

Calendar No. 62

108TH CONGRESS }
1st Session }

SENATE

{ REPORT
108-36

CLEAN DIAMOND TRADE ACT

APRIL 9, 2003.—Ordered to be printed

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

R E P O R T

[To accompany S. 760]

[Including cost estimates of the Congressional Budget Office]

The Committee on Finance having considered the bill (S. 760), to implement effective measures to stop trade in conflict diamonds, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill, as amended, do pass.

BACKGROUND

In several sub-Saharan African countries, rebel insurgent groups fund their military activities by mining and selling rough diamonds. Competition over the use and control of diamond wealth contributes significantly to the depth and longevity of these regional conflicts and to well-documented human rights violations against local populations. A group of diamond-trading nations, non-governmental organizations (including humanitarian, human rights and faith-based organizations) and diamond industry groups involved in the rough diamond trade worked for many years to address the problem of “conflict diamonds.” These groups sought to create a voluntary international certification scheme to regulate the rough diamond trade in order to eliminate conflict diamonds from legitimate diamond trade. These efforts, supported by the United Nations General Assembly, culminated in the Kimberley Process Certification Scheme for Rough Diamonds, adopted by participating nations in the Interlaken Declaration of November 5, 2002.

In the Interlaken Declaration participating governments, including the United States, declared that they were, “committed to the simultaneous launch of the Certification Scheme beginning on 1

January, 2003.” The Certification Scheme sets out a rough diamond trade control and tracking system based on the use of import/export certificates that certify that rough diamonds have been handled in accordance with the provisions of the Scheme. Countries participating in the Certification Scheme commit to import and export only properly documented rough diamonds. The purpose of the Certification Scheme is to curtail the trade in illegally exported conflict diamonds.

The Preamble to the Certification Scheme and the Interlaken Declaration provide that the international certification scheme and measures taken to implement the scheme would be consistent with international trade rules. In January 2003, the United Nations Security Council passed resolution 1459 strongly supporting the Kimberley Process and the Interlaken Declaration. In addition, a group of Kimberley Process participants, including the United States, requested a waiver under the Marrakesh Agreement Establishing the World Trade Organization for certain measures taken to implement the Kimberley Process. On February 26, 2003, the WTO Council for Trade in Goods agreed by consensus to recommend approval of the waiver by the WTO General Council. The Council is expected to consider the waiver at its next meeting which will take place May 15–16, 2003.

The Clean Trade Diamond Act is intended to implement the Kimberley Process Certification Scheme in the United States.

SUMMARY OF THE CLEAN DIAMOND TRADE ACT, AS AMENDED

Short title (Section 1)

This section provides that this Act may be cited as the “Clean Diamond Trade Act.”

Findings (Section 2)

Congress makes the following findings:

(1) The sale of rough diamonds provides funds for the activities of rebel groups in Sierra Leone, Angola, and the Democratic Republic of the Congo in seeking to overthrow legitimate governments, destabilize the region, and commit atrocities against civilians.

(2) These activities have caused the displacement and deaths of many civilians.

(3) Human rights advocates, the legitimate diamond industry, and the United States have been working to block trade in conflict diamonds.

(4) The United Nations Security Council has at various times adopted resolutions imposing embargoes with regard to the conflict diamond trade in Sierra Leone, Liberia, and Angola.

(5) The United States has implemented these embargoes under domestic laws and regulations and is now taking further action with this legislation implementing the Kimberley Process.

(6) The legitimate diamond trade and the economies of countries engaged in such legitimate trade could be severely damaged by a consumer backlash caused by concern about conflict diamonds. Accordingly, to protect legitimate trade, South Africa and other countries active in the diamond trade have devised a scheme to regulate the trade in diamonds in order to eliminate conflict diamonds,

known as the Kimberley Process. As the consumer of a majority of the world's diamond supply, the United States has an obligation to implement an effective solution to the funding of regional conflicts through the sale of diamonds.

(7) Failure to curtail the trade in conflict diamonds could have a severe impact on countries such as Botswana, Namibia, South Africa, and Tanzania.

(8) The United States seeks to resolve regional conflicts in sub-Saharan Africa fueled by the conflict diamond trade.

(9) As stated in the Interlaken Declaration, the Kimberley Process is to be implemented in a manner consistent with international trade rules.

Definitions (Section 3)

Section 3 defines terms used in this bill, including: controlled through the Kimberley Process Certification Scheme, Participant, exporting authority, importing authority, Kimberley Process Certificate, and rough diamond.

Measures for the importation and exportation of rough diamonds (Section 4)

PRESENT LAW

No provision.

EXPLANATION OF PROVISION

Section 4 requires the President to prohibit the importation or exportation of rough diamonds that have not been controlled through the Kimberley Process Certification Scheme. The prohibition may be waived with respect to a particular country for periods of not more than 1 year each if the President determines and reports to Congress that the country is taking steps to implement the Kimberley Process or the President determines and reports to Congress that the waiver is in the national interests of the United States.

REASON FOR CHANGE

This provision implements the Kimberley Process Certification Scheme in the United States by establishing a system to ensure that rough diamonds are not imported into or exported from the United States, unless the shipment is accompanied by a valid Kimberley Process Certificate. Participants in the Kimberley Process undertake measures to ensure that rough diamonds are not imported from or exported to a non-participant, but at the same time, the Interlaken Declaration and the United Nations Security Council Resolution supporting the Kimberley Process both stress that the widest possible participation in the process is essential and should be encouraged and facilitated. The Section 4(b)(1) waiver is designed to facilitate this aim to encourage non-participants to implement the Process. Language in the bill requires the President to determine that the country being granted this waiver is taking effective steps to implement the Kimberley Process Certification Scheme. The Section 4(b)(2) waiver is similar to national interest waivers for various foreign assistance restrictions in Federal statutes, such as 22 U.S.C. §§2370, 2370a(g), 2377(b), 2378(b), and

7513(b)(2). The Committee intends that the national interest waiver under Section 4(b)(2) be judiciously exercised. It is not intended to be used to undermine the goals and objectives of the Kimberley Process Certification Scheme.

Regulatory and other authority (Section 5)

PRESENT LAW

No provision.

EXPLANATION OF PROVISION

Section 5(a) authorizes, and requires as necessary, the President to issue such proclamations, regulations, licenses and orders, and conduct such investigations as may be necessary to carry out the Act. Section 5(b) requires any U.S. person importing into, or exporting from, the United States rough diamonds to keep a full record of any transaction covered by the legislation. Section 5(b) further provides that the President may require the person to provide this information under oath.

Section 5(c) mandates the President to require the appropriate agency to conduct annual reviews of the procedures of any entity in the United States that issues Kimberley Process Certificates for exportation to determine whether they are in accordance with the Kimberley Process. The President is also required to transmit to Congress a report on each annual review.

REASON FOR CHANGE

The record keeping requirement in Section 5(b) is consistent with Section III(b) of the Kimberley Process Certification Scheme, that provides that documents pertaining to the Kimberley Process Certificate be readily accessible. The oversight provision in Section 5(c) is designed to strengthen government oversight of the diamond industry's issuance of the Kimberley Process Certificates.

Importing and exporting authorities (Section 6)

PRESENT LAW

No provision.

EXPLANATION OF PROVISION

Section 6(a)(1) designates the Bureau of Customs and Border Protection within the Department of Homeland Security as the importing authority. Section 6(a)(2) designates the Bureau of the Census within the Department of Commerce as the exporting authority. Section 6(b) requires the Secretary of State to publish a list of all Kimberley Process participants and their exporting and importing authorities in the Federal Register.

REASON FOR CHANGE

Section 6(a) is consistent with Section IV of the Kimberley Process Certification Scheme, which states that each participant in the KPCS should designate an importing and exporting authority. While the Bureau of the Census is designated as the exporting authority in the Act, the Committee anticipates and fully intends that other bureaus within the Department of Commerce, and other

agencies within the U.S. Government such as the Department of Homeland Security, the Department of Justice and the Department of the Treasury, will assist in enforcing this Act.

Section 6(b) is consistent with the aims of Section V of the Kimberley Process concerning cooperation and transparency with respect to information on designated authorities and applicable laws and practices of each participant.

Statement of policy (Section 7)

PRESENT LAW

No provision.

EXPLANATION OF PROVISION

Section 7 sets forth a statement of support for the policy that the President should promote and facilitate the adoption of the Kimberley Process by the international community.

REASON FOR CHANGE

Section 7 is consistent with the Interlaken Declaration and the United Nations Security Council Resolution 1459 (2003) supporting the Kimberley Process which both stress that the widest possible participation in the Certification Scheme is essential and should be encouraged and facilitated.

Enforcement (Section 8)

PRESENT LAW

No provision.

EXPLANATION OF PROVISION

Section 8 sets forth civil and criminal penalties for violations of the Act. Section 8(a)(1) provides that a civil penalty not to exceed \$10,000 may be imposed on any person who violates, or attempts to violate, any license, order, or regulation issued under the Act. Section 8(a)(2) provides for a fine of not more than \$50,000 or, if a natural person, imprisonment for not more than 10 years, or both, for willful violations, or willful attempts to violate, any license, order, or regulation issued under this Act.

Subsection (b) provides that, in addition to the new penalties specified in subsection (a), other civil and criminal penalties, including seizure and forfeiture, under the customs laws of the United States shall also apply to importations of rough diamonds in violation of the Act.

REASON FOR CHANGE

The civil and criminal penalties are intended to ensure compliance with the Act.

Technical assistance (Section 9)

PRESENT LAW

No provision.

EXPLANATION OF PROVISION

Section 9 permits the President to direct Federal agencies to provide technical assistance to countries trying to implement the Kimberley Process.

REASON FOR CHANGE

This provision is consistent with Section V(d) of the Kimberley Process Certification Scheme which states that participants should favorably consider requests from other participants for assistance in improving their implementation of the Scheme.

Sense of Congress (Section 10)

PRESENT LAW

No provision.

EXPLANATION OF PROVISION

Section 10 notes that the Kimberley Process is an ongoing process and affirms the importance of statistical analysis and sharing in monitoring the implementation of the Kimberley Process and its effectiveness in reducing and eliminating the trade in conflict diamonds. It provides that the President should work with participants on strengthening the Process through the adoption of measures to share statistics and that the Executive Branch should continue to maintain statistics on imports and exports of rough diamonds, share this data with other participants and interested parties, and take a leadership role in negotiating a standardized methodology for reporting statistics.

REASON FOR CHANGE

Section 10 is consistent with the purposes of Annex III of the Kimberley Process Certification Scheme, concerning statistics, and also with Sections IV(e) and V(b) of the Process, providing for the collecting and sharing of statistics among participants.

Kimberley Process Implementation Coordinating Committee (Section 11)

CURRENT LAW

No provision.

EXPLANATION OF PROVISION

Section 11 establishes a Kimberley Process Implementation Coordinating Committee to coordinate implementation of this Act. The coordinating committee will be co-chaired by the Secretary of Treasury and the Secretary of State and composed in addition of the Secretary of Commerce, the United States Trade Representative, the Secretary of Homeland Security, and a representative of any other agency the President deems appropriate.

REASON FOR CHANGE

Section 11 seeks to ensure effective implementation and congressional oversight of the Act, through creation of a coordinating com-

mittee made up of all the agencies with substantive responsibilities under the Act.

Reports (Section 12)

PRESENT LAW

No provision.

EXPLANATION OF PROVISION

Section 12(a) provides for annual reports to be submitted by the President to Congress on actions taken by countries that export rough diamonds to the United States to control the exports of diamonds through the Kimberley Process, and on the identification of such countries that also export rough diamonds not controlled through the Kimberley Process, where such uncontrolled exports significantly increased the likelihood that such uncontrolled diamonds would be imported into the United States. Section 12(a) requires the President to describe in the annual reports whether there is statistical information or other evidence that would indicate efforts to circumvent the Kimberley Process Certification Scheme, including cutting rough diamonds for the purpose of circumventing the Kimberley Process Certification Scheme.

Under section 12(b) the President is also required to submit semi-annual reports to Congress for each country identified under section 12(a)(3) as having problematic non-Kimberley Process exports. These reports must explain what actions the United States and the identified countries have taken to ensure that non-Kimberley Process controlled diamonds are not being exported to the United States from those countries. These reports must continue until such a country is no longer identified under section 12(a)(3).

REASON FOR CHANGE

Section 12 is intended to inform Congress regarding effective implementation of the Act and of the implementation and operation of the Kimberley Process Certification Scheme.

GAO report (Section 13)

PRESENT LAW

No provision.

EXPLANATION OF PROVISION

Section 13 provides that, not later than 24 months after the effective date of the legislation, the Comptroller General is required to transmit a report to Congress on the effectiveness of this legislation in preventing the importation or exportation of rough diamonds prohibited under Section 4. The report shall include any recommendations on any modifications to the legislation.

REASON FOR CHANGE

Section 13 is intended to inform Congress regarding effective implementation of the Act.

Effective date (Section 14)

PRESENT LAW

No provision.

EXPLANATION OF PROVISION

Section 14 provides an effective date for the Act. Specifically, Section 14 provides that the Act shall take effect on the date the President certifies to Congress that either (1) a waiver granted by the WTO is in effect, or (2) an applicable decision in a United Nations Security Council resolution adopted pursuant to Chapter VII of the United Nations Charter is in effect.

REASON FOR CHANGE

Section 14 is consistent with the Preamble to the Kimberley Process Certification Scheme and the Interlaken Declaration which provide that the international certification scheme for rough diamonds and measures taken to implement the scheme will be consistent with international law governing international trade.

VOTES OF THE COMMITTEE

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that the Clean Diamond Act, as amended, was ordered favorably reported with a quorum present, by voice vote, on April 2, 2003.

BUDGETARY IMPACT

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) and (b) of rule XXVI of the Standing Rules of the Senate, and section 423 of the Unfunded Mandates Reform Act of 1995 (P.L. 104-4), the following letter has been received from the Congressional Budget Office on the budgetary and regulatory impact of the legislation:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 760—Clean Diamond Trade Act

S. 760 would prohibit the importation into and exportation from the United States of any rough diamonds (as defined in the bill) that have not been controlled through the Kimberley Process Certification Scheme (KPCS). The diamonds prohibited from trade are those that come from or go to countries and territories that do not participate in the Certification Scheme. The KPCS outlines a series of recommended standards, practices, and procedures for certification of rough diamonds through an international document that was agreed to by the United States and 47 other countries. In addition, S. 760 would impose civil penalties on individuals who engage in the trade of such diamonds.

CBO estimates that prohibiting the trade of such diamonds would have no effect on federal revenues because the duty rate on such imports is zero. Also, any additional revenues resulting from the civil penalties contained in the bill would be less than \$500,000 per year. The bill would not affect direct spending.

S. 760 would impose a private-sector mandate, as defined by the Unfunded Mandates Reform Act (UMRA), on importers and exporters of certain diamonds. The bill would prohibit the importation into and exportation from the United States of rough diamonds that have not been controlled through the KPCS. According to government and industry sources, the diamond industry began such a prohibition voluntarily on January 1, 2003. Therefore the direct cost of the mandate would be minimal, if any, and would fall well below the annual threshold established by UMRA for private-sector mandates (\$117 million in 2003, adjusted annually for inflation). CBO has determined that the bill contains no intergovernmental mandates as defined in the UMRA and would impose no costs on state, local, or tribal governments.

The CBO staff contacts for this estimate are Annie Bartsch (for federal revenues), and Paige Piper/Bach (for the impact on the private sector). This estimate was approved by G. Thomas Woodward, Assistant Director for Tax Analysis.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds no changes in existing law made by the bill S. 760, as ordered reported.

