of the Burmese Freedom and Democracy Act, as amended; or (iii) by waiver issued pursuant to section 3(b) of the Burmese Freedom and Democracy Act, as amended.

(3) Beginning on September 27, 2008, as a condition for the importation into the United States of any non-Burmese covered article, the importer and exporter of such article must meet the conditions set forth in section 3A(c)(1) of the Burmese Freedom and Democracy Act, as amended, except as provided for (i) in section 3A(d) of that Act; (ii) in regulations, orders, directives, or licenses issued pursuant to this proclamation and section 3A(c)(3) of the Burmese Freedom and Democracy Act, as amended; or (iii) by waiver issued pursuant to either section 3(b) or section 3A(c)(2) of the Burmese Freedom and Democracy Act, as amended.

(4) The Secretary of the Treasury and the Secretary of Homeland Security are hereby authorized, pursuant to sections 3A(b)(2) and 3A(c)(3) of the Burmese Freedom and Democracy Act, as amended, to issue regulations, licenses, and orders, and conduct such investigations as may be necessary, to implement the prohibition on Burmese covered articles set forth in section 3A(b)(1) of that Act and the conditions for importation of non-Burmese covered articles set forth in sections 3A(c)(1) and 3A(c)(2) of that Act. The Secretary of the Treasury and the Secretary of Homeland Security are further authorized to redelegate, as necessary, any of these functions to other officers and agencies of the United States Government consistent with applicable law.

(5) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to perform the functions set forth in section 3A(c)(2)(A) of the Burmese Freedom and Democracy Act, as amended, relating to the issuance of waivers of the conditions for importation set forth in section 3A(c)(1) of non-Burmese covered articles from any country that has implemented certain measures to prevent the trade in Burmese covered articles. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law.

(6) The United States Trade Representative is hereby authorized to perform the functions specified in section 3A(b)(3)(A) of the Burmese Freedom and Democracy Act, as amended.

(7) The Secretary of State is hereby authorized to perform the functions specified in section 3A(b)(3)(B) of the Burmese Freedom and Democracy Act, as amended.

(8) The Secretary of State is hereby authorized, in consultation with the United States Trade Representative, to perform the functions specified in section 3A(g) of the Burmese Freedom and Democracy Act, as amended.

(9) The Secretary of State is hereby authorized to perform the functions specified in section 3(b) of the Burmese Freedom and Democracy Act, as amended.

(10) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of September, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-third.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style.

ANNEX

TO MODIFY CHAPTER 71 OF THE
HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after September 27, 2008, chapter 71 of the Harmonized Tariff Schedule is modified by inserting in numerical sequence the following new Additional U.S. Note:

“4. Prohibition on the importation of certain goods of Burma.

- (a) Pursuant to section 3A of the Burmese Freedom and Democracy Act of 2003 (Public Law 108-61; 50 U.S.C. 1701 note), as amended by the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (Public Law 110-286), for purposes of goods provided for in headings 7103, 7113 and 7116, except as set forth in subdivisions (c) and (d) of this note, the importation of any of the following goods shall be prohibited--

- (i) jadeite mined in or extracted from Burma and classifiable in heading 7103 of the tariff schedule,
- (ii) rubies mined in or extracted from Burma and classifiable in heading 7103 of the tariff schedule,
- (iii) articles of jewelry containing jadeite described in subdivision (a)(i) of this note, whether classifiable in heading 7113 or 7116 of the tariff schedule; and
- (iv) articles of jewelry containing rubies described in subdivision a(ii) of this note, whether classifiable in heading 7113 or 7116 of the tariff schedule.

With respect to goods entered or withdrawn from warehouse for consumption, on or after September 27, 2008, should an importer choose to enter any good under heading 7103, 7113 or 7116, the presentation of such entry shall be deemed to be a certification by the importer that any jadeite or rubies contained in such good were not mined in or extracted from Burma.

- (b) Notwithstanding the deemed certification under subdivision (a) of this note, the importation of the following goods--

- (i) jadeite mined in or extracted from a country other than Burma and classifiable in heading 7103 of the tariff schedule,
- (ii) rubies mined in or extracted from a country other than Burma and classifiable in heading 7103 of the tariff schedule,
- (iii) articles of jewelry containing jadeite described in subdivision (b)(i) or rubies described in subdivision (b)(ii) of this note, whether classifiable in heading 7113 or 7116 of the tariff schedule,

is not permitted unless such goods comply with the terms of any regulations issued by the Secretary of the Treasury to implement section 3A(c)(1) of the Burmese Freedom and Democracy Act of 2003, as amended, or are covered by any waiver or certification scheme that may be established pursuant to the provisions of sections 3(b) and 3A of Act, as amended.

- (c) The provisions of this note shall not apply to Burmese covered articles and non-Burmese covered articles that were previously exported from the United States, including those that accompanied an individual outside the United States for personal use, if they are reimported into the United States by the same person, without having been advanced in value or improved in condition by any process or other means while outside the United States.
- (d) The certification established under subdivision (a) of this note shall not apply to the importation of non-Burmese covered articles by or on behalf of an individual for personal use and accompanying an individual upon entry into the United States, with a proper claim under subheading 9804.00.20, 9804.00.45 or other appropriate provision of chapter 98 of the tariff schedule.”