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110TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPT. 110–418, Part I

# BLOCK BURMESE JADE (JUNTA'S ANTI-DEMOCRATIC EFFORTS) ACT OF 2007

OCTOBER 31, 2007.—Ordered to be printed

Mr. LANTOS, from the Committee on Foreign Affairs, submitted the following

# REPORT

[To accompany H.R. 3890]

[Including cost estimate of the Congressional Budget Office]

The Committee on Foreign Affairs, to whom was referred the bill (H.R. 3890) to amend the Burmese Freedom and Democracy Act of 2003 to waive the requirement for annual renewal resolutions relating to import sanctions, impose import sanctions on Burmese gemstones, expand the number of individuals against whom the visa ban is applicable, expand the blocking of assets and other prohibited activities, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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69–006

## THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2007".

**SEC. 2. FINDINGS.**

Congress finds the following:

(1) The Burmese regime has continued and worsened its obstruction of democratic processes and mass violation of human rights identified in the Burmese Freedom and Democracy Act of 2003 (Public Law 108–61; 50 U.S.C. 1701 note). In August and September 2007, Burmese people from all walks of life conducted their largest peaceful public protests since 1988. The peaceful public protests responded to a drastic increase in fuel prices, as well as the Burmese regime's ongoing denial of the democratic and human rights of the Burmese people. On September 24, 2007, Buddhist monks actively participated and increasingly led these peaceful demonstrations, culminating in an estimated 100,000 people marching through Rangoon, Burma. The protesters peacefully demanded the release of 1991 Noble Peace Prize Winner Daw Aung San Suu Kyi, the leader of the National League for Democracy (NLD), marching past security barricades to her house in a show of support for Burmese democracy. The Burmese regime continues to refuse to recognize the results of the 1990 election, won by the NLD, which gave Aung San Suu Kyi the right to be named Prime Minister.

(2) The Burmese regime, which calls itself the State Peace and Development Council (SPDC), responded to these peaceful protests with a violent crackdown leading to the reported killing of some 200 people, including a Japanese photojournalist, and hundreds of injuries. Human rights groups further estimate that over 2,000 individuals have been detained, arrested, imprisoned, beaten, tortured, or otherwise intimidated as part of this crackdown. The Burmese regime continues to detain, torture, and otherwise intimidate those individuals whom it believes participated in or led the protests and it has closed down or otherwise limited access to several monasteries and temples that played key roles in the protests.

(3) The Burmese regime and its supporters finance their ongoing violations of human rights, undemocratic policies, and military activities through financial transactions, travel, and trade involving the United States, including the sale of gemstones. Despite the sanctions imposed in the Burmese Freedom and Democracy Act of 2003, the Burmese regime seeks out ways to evade these restrictions. Millions of dollars in gemstones that are exported from Burma ultimately enter the United States but the Burmese regime attempts to conceal the origin of the gemstones in an effort to evade the sanctions in the Burmese Freedom and Democracy Act of 2003. For example, over 90 percent of the world's ruby supply originates in Burma but only three percent of the rubies entering the United States are claimed to be of Burmese origin. The value of Burmese gemstones is more than 99 percent a function of their original quality and geological origin, and not a result of the labor involved in cutting and polishing the gemstones.

**SEC. 3. AMENDMENTS TO THE BURMESE FREEDOM AND DEMOCRACY ACT OF 2003.**

(a) ANNUAL RENEWAL RESOLUTIONS NO LONGER REQUIRED.—

(1) IN GENERAL.—Subsection (b) of section 9 of the Burmese Freedom and Democracy Act of 2003 is amended to read as follows:

"(b) CONTINUATION OF IMPORT SANCTIONS.—The import restrictions under section 3(a)(1) shall continue until such time as such restrictions are terminated—

"(1) pursuant to the enactment into law of a joint resolution of the two Houses of Congress, the sole matter after the resolving clause of which is as follows: 'That Congress terminates the import restrictions under section 3(a)(1) of the Burmese Freedom and Democracy Act of 2003.'; or

"(2) by the President in accordance with subsection (a).".

(2) REPEAL.—Section 9 of such Act is amended by striking subsection (c).

(b) IMPORT RESTRICTIONS ON GEMSTONES.—Paragraph (1) of section 3(a) of the Burmese Freedom and Democracy Act of 2003 is amended by striking the period at the end and inserting the following: ", including the importation of any gemstone, pearl, or rough unfinished geological or mineral material mined or extracted from Burma, whether imported as a loose item or as any part or component of a finished

piece of jewelry. Such restriction on such importation shall not be deemed to be an amendment to the general rules of origin applied by the United States.".

(c) VISA BAN.—Paragraph (1) of section 6(a) of the Burmese Freedom and Democracy Act of 2003 is amended to read as follows:

"(1) VISA BAN.—

"(A) IN GENERAL.—The Secretary of State shall deny the issuance of a visa and the Secretary of Homeland Security shall deny admission to the United States to—

"(i) former and present leadership of the SPDC or the Union Solidarity Development Association;

"(ii) any member of the Burmese military involved in the violent repression of the public protests in Burma in August, September, and October 2007;

"(iii) any Burmese official who has engaged in, ordered, or facilitated acts of gross violations of internationally recognized human rights (as defined in section 502B(d)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2304(d)(1)), either as an individual or as a member of a group or government; and

"(iv) any member of the immediate family of any individual described in clauses (i), (ii), or (iii).

"(B) WAIVER.—The ban described in subparagraph (A) may be waived only if the President determines and certifies in writing to Congress that such is in the national interests of the United States.".

(d) FREEZING ASSETS OF THE BURMESE REGIME IN THE UNITED STATES.—Section 4 of the Burmese Freedom and Democracy Act of 2003 is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d); and

(2) by inserting after subsection (a) the following new subsection:

"(b) BLOCKING OF ASSETS AND OTHER PROHIBITED ACTIVITIES.—

"(1) IN GENERAL.—The President shall block all property and interests in property, including all commercial, industrial, or public utility undertakings or entities, that, on or after the date of the enactment of the Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2007—

"(A) are owned, in whole or in part, by an individual on the list specified in section 6(a)(1)(A); and

"(B) are in the United States, or in the possession or control of the Government of the United States or of any United States financial institution, including any branch or office of such financial institution that is located outside the United States.

"(2) PROHIBITED ACTIVITIES.—Activities prohibited by reason of the blocking of property and interests in property under paragraph (1) shall include—

"(A) payments or transfers of any property, or any transactions involving the transfer of anything of economic value by any United States person, including any United States financial institution and any branch or office of such financial institution that is located outside the United States, to an individual on the list specified in section 6(a)(1)(A);

"(B) direct or indirect payments of any tax, cancellation penalty, or other amount to the Burmese Government;

"(C) the export or reexport to any entity owned, controlled, or operated by such an individual directly or indirectly, of any goods, technology, or services by a United States person; or

"(D) the performance by any United States person of any contract, including a contract providing a loan or other financing, in support of an industrial, commercial, or public utility operated, controlled, or owned by such an individual.

"(3) EXTENSION OF AUTHORITY.—The President may block all property and interests in property of the following persons, to the same extent as property and interests in property of a foreign person determined to have committed acts of terrorism for purposes of Executive Order No. 13224 of September 21, 2001, (50 U.S.C. 1701 note) may be blocked:

"(A) Persons and financial institutions who assist or provide financial, material, or technological support for, or financial or other services to or in support of, an individual on the list specified in section 6(a)(1)(A) or entities owned or effectively controlled by such an individual.

"(B) Persons otherwise associated with such an individual.

"(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit any contract or other financial transaction with any nongovernmental humanitarian organization in Burma.

"(5) EXCEPTIONS.—The prohibitions and restrictions described in paragraphs (1), (2), and (3) shall not apply to medicine, medical equipment or sup-

plies, food, or any other form of humanitarian assistance provided to Burma as relief in response to a humanitarian crisis.

"(6) PENALTIES.—Any person who violates any prohibition or restriction described in paragraph (1), (2), or (3) shall be subject to the penalties under section 6 of the International Emergency Economic Powers Act (50 U.S.C. 1705) to the same extent as for a violation under that Act.

"(7) UNITED STATES PERSON DEFINED.—In this subsection, the term 'United States person' means—

"(A) any United States citizen or alien lawfully admitted for permanent residence to the United States;

"(B) any entity organized under the laws of the United States, and any foreign branch or subsidiary of such an entity; and

"(C) any person in the United States.".

**SEC. 4. DENIAL OF TAX BENEFITS RELATING TO THE BURMESE REGIME.**

(a) IN GENERAL.—No deduction or credit against tax shall be allowed under the Internal Revenue Code of 1986 with respect to amounts paid or incurred with respect to the Burmese Government, the SPDC, or a joint production agreement relating to the Yadana gas field or pipeline.

(b) EFFECTIVE DATE.—This section shall apply to amounts paid or incurred after the date of the enactment of this Act.

**SEC. 5. SUPPORT FOR DEMOCRACY PROMOTION AND HUMANITARIAN ASSISTANCE IN BURMA.**

(a) IN GENERAL.—The President is authorized to use all available resources to assist Burma democracy activists and humanitarian aid workers in their efforts to promote freedom, democracy, and human rights in Burma.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $20,000,000 to the Secretary of State for each of the fiscal years 2008 and 2009 for the following purposes:

(1) To provide aid to democracy and human rights activists and organizations inside and outside of Burma working to bring a transition to democracy inside Burma, including to individuals and groups that—

(A) promote democracy and human rights;

(B) represent the ethnic minorities of Burma;

(C) broadcast radio and television programs into Burma that promote democracy and report on human rights conditions inside Burma; or

(D) compile evidence of human rights violations by the SPDC and its civilian militia, the Union Solidarity and Development Association (USDA), and of the SPDC and its entities' efforts to repress peaceful activities.

(2) To provide aid to humanitarian workers who—

(A) provide food, medical, educational, or other assistance to refugees and internally displaced persons;

(B) assist women and girls after incidents of rape and other forms of sexual violence; or

(C) assist in the rehabilitation of child soldiers.

(c) PROTECTING FUNDS FROM ENRICHING THE SPDC.—None of the funding made available under this section may be provided to SPDC-controlled entities, entities working with or providing cash or resources to the SPDC, including organizations affiliated with the United Nations, or entities requiring the approval of the SPDC to operate within the borders of Burma.

**SEC. 6. REPORT ON MILITARY AND INTELLIGENCE AID TO BURMA.**

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate a report containing a list of countries, companies, and other entities that provide military or intelligence aid to the SPDC and describing such military or intelligence aid provided by each such country, company, and other entity.

(b) MILITARY OR INTELLIGENCE AID DEFINED.—For the purpose of this section, the term "military or intelligence aid" means, with respect to the SPDC—

(1) the provision of weapons, weapons parts, military vehicles, or military aircraft;

(2) the provision of military or intelligence training, including advice and assistance on subject matter expert exchanges;

(3) the provision of weapons of mass destruction and related materials, capabilities, and technology, including nuclear, chemical, or dual-use capabilities;

(4) conducting joint military exercises;

(5) the provision of naval support, including ship development and naval construction;

(6) the provision of technical support, including computer and software development and installations, networks, and infrastructure development and construction; or

(7) the construction or expansion of airfields, including radar and anti-aircraft systems.

(c) FORM.—The report required under subsection (a) shall be submitted in unclassified form but may include a classified annex.

## SUMMARY

H.R. 3890, the Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2007 (the "Act") strengthens sanctions against Burma in the wake of the regime's violent crackdown on peaceful protest. It bans import of gems from Burma; authorizes the freezing of assets; imposes broad financial sanctions, including on third-country banks and supporters of the regime; removes tax deductions for American companies investing in Burma and prevents American firms from making payments to the regime, including those related to the Yadana gas pipeline; extends the visa ban against human rights violators and other leaders of the regime; eliminates the requirement for annual renewal of sanctions; authorizes $20 million in each of the fiscal years 2008 and 2009 for pro-democracy and humanitarian programs inside and outside of Burma and requires the State Department to report on Burma's sources of military support.

## BACKGROUND AND PURPOSE FOR THE LEGISLATION

The Act aims to tighten and add sanctions against Burma's regime and its supporters in the wake of the September 2007 violent suppression of mass peaceful protests. In August 2007, peaceful protesters took to the streets of Rangoon, Mandalay and other cities in Burma, conducting the country's largest peaceful public protests since 1988. Initially motivated by drastic fuel price increases, the demonstrations later took a political turn. On September 24, 2007, Buddhist monks actively participated and increasingly led these peaceful demonstrations, culminating in an estimated 100,000 people marching through Rangoon. The protesters peacefully demanded the release of 1991 Noble Peace Prize Winner Daw Aung San Suu Kyi, the leader of the National League for Democracy (NLD). Aung San Suu Kyi remains a symbol of Burma's democracy as the regime refuses to recognize her party's 1990 victory in Burma's last free elections. Protesters marched past security barricades to Aung San Suu Kyi's house, where she has been held under house arrest for more than 12 of the past 17 years.

The regime responded to these peaceful protests with a violent crackdown, beating and opening fire on unarmed peaceful protesters. The regime says 10 were killed, including a Japanese photojournalist, while NGOs estimate that hundreds were killed. Burmese troops and the regime's hired thugs in the Union Solidarity and Development Association beat and detained more than 2,900 people, according to the regime. NGOs estimate that even more have been detained, imprisoned, beaten, tortured or otherwise intimidated so far as part of this crackdown. More than a month later, the regime and its security authorities continue to round up participants in the protests and in an attempt to frighten Burma's people into submission, loudspeakers broadcast announcements saying "We have pictures. We will find you."

The Act aims to tighten and close loopholes with regard to past Congressional and Executive efforts to sanction Burma and its leaders. In 1997, the Congress passed a comprehensive ban on new investment in Burma. Unocal's investment in Burma's Yadana pipeline and gas production sharing project, which has since transferred to Chevron as a result of a merger, was explicitly permitted under a provision grandfathering investments that occurred before May 21, 1997. The Burmese Freedom and Democracy Act of 2003 ("2003 Act") banned import into the United States of any article that is a product of Burma. The 2003 Act authorized, but did not require, the president to freeze assets of certain elements of the regime and to ban travel by regime leaders. Intermittent Executive Orders have been issued to implement provisions of the 1997 and 2003 Acts. The most recent Executive Orders issued since the August crackdown identify 11 regime officials for inclusion on the Department of the Treasury's "Specially Designated List" and make 5 individuals and 7 companies in Burma subject to financial restrictions and the asset freeze.

The Act responds to a series of steps taken by the regime to evade these previous sanctions. The regime continues to profit from the sale of Burma's vast natural resources while the bulk of Burma's people live in poverty. Most economic enterprises in Burma are state-owned and proceeds from most economic activity of those enterprises inure to the regime's economic benefit. The state-run Myanmar Oil and Gas Enterprise is the largest of these, earning $2.16 billion in 2006–07 (43% of Burma's export earnings) mainly through the sale of natural gas to Thailand. Gem and timber exports account for significant revenues. The state-run Myanmar Gems Enterprise earned some $300 million in 2006–07, a 45% increase over the previous year's exports. Under Lieutenant-General Thein Sein, chairman of the Leading Committee for Development of Myanmar Gems Industries, Burma authorized some 585 new mining blocks for jade exploration in the past year. Labor groups report that conditions in the gem mines are very dangerous, access to the mines is forbidden to outsiders, and forced labor is exploited there. Despite the ban against imports contained in the 2003 Act, the regime launders its sale of gems to the United States through third countries. Rubies, fine quality (or imperial) jade and pearls are among the top items that are ultimately imported to the United States. As a result of these factors, leading American jewelers and jewelry associations have asked the Congress to close loopholes in the 2003 Act and to ban the import of Burmese gemstones.

The regime has also used various financial measures to avoid sanctions and to enhance its economic position. It uses third-country banks to process transactions in U.S. dollars and to process payments using U.S.-issued credit cards. Regime members often hide their funds under the names of their immediate relatives. Recently, industry and government leaders in Burma reportedly met to discuss restructuring trade and financial dealings to evade potential new sanctions. Currently, a majority of Burma's international business transactions are conducted through Singaporean banks, specifically United Overseas Bank and the Development Bank of Singapore, according to reports that the regime was considering changes to this practice to keep its finances safe from the reach of U.S. sanctions.

In addition to the regime's suppression of democracy and peaceful protest and its exploitation of the country's natural resources, Burma's history of political and economic disorder provide other reasons for U.S. sanctions. Burma's rampant drug trade, its role as a source for international trafficking in persons and illicit goods, its interest in uranium and nuclear sciences, and its increasing imports of sophisticated military technology pose other threats to regional peace and security and to U.S. interests in Southeast Asia.

## HEARINGS

The Subcommittee on Asia, the Pacific, and the Global Environment held a hearing on Burma on October 17, 2007.

## COMMITTEE CONSIDERATION

On October 23, 2007, the Committee held a markup and considered H.R. 3890. A motion to report the bill, as amended, to the House, a quorum being present, was agreed to by unanimous consent.

## VOTES OF THE COMMITTEE

There were no recorded votes on H.R. 3890.

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with Clause 3(c)(2) of House Rule XIII, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, October 29, 2007.*

Hon. TOM LANTOS, *Chairman,*
*Committee on Foreign Affairs,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3890, the Block Burmese JADE (Junta's Anti-Democratic Effort) Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Michelle S. Patterson, who can be reached at 226–2840.

Sincerely,

PETER R. ORSZAG.

Enclosure

cc: Honorable Ileana Ros-Lehtinen
Ranking Member

*H.R. 3890—Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2007.*

SUMMARY

H.R. 3890 would expand the current financial and diplomatic restrictions against government officials from Burma and would further restrict imports from that country. It also would authorize the appropriation of funds to aid individuals and organizations to promote democracy in Burma. CBO estimates that implementing H.R. 3890 would cost $5 million in 2008 and $36 million over the 2008–2012 period, assuming the appropriation of the necessary amounts. In addition, enacting the bill would have an insignificant effect on direct spending.

H.R. 3890 also would eliminate the need for annual extensions by the Congress on the ban of all imports from Burma and would repeal the six-year maximum for those extensions. It would ban the importation of all geological and mineral materials originating from Burma that pass through other countries. It also would prohibit certain tax benefits for persons doing business with Burma. CBO estimates that enacting H.R. 3890 would reduce federal revenues by less than $500,000 in 2008, by about $8 million over the 2008–2012 period, and by $18 million over the 2008–2017 period, net of income and payroll tax offsets.

CBO reviewed the non-tax provisions of H.R. 3890 and determined that the provisions contain private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA). The bill would extend the one-year ban on imports from Burma until the Congress or the President terminate the ban. The bill also would expand the existing ban on Burmese imports to include any gems mined or extracted from Burma. CBO cannot estimate the cost of those mandates because information on the value of lost profits to importers resulting from the ban is not available. Thus, CBO cannot determine whether the aggregate direct cost of the mandates would exceed the annual threshold for private-sector mandates established in UMRA ($131 million in 2007, adjusted annually for inflation).

CBO has reviewed the non-tax provisions of H.R. 3890 and has determined that they contain no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 3890 is shown in the following table. The costs of this legislation fall mostly within budget function 150 (international affairs).

By Fiscal Year, in Millions of Dollars

| | 2008 | 2009 | 2010 | 2011 | 2012 |
|---|---|---|---|---|---|
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION | | | | | |
| Authorization Level | 20 | 20 | 0 | 0 | 0 |
| Estimated Outlays | 5 | 11 | 10 | 6 | 4 |
| CHANGES IN REVENUES [1] | | | | | |
| Estimated Revenues | * | –2 | –2 | –2 | –2 |

Note: * = between zero and –$500,000.

[1] In addition to the revenue effects shown here, H.R. 3890 would have additional effects on revenues after 2012. The estimated changes (net of income and payroll tax offsets) decrease revenues by $8 million over the 2008–2012 period and by $18 million over the 2008–2017 period.

## BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 3890 will be enacted before the end of calendar year 2008, that the specified authorization amounts will be appropriated near the beginning of each fiscal year, and that outlays will follow historical patterns for similar programs.

### *Spending Subject to Appropriation*

Section 5 would authorize the appropriation of $20 million for each of fiscal years 2008 and 2009 to aid democracy and human rights activists and organizations and humanitarian workers. The funds could be used by those inside or outside Burma to promote democracy and human rights through various means, including using radio and television programs to promote democracy and compiling evidence of human rights violations. CBO estimates that implementing this provision would cost $5 million in 2008 and $36 million over the 2008–2012 period, assuming the appropriation of the authorized amounts.

Other provisions of the bill would have an insignificant effect on spending subject to appropriation. Section 3(d) would freeze any assets of certain Burmese government officials and their families that are held by the U.S. government or by U.S. financial institutions. Section 6 would require the Secretary of State to issue a report containing a list of countries, companies, and other entities that provide military and intelligence aid to the military regime and a description of such aid.

### *Direct Spending*

Section 3 would expand the number of people whose assets must be frozen by the Secretary of the Treasury and who would be denied a visa by the Secretary of State. Under current law, leaders of the military regime are prohibited from receiving visas to travel to the United States. H.R. 3890 would expand the visa ban to any Burmese government official or military member who was involved in the repression of recent public protests or who has engaged in the violation of human rights. The ban would also extend to the immediate family members of these individuals. CBO estimates that enacting this provision would have an insignificant effect on direct spending.

*Revenues*

Imports into the United States from Burma have been banned on a year-by-year basis since the enactment of the Burmese Freedom and Democracy Act of 2003. Public Law 110–52, enacted in the summer of 2007, renewed the ban for one additional year through its current expiration date of July 28, 2008. H.R. 3890 would repeal the expiration date. Under the bill, the President or the Congress would have the authority to lift or waive the ban. For purposes of this cost estimate, CBO assumes that the ban would continue for all years through 2017.

In the years immediately before the ban went into effect, over half of all U.S. imports from Burma were knitted or crocheted clothing and apparel goods. The remaining imports included apparel items not knitted or crocheted, certain types of fish and crustaceans, goods made of wood, certain precious and semiprecious stones and metals, and woven fabrics and tapestries. In 2001 and 2002, roughly 80 percent of duties collected on these imports came from knitted and crocheted articles. CBO assumes that most of the banned imports would be replaced with imports from other countries.

The bill places an additional ban on the importation of all geological and mineral materials originating in Burma. This includes jewelry set with Burmese gemstones that are imported from other nations. CBO estimates that such a ban would not have a significant effect on customs duties over the 2008–2017 period.

CBO estimates that continuation of the import ban would reduce customs duties. Based on data from the U.S. International Trade Commission on recent U.S. imports from Burma, information from several government agencies, and CBO's most recent forecast for total U.S. imports, CBO estimates that enacting H.R. 3890 would reduce federal revenues by less than $500,000 in 2008, by about $8 million over the 2008–2012 period, and by $18 million over the 2008–2017 period, net of income and payroll tax offsets.

The President or the Congress could remove the ban on imports upon Burma's compliance with the bill's conditions for the progression toward democratization. CBO has no basis for estimating the likelihood of such political change. Should the ban be lifted, U.S. companies would be allowed to resume importation of goods produced, manufactured, grown, or assembled in Burma. If the President or the Congress were to exercise such authority during the 2008–2017 period, the impact on customs duties would be reduced accordingly.

The Joint Committee on Taxation estimates that there would be an insignificant revenue effect for enacting a provision of this bill that would prohibit a tax deduction or credit for amounts paid or incurred with respect to certain parties, including the Burmese government.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

CBO has reviewed the non-tax provisions of H.R. 3890 and has determined that they contain no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

CBO reviewed the non-tax provisions of H.R. 3890 and determined that the provisions contain private-sector mandates, as defined in UMRA. The bill would extend the one-year ban on imports from Burma until the Congress or the President terminate the ban. The bill also would expand the existing ban on Burmese imports to include any gems (as defined in the bill) mined or extracted from Burma. CBO cannot estimate the cost of those mandates because information on the value of lost profits to importers resulting from the ban is not available. Thus, CBO cannot determine whether the aggregate direct cost of the mandates would exceed the annual threshold for private-sector mandates established in UMRA ($131 million in 2007, adjusted annually for inflation).

PREVIOUS CBO ESTIMATES

On July 25, 2007, CBO completed an estimate for H.J. Res. 44, approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, as cleared by the Congress on July 24, 2007. On July 30, 2007, CBO completed an estimate for S.J. Res. 16, a joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, as reported by the Senate Committee on Finance on July 24, 2007. Section 1 of H.J. Res 44 and S.J. Res 16 would extend the ban on imports from Burma through July of 2008. Section 3 of H.R. 3890 would make the ban permanent; thus, it would have an effect on revenues for the remainder of the 2008–2017 period. As a result, CBO estimates H.R. 3890 would have a larger effect on revenues than the earlier legislation. In addition, both resolutions and H.R. 3890 include private-sector mandates as defined in UMRA. CBO could not estimate the cost of the mandates for the two resolutions because information on the value of lost profits to importers resulting from the ban was not available.

ESTIMATE PREPARED BY:

Federal Revenues: Zachary Epstein (226–2680)
Federal Spending: Michelle S. Patterson (226–2840)
Impact on State, Local, and Tribal Governments: Neil Hood (225–3220)
Impact on the Private Sector: Paige Piper/Bach (226–2960)

ESTIMATE APPROVED BY:

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PERFORMANCE GOALS AND OBJECTIVES

The Act is intended to strengthen sanctions against Burma and to support democracy in Burma. The goal of this requirement is to end the brutal repression of the Burmese people by the military regime that governs Burma and to end direct or indirect financial support for the regime coming from the United States government, companies or consumers.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8 of the Constitution.

## NEW ADVISORY COMMITTEES

H.R. 3890 does not establish or authorize any new advisory committees.

## CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 3890 does not apply to the Legislative Branch.

## EARMARK IDENTIFICATION

H.R. 3890 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI. Section 4 removes limited tax benefits currently enjoyed by U.S. companies operating in Burma.

## SECTION-BY-SECTION ANALYSIS AND DISCUSSION

*Section 1. Short Title.*

This section provides that the short title of the Act is the "Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2007."

*Section 2. Findings.*

This section contains findings highlighting the repressive and anti-democratic nature of the Burmese regime. The findings specifically condemn the regime's actions in September of violently oppressing peaceful political protestors and note the regime's ongoing repression of the National League for Democracy and Aung San Suu Kyi. It also includes findings related to the gem trade and efforts by the Burmese regime to evade existing sanctions concerning its gem exports to the United States. It finds that the value of Burmese gems imported to the United States is a function of their geology in Burma, not the minimal labor involved in subsequent cutting and polishing. It notes that the regime seeks to hide other financial transactions involving the United States, including those done via third country financial institutions, so as to avoid sanctions.

*Section 3. Amendments to the Burmese Freedom and Democracy Act of 2003.*

Subsection (a) states that annual renewal resolutions required by the Burmese Freedom and Democracy Act of 2003 are no longer required. The sanctions outlined by the 2003 Act shall continue until such time as the Congress or the President terminates those sanctions.

Subsection (b) states that gems, pearls, imperial jade and other mineral material with geological origin in Burma are covered by the provisions of the Burmese Freedom and Democracy Act of 2003. Import of such items and jewelry made from them is prohibited. The provision clarifies Congress' intent to ban the import of Burmese gems in its previous Burma sanctions act and tightens those

sanctions to make those initial sanctions effective. In so doing, it overturns a December 11, 2004, United States Customs and Border Protection ruling and provides that gems and related jewelry should be treated as a product of Burma. As noted in the findings, the value of gems, jade and pearls coming from Burma is over 90 percent a function of their geological origin, not the minimal, low-cost labor involved in cutting and polishing such stones. The provision explicitly states that this change is done to make the pre-existing Burma sanctions regime effective and not to change rule of origin or discriminate against any gem cutting, polishing or processing countries.

Subsection (c) states that the Secretaries of State and Homeland Security shall deny issuance of visas and entry into the United States to certain classes of individuals. Such individuals include former and present leadership of the SPDC and the Union Solidarity Development Association, any member of the Burmese military involved in repression of public protests in August–October 2007 (even if the repression occurred at a later date), any Burmese official who has engaged in, ordered or facilitated gross human rights violations, and immediate family members of individuals in the preceding three groups. The provision defines categories of individuals subject to a visa ban, rather than rely on the lists of individuals previously announced by Executive Order. The provision requires implementing agencies to ensure that individuals who are members of the defined classes are covered by the sanctions.

Subsection (d) provides several types of financial sanctions against the Burmese regime, its financial supporters and associates. In an expansion of authority, this subsection extends financial sanctions to activities by third-country entities, including financial institutions, which support the Burmese regime. As a result, this subsection attempts to serve as a catalyst to make sanctions more effective and multilateral. Subsection (d) has five main provisions. First, it creates a new subsection (b) in Section 4 of the 2003 Act to block assets and prohibit other activities. It requires the President to block all property interests in the United States of entities owned by individuals who fall in the classes defined previously. For those same groups of individuals, it requires the blocking of assets that come into the possession or control of the United States or U.S. financial institutions, including overseas bank branches. Second, it lists prohibited activities, including: payments or transfer of anything of value to individuals who are members of the defined groups of leaders, human rights abusers and their families; and export of items to such persons or the performance of contracts, including financing contracts, involving such persons. Subsection (2)(B) specifies that direct or indirect tax payments or other payments to the Burmese Government are blocked and is designed to specifically prohibit Chevron from making a payment to the Burmese regime or its supporters as a result of any business decision Chevron might make to withdraw from Burma. Third, it defines the extension of authority to the President to block property and interests in property of financial institutions, corporations and other "persons" who assist or provide support to the defined groups of leaders, human rights abusers and their families. Fourth, it creates exceptions such that nothing in the subsection shall prohibit the work of humanitarian NGOs in Burma and shall not apply to

supplies of medicine or other humanitarian assistance. Fifth, it provides that violators are subject to penalties in Section 6 of the International Emergency Economic Powers Act.

All of the amendments contained in this section are designed to expand, not to limit, the sanctions outlined in the 1997 and 2003 Acts.

*Section 4. Denial of Tax Benefits Relating to the Burmese Regime.*

This section provides that no tax deduction or credit shall be allowed for amounts paid to the Burmese Government, the SPDC or with respect to a joint production agreement relating to the Yadana gas field. It prevents U.S. tax benefits from accruing to companies that continue to operate in Burma. It specifically mentions the Yadana gas field, which is part of Chevron's investment in Burma and which had been permitted under an exception to previous Burma sanctions. This section prevents Chevron or subsequent entities related to the Yadana gas field or pipeline from enjoying tax benefits related to Burma or the Yadana investment. It would also prevent any other American firm from making tax payments to the Burmese regime. The section applies to payments made after enactment of the Block Burmese JADE Act of 2007. It is not intended to impose or increase tax obligations of humanitarian organizations in Burma.

*Section 5. Support for Democracy Promotion and Humanitarian Assistance in Burma.*

This section authorizes $20,000,000 for each fiscal year 2008 and 2009 to be appropriated for pro-democracy and humanitarian programs in Burma. The section specifies that the aid should be used to support democracy and human rights, represent ethnic minorities, and to broadcast information into Burma about human rights and democracy to counter the regime's propaganda. It also specifies that funds should be used to document the SPDC and USDA's efforts to repress peaceful activities, and as such, provides resources to identify the persons in categories subject to sanctions elsewhere in the bill. It includes funds for humanitarian workers assisting internally displaced persons, victims of sexual violence and rehabilitation of child soldiers.

*Section 6. Report on Military or Intelligence Aid to Burma.*

This section requires the Department of State to prepare a report identifying countries and companies who provide military or intelligence support to Burma. The aid to be discussed in the report includes: military supplies; intelligence; weapons parts and servicing; technical support, including software and network infrastructure; nuclear, chemical and biological capabilities, including weapons and dual-use civilian programs and technologies.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

## BURMESE FREEDOM AND DEMOCRACY ACT OF 2003

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**SEC. 3. BAN AGAINST TRADE THAT SUPPORTS THE MILITARY REGIME OF BURMA.**

(a) GENERAL BAN.—

(1) IN GENERAL.—Notwithstanding any other provision of law, until such time as the President determines and certifies to Congress that Burma has met the conditions described in paragraph (3), beginning 30 days after the date of the enactment of this Act, the President shall ban the importation of any article that is a product of Burma**[.]**, *including the importation of any gemstone, pearl, or rough unfinished geological or mineral material mined or extracted from Burma, whether imported as a loose item or as any part or component of a finished piece of jewelry. Such restriction on such importation shall not be deemed to be an amendment to the general rules of origin applied by the United States.*

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**SEC. 4. FREEZING ASSETS OF THE BURMESE REGIME IN THE UNITED STATES.**

(a) * * *

*(b) BLOCKING OF ASSETS AND OTHER PROHIBITED ACTIVITIES.—*

*(1) IN GENERAL.—The President shall block all property and interests in property, including all commercial, industrial, or public utility undertakings or entities, that, on or after the date of the enactment of the Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2007—*

*(A) are owned, in whole or in part, by an individual on the list specified in section 6(a)(1)(A); and*

*(B) are in the United States, or in the possession or control of the Government of the United States or of any United States financial institution, including any branch or office of such financial institution that is located outside the United States.*

*(2) PROHIBITED ACTIVITIES.—Activities prohibited by reason of the blocking of property and interests in property under paragraph (1) shall include—*

*(A) payments or transfers of any property, or any transactions involving the transfer of anything of economic value by any United States person, including any United States financial institution and any branch or office of such financial institution that is located outside the United States, to an individual on the list specified in section 6(a)(1)(A);*

*(B) direct or indirect payments of any tax, cancellation penalty, or other amount to the Burmese Government;*

*(C) the export or reexport to any entity owned, controlled, or operated by such an individual directly or indirectly, of any goods, technology, or services by a United States person; or*

*(D) the performance by any United States person of any contract, including a contract providing a loan or other financing, in support of an industrial, commercial, or public*

*utility operated, controlled, or owned by such an individual.*

*(3) EXTENSION OF AUTHORITY.—The President may block all property and interests in property of the following persons, to the same extent as property and interests in property of a foreign person determined to have committed acts of terrorism for purposes of Executive Order No. 13224 of September 21, 2001, (50 U.S.C. 1701 note) may be blocked:*

*(A) Persons and financial institutions who assist or provide financial, material, or technological support for, or financial or other services to or in support of, an individual on the list specified in section 6(a)(1)(A) or entities owned or effectively controlled by such an individual.*

*(B) Persons otherwise associated with such an individual.*

*(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit any contract or other financial transaction with any nongovernmental humanitarian organization in Burma.*

*(5) EXCEPTIONS.—The prohibitions and restrictions described in paragraphs (1), (2), and (3) shall not apply to medicine, medical equipment or supplies, food, or any other form of humanitarian assistance provided to Burma as relief in response to a humanitarian crisis.*

*(6) PENALTIES.—Any person who violates any prohibition or restriction described in paragraph (1), (2), or (3) shall be subject to the penalties under section 6 of the International Emergency Economic Powers Act (50 U.S.C. 1705) to the same extent as for a violation under that Act.*

*(7) UNITED STATES PERSON DEFINED.—In this subsection, the term "United States person" means—*

*(A) any United States citizen or alien lawfully admitted for permanent residence to the United States;*

*(B) any entity organized under the laws of the United States, and any foreign branch or subsidiary of such an entity; and*

*(C) any person in the United States.*

**[**(b)**]** *(c)* ADDITIONAL AUTHORITY.—The President may take such action as may be necessary to impose a sanctions regime to freeze such funds or assets, subject to such terms and conditions as the President determines to be appropriate.

**[**(c)**]** *(d)* DELEGATION.—The President may delegate the duties and authorities under this section to such Federal officers or other officials as the President deems appropriate.

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**SEC. 6. EXPANSION OF VISA BAN.**

(a) IN GENERAL.—

**[**(1) VISA BAN.—The President is authorized to deny visas and entry to the former and present leadership of the SPDC or the Union Solidarity Development Association.**]**

*(1) VISA BAN.—*

*(A) IN GENERAL.—The Secretary of State shall deny the issuance of a visa and the Secretary of Homeland Security shall deny admission to the United States to—*

*(i) former and present leadership of the SPDC or the Union Solidarity Development Association;*

*(ii) any member of the Burmese military involved in the violent repression of the public protests in Burma in August, September, and October 2007;*

*(iii) any Burmese official who has engaged in, ordered, or facilitated acts of gross violations of internationally recognized human rights (as defined in section 502B(d)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2304(d)(1)), either as an individual or as a member of a group or government; and*

*(iv) any member of the immediate family of any individual described in clauses (i), (ii), or (iii).*

*(B) WAIVER.—The ban described in subparagraph (A) may be waived only if the President determines and certifies in writing to Congress that such is in the national interests of the United States.*

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**SEC. 9. DURATION OF SANCTIONS.**

(a) * * *

[(b) CONTINUATION OF IMPORT SANCTIONS.—

[(1) EXPIRATION.—The import restrictions contained in section 3(a)(1) shall expire 1 year from the date of enactment of this Act unless renewed under paragraph (2) of this section.

[(2) RESOLUTION BY CONGRESS.—The import restrictions contained in section 3(a)(1) may be renewed annually for a 1-year period if, prior to the anniversary of the date of enactment of this Act, and each year thereafter, a renewal resolution is enacted into law in accordance with subsection (c).

[(3) LIMITATION.—The import restrictions contained in section 3(a)(1) may be renewed for a maximum of six years from the date of the enactment of this Act.

[(c) RENEWAL RESOLUTIONS.—

[(1) IN GENERAL.—For purposes of this section, the term "renewal resolution" means a joint resolution of the 2 Houses of Congress, the sole matter after the resolving clause of which is as follows: "That Congress approves the renewal of the import restrictions contained in section 3(a)(1) of the Burmese Freedom and Democracy Act of 2003.".

[(2) PROCEDURES.—

[(A) IN GENERAL.—A renewal resolution—

[(i) may be introduced in either House of Congress by any member of such House at any time within the 90-day period before the expiration of the import restrictions contained in section 3(a)(1); and

[(ii) the provisions of subparagraph (B) shall apply.

[(B) EXPEDITED CONSIDERATION.—The provisions of 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)) apply to a renewal resolution under this Act as if such resolution were a resolution described in section 152(a) of the Trade Act of 1974.]

*(b) CONTINUATION OF IMPORT SANCTIONS.—The import restrictions under section 3(a)(1) shall continue until such time as such restrictions are terminated—*

*(1) pursuant to the enactment into law of a joint resolution of the two Houses of Congress, the sole matter after the resolving clause of which is as follows: "That Congress terminates the import restrictions under section 3(a)(1) of the Burmese Freedom and Democracy Act of 2003."; or*

*(2) by the President in accordance with subsection (a).*

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