



# U.S. Sanctions on Burma

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## Summary

Existing U.S. sanctions on Burma are based on various U.S. laws and presidential executive orders. This report provides a brief history of U.S. policy towards Burma and the development of U.S. sanctions, a topical summary of those sanctions, and an examination of additional sanctions that have been considered, but not enacted, by Congress, or that could be imposed under existing law or executive orders. It also discusses waiver provisions under which they could be removed. The report concludes with a discussion of options for Congress.

The current U.S. sanctions on Burma were enacted, for the most part, due to what the U.S. government saw as a general disregard by Burma's ruling military junta, the State Peace and Development Council (SPDC), for the human rights and civil liberties of the people of Burma. The actions of the new quasi-civilian government in Burma have initiated a discussion on when and how to possibly remove some of the existing sanctions. Since Secretary Hillary Clinton's visit in December 2011, the Obama Administration has announced the partial relaxing of some of the existing sanctions in an effort to promote further reforms in Burma and to support pro-reform officials in the Burmese government. The easing of U.S. sanctions has been generally timed to correspond with a significant political development in Burma.

Burma-specific sanctions began following the Tatmadaw's violent suppression of popular protests in 1988, and have continued through several subsequent periods in which Congress perceived major human rights violations in Burma. The result is a web of overlapping sanctions with differing restrictions, waiver provisions, expiration conditions, and reporting requirements.

The United States currently imposes sanctions specifically on Burma via five laws and four presidential documents. These sanctions can be generally divided into several broad categories, such as visa bans, restrictions on financial services, prohibitions of Burmese imported goods, a ban on new investments in Burma, and constraints on U.S. assistance to Burma. Past Congresses have considered a variety of additional, stricter sanctions on Burma.

In addition to the targeted sanctions, Burma is currently subject to certain sanctions specified in U.S. laws based on various functional issues. In many cases, the type of assistance or relations restricted or prohibited by these provisions is also addressed under Burma-specific sanction laws. The functional issues include the use of child soldiers, drug trafficking, human trafficking, money laundering, failure to protect religious freedoms, violations of workers' rights, and threats to world peace and the security of the United States.

On March 30, 2011, SPDC formally dissolved itself and transferred power to the new Union Government, headed by President Thein Sein, ex-general and prime minister for the SPDC. On four separate occasions since his appointment, President Thein Sein has ordered the release of prisoners, including a number of political prisoners. The Union Government has also initiated ceasefire talks with various ethnic-based militias, and altered laws that allowed opposition parties to participate in parliamentary by-elections held on April 1, 2012. However, the continuation of serious human rights abuses has raised questions about the extent to which there has been significant political change in Burma.

The 112<sup>th</sup> Congress may consider either the imposition of additional sanctions or the removal of some of the existing sanctions, depending on the conduct of Burma's new Union Government and other developments in Burma. This report will be updated as conditions warrant.

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## Overview of Sanctions

The United States imposes sanctions on Burma by a variety of means, including certain laws and presidential executive orders (E.O.s) specifically targeting Burma, as well as laws that impose sanctions on countries for unacceptable behavior related to functional issues of importance to the U.S. government, such as nuclear proliferation or human trafficking. The Burma-specific laws and E.O.s were issued between 1990 and 2008, often in response to actions on the part of Burma’s ruling military junta, the State Peace and Development Council (SPDC), that were considered sufficiently egregious to warrant the imposition of sanctions. The result is a web of overlapping sanctions subject to differing restrictions, waiver provisions, expiration conditions, and reporting requirements.

U.S. sanctions targeted solely at Burma are specified in five federal laws, a series of presidential executive orders, and certain presidential determinations. The five laws are

- **Section 138 of the Customs and Trade Act of 1990** (Section 138) (P.L. 101-382)—requires the President to impose “such economic sanctions upon Burma as the President determines to be appropriate,” unless the President certifies certain conditions pertaining to human rights and counternarcotics have been met;
- **Section 307 of the Foreign Assistance Act of 1961** (Section 307) (P.L. 87–195), as amended by the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (P.L. 103-236)—withholds U.S. contributions to selected international organizations with programs in Burma;
- **Section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997** (Section 570) (P.L. 104-208)<sup>1</sup>—imposes various specific sanctions on Burma, unless the President certifies that certain human rights and democracy standards have been met;
- **The Burmese Freedom and Democracy Act of 2003** (2003 BFDA) (P.L. 108-61)—requires the President to impose a ban on the import of products of Burma; freeze assets of certain Burmese officials; block U.S. support for loans from international financial institutions; and ban visas for certain Burmese officials; and

### Defining “Sanction”

The term “sanction” has a number of different legal meanings, depending on the context and/or circumstances in which it is being used. “Sanction” can be used to describe tacit or explicit approval, but can also be used to describe disapproval. For international matters, the word often refers to measures taken by a nation or a group of nations to coerce another nation to comply with expected conduct or behavior. These may include diplomatic measures (e.g., severing diplomatic ties), economic measures (e.g., restricting trade), or military measures (e.g., the imposition of a “no fly zone”).

For purposes of this report, “sanction” refers to any measure or action of a diplomatic, economic, or military nature taken by a nation (usually, the United States) or a group of nations to coerce Burma to comply with expected conduct or behavior.

<sup>1</sup> The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 was merged into Title 1 of the Omnibus Consolidated Appropriations Act, 1997.

- **The Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act of 2008** (2008 JADE Act) (P.L. 110-286)—bans the direct and indirect import of products containing Burmese jadeite and rubies; expands the list of Burmese officials subjected to visa bans and financial sanctions; and allows for the placement of restrictions on use of correspondent accounts to provide services to Burmese officials.

Four presidential executive orders (E.O.) currently in force impose sanctions on Burma. The four E.O.s are

- **E.O. 13047**—Issued on May 20, 1997, by President Bill Clinton, it bans all new investments in Burma, as required by Section 570;
- **E.O. 13310**—Issued on July 28, 2003, by President George W. Bush, it brings the sanction regime into compliance with certain provisions of the BFDA, including the freezing of assets of certain Burmese officials and the prohibition of the provision of financial services to Burma;
- **E.O. 13448**—Issued on October 18, 2007, by President Bush, it added to the list of Burmese officials and entities subject to the freezing of assets; and
- **E.O. 13464**—Issued on April 30, 2008, by President Bush, it added to the list of Burmese officials and entities subject to the freezing of assets.

On October 3, 1996, President Clinton issued **Presidential Proclamation 6925** denying entry into the United States of “persons who formulate, implement, or benefit from policies that impede Burma’s transition to democracy, and the immediate family members of such persons.”<sup>2</sup> President Bush issued **Presidential Determination No. 2009–11** on January 15, 2009, providing a limited waiver of some of the sanctions in the JADE Act, stating that doing so was “in the national interest of the United States.”<sup>3</sup>

The E.O.s sanctioning Burma rely on the authority vested in the President by the Constitution, the five Burma sanctions laws, and the following laws:

- **The International Emergency Economic Powers Act of 1997, or IEEPA** (P.L. 95-223; 50 U.S.C. 1701 et seq.)—authorizes the President to impose certain types of international trade or financial sanctions to deal with a threat to national security, foreign policy, or economy of the United States; and
- **The National Emergencies Act, or NEA** (P.L. 94-412; 50 U.S.C. 1601 et seq.)—authorizes the President (under certain conditions) to declare a national emergency.

To carry out and execute the authority conveyed by the IEEPA, the President must declare a national emergency by invoking the NEA. Invocations of the IEEPA are subject to annual renewal requirements. Section 301 of U.S.C. Title 3, Chapter 35 allows the President to delegate authority

<sup>2</sup> Presidential Proclamation 6925, “Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Formulate or Implement Policies that are Impeding the Transition to Democracy in Burma or Who Benefit from Such Policies,” 61 *Federal Register* 52233-52234, October 7, 1996.

<sup>3</sup> Executive Determination 2009-11, “Limited Waiver of Certain Sanctions Imposed by, and Delegation of Certain Authorities Pursuant to, the Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act of 2008,” 74 *Federal Register* 3957-3958, January 21, 2009.

(under certain conditions) to other government officials to carry out responsibilities on behalf of the President. In most cases, this has been either the Secretary of State or the Treasury Secretary. President Obama gave official notice to Congress on May 17, 2012, that he was continuing for another year (May 21, 2012-May 20, 2013) the international emergency with respect to Burma, and renewing the provisions of E.O. 13047, E.O. 13310, E.O. 13448, and E.O. 13464, which are still in force.<sup>4</sup>

The implementation of the Burma-specific sanctions instituted by the preceding laws and E.O.s, and that have been delegated to the Treasury Secretary, is governed by Part 537 of Title 31 of the Code of Federal Regulations (CFR). These Burmese sanction regulations cover the import ban, the prohibition of the provision of financial services, and the prohibition of new investments in Burma. Other portions of the CFR cover some portions of Burmese-specific sanctions.<sup>5</sup>

## Recent U.S. Sanctions Policy

Current U.S. policy towards Burma can be characterized as the balancing of bilateral engagement and an assortment of political and economic sanctions—an approach sometimes referred to as “pragmatic engagement.” The stated intent of U.S. policy is to persuade and/or pressure Burma’s year-old, quasi-civilian Union Government to release all political prisoners from detention and advance the nation’s transition to a representative, democratically elected civilian government that will respect the human rights of the people of Burma, including its ethnic minorities.<sup>6</sup> Since Burma’s former ruling military junta formally transferred power to a quasi-civilian government in April 2011, Burma’s Union Government and Union Parliament have implemented a number of political reforms that the Obama Administration sees as progress towards the fulfillment of U.S. objectives in Burma.

Frequently described as being in an “action for action” mode, recent U.S. policy discussions have generally focused on establishing criteria for amending, waiving, and/or removing existing U.S. sanctions. In an April 4, 2012, press briefing, two unnamed senior Administration officials gave some indication of the current principles underlying current Burma policy. The first principle is “to send a clear signal of support for the reform process and reformers.”<sup>7</sup> The second principle is to remove the “bluntness” of the existing sanctions and refocus them onto “the regressive elements, the corrupt elements, the elements that are not looking forward and consistent with reform going forward.”

Over the last 12 months, the Obama Administration has taken several steps designed to foster further reforms in Burma and support individuals identified as being generally supportive of political and economic reforms. The first steps were taken following the second of the four prisoner releases and were announced by Secretary Clinton during her historic trip to Burma.

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<sup>4</sup> The President, “Continuation of the National Emergency with Respect to Burma,” 76 *Federal Register* 28883, May 18, 2011.

<sup>5</sup> For example, Part 447.52 of Title 27 regulates the arms embargo, while Part 41.21 of Title 21 regulates the visa ban on selected Burmese government officials, military officers, and their immediate family members.

<sup>6</sup> The Burmese government recognizes 135 distinct ethnic groups in the country. In addition, there are several ethnic groups, such as the Rohingyas, that are not recognized by the government. The ethnic groups are also referred to as “ethnic minorities” or “nationalities.” This report will generally use the term, “ethnic groups.”

<sup>7</sup> State Department, “Background Briefing on Burma,” press release, April 4, 2012.

Another series of steps was announced following the April 2012 parliamentary by-elections. The latest changes were announced during Foreign Minister Wunna Maung Lwin's visit to Washington, DC, on May 16 and 17, 2012.

## Clinton's Trip to Burma and the First Major Policy Changes

Secretary Clinton traveled to Burma from November 30 to December 2, 2011—the first Secretary of State to visit Burma since John Foster Dulles' trip in 1955. During her visit to Burma, she announced that the United States would consider the exchange of ambassadors and would introduce several new U.S. development programs including an English language program; aid to victims of Burma's internal conflict (especially land mine victims); and academic exchange programs. An official traveling with Secretary Clinton reportedly told the press that initially \$200,000 would be provided for the program for victims of the internal conflict, with the goal of raising the funding to \$800,000, out of existing appropriations. The English language program was to be financed by a \$25 million grant by Brunei. Other programs would use approximately \$1 million out of existing appropriations. In a separate announcement, USAID said that it intended to expand an existing \$24 million anti-malaria program into Burma.<sup>8</sup> All of the initiatives announced by Secretary Clinton during her visit are permissible under the current U.S. sanction regime.

On February 3, 2012, President Obama issued a presidential memorandum waiving Section 110(d)(1)(B) of the Trafficking Victims Protection Act (TVPA) with respect to Burma.<sup>9</sup> The law requires the U.S. executive directors of international financial institutions to vote against, “and use the Executive Director's best efforts” to deny non-trade, non-humanitarian loans or other use of funds to Burma through multilateral development banks (MDBs) and the International Monetary Fund (IMF). While Section 5 of the Burmese Freedom and Democracy Act of 2003 still requires the U.S. executive directors of the IMF and MDBs “to oppose, and vote against the extension by such institution of any loan or financial or technical assistance to Burma,” the Obama Administration maintains that the presidential waiver of the TVPA provision partially opens the door for the IMF and MDBs to provide additional technical support to Burma.

## Major Policy Changes Following the By-Elections

On April 1, 2012, Burma held a parliamentary by-election to fill 45 vacant seats across much of the country.<sup>10</sup> The by-election garnered national and international interest not because of its potential influence on the balance of power within the Parliament, but because of the decision by pro-democracy opposition leader Aung San Suu Kyi and other National League for Democracy (NLD) members to run as candidates. The NLD had refused to run in the November 2010 elections because it considered the election laws overly restrictive.<sup>11</sup> Although an improvement over the November 2010 parliamentary elections, the April by-elections by most assessments did

<sup>8</sup> “USAID Project to Expand to Myanmar,” *Myanmar Times*, December 5-11, 2011.

<sup>9</sup> Office of the Press Secretary, “Presidential Memorandum—Delegation of Authority Pursuant to Sections 110(d)4 and 110(f) of the Trafficking Victims Protection Act of 2000, as Amended,” February 3, 2012.

<sup>10</sup> For more information about the parliamentary by-elections, see CRS Report R42438, *Burma's April Parliamentary By-Elections*, by Michael F. Martin.

<sup>11</sup> For more about the NLD's decision to not participate in the November 2010 elections, see CRS Report R41218, *Burma's 2010 Elections: Implications of the New Constitution and Election Laws*, by Michael F. Martin, and CRS Report R41447, *Burma's 2010 Election Campaign: Issues for Congress*, by Michael F. Martin.

not achieve the four standards set forth by United Nations Special Rapporteur Tomás Quintana—free, fair, transparent, and inclusive.<sup>12</sup> According to the official results announced by the Union Election Commission, Aung San Suu Kyi and 42 of her fellow NLD candidates won, with the 2 remaining seats going to a candidate from the pro-military Union Solidarity and Development Party (USDP) and a candidate from the Shan Nationalities Democratic Party (SNDP).

The Obama Administration issued a statement on April 1, congratulating “the people of Burma on their participation in the electoral process, and Aung San Suu Kyi and the National League for Democracy on their strong showing in the polls.”<sup>13</sup> A more detailed response came two days later, after the official results had been announced. On April 4, 2012, Secretary Clinton announced that United States would undertake five steps to support and foster reforms in Burma “in light of the by-elections and other progress in recent months.”<sup>14</sup> The five steps are

1. Seeking an agreement with Burma on the exchange of fully accredited ambassadors—it has subsequently been revealed that Special Representative and Policy Coordinator for Burma Derek Mitchell will be the U.S. nominee;
2. Establishing an in-country USAID mission and supporting a normal country program for the United Nations Development Program (UNDP)—Currently, USAID activities for Burma are being administered by the mission in Bangkok, Thailand; for a number of years, the United States has restricted UNDP activities in Burma to prevent any funds benefiting the Burmese government, including local officials;
3. Relaxing restrictions on private U.S. organizations providing nonprofit activities in Burma designed to promote democracy, provide healthcare, or offer education;
4. Facilitating travel to the United States for selected pro-reform Burmese officials; and
5. Beginning the process of a targeted easing of the ban on the export of U.S. financial services and investment as part of a broader effort to help accelerate economic modernization and political reforms.<sup>15</sup>

All of these steps are to be taken using existing executive authority granted by the constitution and relevant federal laws, including the major Burmese sanctions laws. According to Secretary Clinton, these five steps were chosen following consultation with Congress, “as well as our allies and friends in Europe and Asia.”<sup>16</sup>

In a separate background briefing organized by the State Department on the same day as Secretary Clinton’s announcement, two unnamed senior Administration officials provided additional information about the five steps.<sup>17</sup> Regarding relaxing restrictions on private U.S.

<sup>12</sup> Special Rapporteur Quintana included the four standards in his most recent progress report to the United Nations Human Rights Council (United Nations Human Rights Council, *Progress Report of the Special Rapporteur of the Situation of Human Rights in Myanmar, Tomás Ojea Quintana, A/HRC/19/67*, March 7, 2012).

<sup>13</sup> Office of the Press Secretary, White House, “Statement by the Press Secretary on the Elections in Burma,” press release, April 2, 2012.

<sup>14</sup> Secretary of State, “Recognizing and Supporting Burma’s Democratic Reforms,” press release, April 4, 2012.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> State Department, “Background Briefing on Burma,” press release, April 4, 2012.

organizations providing nonprofit activities in Burma, the officials said that the State Department was working with the Department of Treasury's Office of Foreign Assets Control (OFAC) to create an "expanded general license" to facilitate the approval of such activities. OFAC approved this new general license on April 17, 2012, authorizing the exportation and reexportation of financial services to Burma for six types of not-for-profit projects.<sup>18</sup> With respect to the easing of trade and investment restrictions, the officials indicated that the intent is to identify areas that will have an "immediate impact on the livelihood of the people in the country" and will reduce impediments to the reform process. When asked to identify economic areas that may be chosen for the easing of trade and investment restrictions, the officials specifically mentioned agriculture, banking, tourism, and possibly telecommunications. They also stated that the United States would have to be very careful regarding activities in "more regressive sectors," such as gems, timber, and activities in ethnic minority areas where there is a history of the Burmese government approving projects opposed by the local population.

In terms of the method of implementing the five steps, the officials said that the plan is to use existing waiver authorities and/or to rescind executive orders, and that there was "no plan at the current time to ask [Congress] to get rid of anything legislative."<sup>19</sup> Some of the announced steps—in particular, the establishment of a USAID mission in Burma, U.S. support for UNDP projects in Burma, the relaxation of restrictions on nonprofit activities in Burma by private entities, and the facilitation of travel by selected Burmese officials—may require the explicit invoking of presidential authority in existing sanction laws (possibly involving the issuance of a presidential executive order), as well as the delivery to Congress of a presidential determination and certification stipulating that the situation meets the waiver provisions in existing sanction laws. The implications of each of the five announced steps for existing U.S. sanctions will be discussed in the section, "Summary of Burma-Specific Sanctions," below.

## Policy Changes Announced on May 17

On May 16, 2012, Burma's Foreign Minister Wunna Maung Lwin arrived in Washington, DC, for a two-day visit at the invitation of Secretary Clinton.<sup>20</sup> During the foreign minister's visit, the Obama Administration announced three significant developments in U.S. policy towards Burma:

1. The White House released a Presidential Memorandum renewing for one year the national emergency with respect to Burma, and thereby extending the sanctions contained in E.O. 13047, E.O. 13310, E.O. 13448, and E.O. 13464 for another year.<sup>21</sup>
2. President Obama formally nominated Derek Mitchell to be the U.S. ambassador to Burma.<sup>22</sup>

<sup>18</sup> The six types of projects are ones that (1) meet basic human needs; (2) promote democracy and good governance; (3) provide education; (4) conduct sporting activities; (5) support non-commercial development projects; and (6) foster religious activities (Department of the Treasury, Office of Foreign Assets Control, "General License No. 14-C," Burmese Sanctions Regulations 31 C.F.R. Part 537, April 17, 2012).

<sup>19</sup> Ibid.

<sup>20</sup> Following his stay in Washington, DC, Foreign Minister Wunna Maung Lwin traveled to New York City to see U.N. Secretary General Ban Ki-moon.

<sup>21</sup> Office of the Press Secretary, the White House, "Continuation of the National Emergency with Respect to Burma," Presidential Memorandum, May 17, 2012.

<sup>22</sup> Office of the Press Secretary, the White House, "Statement by the President on Burma," press release, May 17, 2012.

3. President Obama announced an easing of U.S. “bans on the exportation of financial services and new investment in Burma.”<sup>23</sup>

Following her meeting with the foreign minister, Secretary Clinton provided additional details of the easing of the investment and financial service bans.<sup>24</sup> According to Secretary Clinton, steps will be taken “to permit American investment in the country and export of U.S. financial services.” She stated that the State Department intended to work with Congress, the U.S. Treasury, and other government agencies “to be sure we are promoting responsible investment and deterring abuses.” She also called upon the U.S. business community to set a “good corporate example of doing business in a transparent, responsible manner.”

In a subsequent press briefing, unnamed senior Administration officials provided more details about the easing of the investment and financial services ban.<sup>25</sup> U.S. investors in Burma will be allowed to invest in all sectors and export financial services to any Burmese entity, so long as the investment partner or entity in Burma is not on OFAC’s Specially Designated Nationals (SDN) list. To ensure that “bad actors” will not receive benefits from the U.S. easing of sanctions, the SDN is to be regularly updated. The criteria for placing a person or company on the SDN list are still to be determined, but will probably include evaluations of business practices and attitudes towards Burma’s reforms. With regards to Clinton’s call for U.S. businesses to be good examples in Burma, the State Department plans on working with Congress, U.S. companies, human rights organizations, non-governmental organizations active in Burma, and other interested parties to develop voluntary corporate governance standards for U.S. companies doing business in Burma.

It remains to be determined the precise methods by which the Obama Administration intends to ease the ban on U.S. investments and export of financial services to Burma. The decision to renew the national emergency with respect to Burma, combined with comments made by various officials, would seem to imply that the easing of the sanctions is to be done in the form of a waiver, rather than as a removal, of the restrictions. The implications of easing of these selected sanctions will be discussed in the section, “Summary of Burma-Specific Sanctions,” below.

## Brief History of U.S. Sanctions on Burma

The current U.S. sanctions on Burma are the end result of a general, but uneven decline in U.S. relations with Burma and its military, the Tatmadaw, since World War II. For the most part, the decline is due to what the U.S. government sees as a general disregard by the Burmese military for the human rights and civil liberties of the people of Burma. However, part of the tensions between the Tatmadaw and the United States can be attributed to a failure to address Burma’s internal security concerns in the early years after its independence.

During World War II, the United States utilized Burma as a base of operations against Japanese forces in China and Southeast Asia, engendering generally cordial relations with Burma’s civilian and military leadership. Following the war, the former British colony of Burma became an independent nation, led by a civilian government. The new nation became a member of the

<sup>23</sup> Ibid.

<sup>24</sup> Office of the Spokesperson, State Department, “Remarks of Secretary of State Hillary Rodham Clinton and Foreign Minister of Burma U Wunna Maung Lwin after their Meeting,” press release, May 17, 2012.

<sup>25</sup> Department of State, “Background Briefing on Burma,” press release, May 17, 2012.

United Nations in 1948, was a founding member of the General Agreement on Tariffs and Trade (GATT), and joined the International Monetary Fund (IMF) in 1952—with the full support of the United States. The United States and Burma also established full diplomatic relations.

Relations between the two nations began to sour following World War II for various reasons. First, Burma was increasingly frustrated by U.S. reluctance to resolve the status of displaced Kuomintang (KMT) soldiers operating out of northeastern Burma against the newly established People's Republic of China (PRC).<sup>26</sup> In 1953, U.S. economic assistance to Burma temporarily ceased in part because of the friction over the KMT soldiers in Burma. Second, Burma's civilian government proved to be unstable, due in part to various ethnic-based militia groups operating in the country, and in part due to a 1962 coup d'état staged by the military under the name of the Burmese Socialist Programme Party (BSPP). The new military government chose to foster closer ties to the PRC, a decision that the United States did not like. Third, the military government also demonstrated a general lack of respect for the human rights of its citizens, clamping down on opposition groups calling for a return to civilian rule.

Despite the cooling of relations, U.S. policy towards Burma remained relatively normal. The United States also accepted Burma as one of the original beneficiaries of its Generalized System of Preference (GSP) program in 1976. It also granted Burma Most Favored Nation (MFN, now referred to as Normal Trade Relations, or NTR) status, and supported the provision of developmental assistance by international financial institutions. There were also close military to military relations (including a major International Military Education and Training [IMET] program) until 1988.

The implementing of sanctions on Burma did not begin until after the Tatmadaw brutally suppressed a peaceful, popular protest that has become known as the 8888 Uprising. Starting in the fall of 1987, popular protests against the military government sprang up throughout Burma, reaching a peak in August 1988. On August 8, 1988, the military squashed the protest, killing and injuring an unknown number of protesters. In the aftermath of the event, the military regrouped and the State Law and Order Restoration Council (SLORC) assumed power.

Three days following the crackdown, the Senate passed S.Res. 464, condemning the killings and mass arrests, supporting a return to democracy in Burma, and calling on the Reagan Administration to raise the issue of human rights and reconciliation with Burmese officials. On September 7, 1988, the House of Representatives passed H.Res. 529 condemning the killing of unarmed protesters, paying tribute to the people of Burma and their struggle for democracy, and calling on the executive branch to review assistance programs in Burma. The Reagan Administration responded on September 23, 1988, by suspending all U.S. aid to Burma, including counternarcotics programs, and stopping all arms sales—starting the gradual progress of sanctions on Burma. On April 13, 1989, President George H. W. Bush issued Presidential Proclamation 5955, amending the Generalized System of Preferences (GSP) program and suspending preferential treatment.<sup>27</sup>

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<sup>26</sup> When the KMT government collapsed in 1949, a group of about 12,000 KMT soldiers retreated into Burma and continued their military operations against the PRC and its army, the People's Liberation Army (PLA), causing problems in Burma's relationship with the PRC. Burma asked the United States to press its ally, the Republic of China, now located in Taiwan, to remove their troops from Burma. Although the United States did raise the issue with the Republic of China starting in 1953, the KMT troops remained in Burma until 1961, when they relocated into Thailand, but continued to move across the border into Burma.

<sup>27</sup> George H.W. Bush, "Amending the Generalized System of Preferences," Presidential Proclamation 5955, April 13, (continued...)

After assuming power, SLORC announced that it intended to expedite the return to civilian rule by holding parliamentary elections to form a Pyithu Hluttaw (Union Assembly) on May 27, 1990. On September 27, 1988, SLORC released a new law governing the registration of political parties, and on May 31, 1989, it issued a new law governing the upcoming parliamentary election.<sup>28</sup> Although 235 political parties registered for the election, only 4 parties won more than 10 of the 485 contested seats.<sup>29</sup> In a surprise to everyone, the National League for Democracy (NLD), led by Aung San Suu Kyi, received 59.9% of the valid votes and won 382 seats, while SLORC's political party, the National Unity Party, received 21.2% of the vote, but only 10 seats.

SLORC and Burma's military were clearly shocked by the election results, and refused to allow the Union Assembly to meet. Instead, the Burmese military arrested and detained many of the opposition leaders, including Aung San Suu Kyi. Protests, led by Buddhist monks and university students, were brutally suppressed. SLORC declared martial law.

Congress responded to the post-election crackdown by including Burmese sanction language in the Customs and Trade Act of 1990 (P.L. 101-382), which it passed on August 20, 1990. Section 138 of the law granted the President the authority to impose "such economic sanctions upon Burma as the President determines to be appropriate, including any sanctions appropriate under the Narcotics Control Trade Act of 1986." A version of the act which passed the Senate by a vote of 92-0 would have prohibited all imports from Burma.

Prior to the passage of Customs and Trade Act of 1990, the Bush Administration had suspended Burma's eligibility for the Generalized System of Preferences (GSP) program on April 13, 1989.<sup>30</sup> President Bush also designated Burma as a drug-producing and/or drug-trafficking country under the Foreign Assistance Act of 1961 on February 28, 1990, which required the United States to oppose loans to Burma by international financial institutions.<sup>31</sup> After the passage of Customs and Trade Act of 1990, the Bush Administration invoked the law's authority on August 5, 1991, and refused to renew the Bilateral Textile Agreement with Burma, which had lapsed on December 31, 1990.<sup>32</sup>

During the 1990s, Congress considered a number of bills and resolutions calling for additional sanctions on Burma. Most of those measures failed to emerge from committee, with a few notable exceptions. On April 30, 1994, Congress passed the Foreign Relations Authorization Act, Fiscal

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(...continued)

1989.

<sup>28</sup> There is some controversy over the intent of the election. According to Burma's 1974 constitution, the Union Assembly was the "highest organ of state power." In addition, SLORC repeatedly stated that the May 1990 election was to be a "multiparty democratic general election." As a result, many observers assumed that the newly elected Union Assembly would assume power. However, after the election, SLORC issued a statement on July 27, 1990, indicating that the purpose of the May 1990 election was to create a constitutional convention, and not the transfer of power to a civilian government.

<sup>29</sup> These were the National League for Democracy with 392 seats, the Shan Nationalities League for Democracy with 23 seats, the Arakan League for Democracy with 11 seats, and the National Unity Party with 10 seats. Of the 235 registered political parties, only 93 fielded candidates.

<sup>30</sup> "Memorandum on Amendments to the Generalized System of Preferences," Office of the President, April 13, 1989.

<sup>31</sup> "Presidential Determination No. 90-12—Memorandum on Narcotics Control Certification," Office of the President, February 28, 1990.

<sup>32</sup> The United States and Burma had a bilateral textile agreement covering selected articles of apparel from January 1, 1987, to December 31, 1990.

Years 1994 and 1995 (P.L. 103-236) which amended the Foreign Assistance Act of 1961 and withheld a portion of U.S. contributions to international organizations with programs for Burma, including the United Nations Development Program (UNDP), but excluding IAEA and UNICEF. Language restricting U.S. funding for UNDP if it conducted programs in Burma was included in legislation up to FY2008, but not since then.<sup>33</sup>

In July 1995, the Free Burma Act of 1995 (S. 1092) was introduced, which would have placed a broad range of sanctions on Burma, including a ban on U.S. investment and assistance, the suspension of GSP privileges and normal trade relations, the prohibition of all imports of Burmese goods, travel restrictions to and from Burma, and U.S. opposition to all multilateral assistance. According to some scholars, the severity of the sanctions in this bill was sufficient to persuade SLORC to release Aung San Suu Kyi from house arrest on July 10, 1995.

Even after the release of Aung San Suu Kyi, Congress approved new sanctions on Burma in Section 570 of the Omnibus Consolidated Appropriations Act, 1997 (P.L. 104-208), including a cessation of all non-humanitarian assistance, a ban on the issuance of entry visas for Burmese government officials, and instructions for U.S. representatives for international financial institutions to vote against loans or funding to Burma. On October 3, 1996, President Clinton issued Presidential Proclamation 6925, suspending visas for “persons who formulate, implement, or benefit from policies that impede Burma’s transition to democracy, and the immediate family members of such persons.”<sup>34</sup> In addition, the law required the President to prohibit new investments in Burma by U.S. persons. On May 20, 1997, President Clinton released E.O. 13047 banning all new investments in Burma.

Since 2000, additional bills and resolutions have been introduced in Congress seeking to apply more sanctions on Burma. In October 2000, identical bills were introduced in the House and the Senate (H.R. 5603 and S. 3246) that would have banned all textile and apparel imports from Burma. In the spring of 2001, similar bills (H.R. 2211 and S. 926) were introduced that would have “prohibited the importation of any article that is produced, manufactured, or grown in Burma.” However, Congress did not pass any new sanction legislation until after the spring 2003 crackdown on opposition parties (which included the detention of Aung San Suu Kyi and other opposition leaders), when it approved the Burmese Freedom and Democracy Act of 2003 (P.L. 108-61). Similarly, Congress did not pass the 2008 JADE Act until the SPDC crushed a nationwide protest initiated by Buddhist monks in the autumn of 2007—the so-called “Saffron Revolution.” After the protests had been quashed, the SPDC arrested and imprisoned many of the leaders, and defrocked and relocated a number of the Buddhist monks involved in the protests.

<sup>33</sup> Section 668(b) of the Consolidated Appropriations Act, 2008 (P.L. 110-161) stipulated:

Twenty percent of the funds appropriated by this act under the heading ‘International Organizations and Programs’ for a United States contribution to the United Nations Development Program (UNDP) shall be withheld from disbursement until the Secretary of State reports to the Committees on Appropriations that UNDP is—

- (1) giving adequate access to information to the Department of State regarding UNDP’s programs and activities as requested, including in North Korea and Burma;
- (2) conducting oversight of UNDP programs and activities globally; and
- (3) implementing a whistleblower protection policy equivalent to that recommended by the United Nations Secretary General on December 3, 2007.

<sup>34</sup> Executive Order 6925, “Suspension of Entry as Immigrants and Nonimmigrants of Persons who Formulate or Implement Policies that are Impeding the Transition to Democracy in Burma or Who Benefit from Such Policies,” 61 *Federal Register* 52233-52234, October 7, 1996.

The Bush Administration did not take significant action on Burma until after the attacks on the Burmese opposition in the spring of 2003 and the passage of the Burmese Freedom and Democracy Act of 2003 (BFDA). Using authority granted by the BFDA and other laws (see “Summary of Burma-Specific Sanctions”), President George W. Bush issued E.O. 13310, E.O. 13448, and E.O. 13464 on July 28, 2003, October 18, 2007, and April 30, 2008, respectively. Since assuming office, President Barack Obama’s actions regarding Burmese sanctions have included renewing the international emergency with respect to Burma (thereby extending the sanctions under E.O. 13047, E.O. 13310, E.O. 13448, and E.O. 13464), and issuing a presidential determination and a memorandum waiving some of the sanctions related to the Victims of Trafficking and Violence Protection Act of 2000.

There are some distinct patterns in the history of U.S. relations with Burma. First, despite the general decline in relations following World War II, the imposition of sanctions did not begin until after the suppression of the 8888 Uprising in 1988. Second, subsequent U.S. sanctions have generally been imposed after Burma’s military has severely violated the human rights and civil liberties of its political opponents and/or the Burmese people. Third, Congress has been more proactive in pushing for the imposition of sanctions on Burma than the White House. Fourth, it is unclear if the imposition of sanctions has had a demonstrable effect on the SPDC or its predecessors. Fifth, it is equally unclear if the absence of U.S. sanctions on Burma would have led to an improvement in the political situation in Burma.

## Summary of Burma-Specific Sanctions

The existing U.S. sanctions specifically targeted at Burma can be generally divided into several broad categories. First, there are bans on issuing visas to certain Burmese government officials (particularly the leadership of the State Peace and Development Council [SDPC] and the Union Solidarity Development Association [USDA]), members of their families, and their business associates. Second, there are restrictions on the provision of financial services to certain Burmese government officials, members of their families, and their business associates. Third, certain assets of selected individuals held by U.S. entities have been “frozen.” Fourth, there is a general prohibition on the import of goods of Burmese origin. Fifth, there is a prohibition on the import of certain types of goods and goods from certain companies. Sixth, there is a ban on new U.S. investments in Burma, including investments in third country companies. Seventh, there are restrictions on the provision of bilateral and multilateral assistance to Burma.

Some of the types of sanctions are included in more than one of the laws or E.O.s listed above, with at times apparently overlapping provisions. In addition, depending on the specific provisions of the laws or E.O.s, the sanctions may be subject to differing presidential waiver provisions, renewal or extension conditions, reporting requirements, etc. A summary of the various provisions in the laws or E.O.s for each type of sanction follows in tabular form. In cases where the Obama Administration has indicated its intent to relax or modify the existing type of sanction, a brief description of what steps may be necessary to implement the proposed change is provided, and the relevant waiver or removal conditions are highlighted in the table.

### Visa Bans

There are three laws that include restrictions on the issuance of visas to certain Burmese nationals: Section 570 of the Foreign Operations, Export Financing, and Related Programs

Appropriations Act, 1997; the 2003 BFDA; and the 2008 JADE Act, plus Presidential Proclamation 6925.<sup>35</sup> The nature and scope of the visa restrictions differ in each case. In addition, although there is no language in the 2008 JADE Act indicating that it supersedes the prior visa restrictions, a representative of the State Department indicated that their current interpretation is that 2003 BFDA provisions authorize a visa ban, but do not require their implementation, and that so far no President has invoked the visa ban authority granted in the 2003 BFDA.

Secretary Clinton in her April 4 remarks said that the Obama Administration was prepared to facilitate “travel to the United States for selected government officials and parliamentarians.”<sup>36</sup> In a subsequent press briefing, unnamed Administration officials indicated that the intent is to allow visits by “select reform-minded authorities.”<sup>37</sup> Existing sanctions laws—most notably Section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 and the 2008 JADE Act—authorize the President to waive restrictions on the issuance of visas to Burmese officials. In the case of the 2008 JADE Act, the President is to determine and certify in writing to Congress that the waiver is in the national interest of the United States. Presumably, such a written notification to Congress is required for each case in which the President invokes the authority to waive the visa ban.

**Table I. Visa Bans**

|                        | <b>Presidential Proclamation 6925</b>   | <b>Section 570</b>                                   | <b>2003 BFDA</b>  | <b>2008 JADE Act</b>   |
|------------------------|---|--|---|--|
| <b>Main Provisions</b> | Suspends the entry into the United States as immigrants or nonimmigrants “persons who formulate, implement, or benefit from policies that impede Burma’s transition to democracy,” and the immediate family members of such persons | No entry visas for “any Burmese government official” | President is authorized to deny visas and entry to former and present leadership of the SPDC and the USDA | Certain categories of people are ineligible for U.S. visa: former and present leaders of the SPDC, USDA, or the Burmese military; officials of the SPDC, USDA, or Burmese military that are “involved in the repression of peaceful political activity or in other gross violations of human rights in Burma or in the commission of other human rights abuses ...”; persons providing substantial economic and political support for the SPDC, the USDA, or the Burmese military; and the immediate family members of any of the preceding people |

<sup>35</sup> Presidential Proclamation 6925, “Suspension of Entry as Immigrants and Nonimmigrants of Person who Formulate or Implement Policies that are Impeding the Transition to Democracy in Burma or Who Benefit from Such Policies,” 61 *Federal Register* 52233-52234, October 7, 1996.

<sup>36</sup> Secretary of State, “Recognizing and Supporting Burma’s Democratic Reforms,” press release, April 4, 2012.

<sup>37</sup> State Department, “Background Briefing on Burma,” press release, April 4, 2012.

|   | <b>Presidential Proclamation 6925</b>  | <b>Section 570</b>   | <b>2003 BFDA</b>   | <b>2008 JADE Act</b>   |
|---|--|--|--|--|
| <b>Conditions or Exceptions</b>                     | <p>Does not apply to officials assigned to Burmese missions in the United States, and support staff and visitors who support the work of Burmese missions in the United States</p> <p>Does not apply to persons whose entry is required by international agreements</p>  | As required by treaty obligations or to staff of Burmese mission in the United States  | Secretary of State shall coordinate list of banned individuals on a biannual basis with representative of the European Union (EU)  | Shall not be construed to conflict with visa eligibility provisions in P.L. 110-161 for ethnic groups in Burma who were forced to provide labor or support for Burmese military; Secretary of State may authorize exceptions to permit the operation of diplomatic missions, to conduct official government business in Burma, to permit U.S. citizens to visit Burma, and permit compliance with international agreements             |
| <b>Waiver Provisions</b>                            | Permits the Department of State to waive the entry ban if “the entry of such person would not be contrary to the interests of the United States”   | Temporary or permanent presidential waiver if sanctions are “contrary to the national security interests of the United States”   | None specified   | Presidential waiver allowed only if he determines and certifies in writing to Congress that it is “in the national interests of the United States”   |
| <b>Termination, Duration, or Renewal Conditions</b> | May be repealed, in whole or in part, by Secretary of State, if “the Burmese regime has released NLD members currently being held for political offenses and other pro-democracy activists; enters into dialogue with the democratic opposition; or makes significant progress toward improving the human rights situation in the country” | “Until such time as the President determines and certifies to Congress that Burma has made measurable and substantial progress in improving human rights practices and implementing democratic government” | The President may terminate “upon request of a democratically elected government in Burma” and when conditions in Section (3)(a)(3)—progress on human rights, release of all political prisoners, freedom of speech and the press, freedom of association, peaceful exercise of religion, democratic governance, not designated as “a country of interest” for narcotics trafficking—have been met | Until the President determines and certifies “to the appropriate congressional committees” that the SPDC has released all political prisoners; entered into “a substantial dialogue with democratic forces led by the National League for Democracy and the ethnic minorities of Burma on transitioning to democratic government under the rule of law”; and allowed humanitarian access to people in areas of armed conflict in Burma |

|   | Presidential Proclamation 6925 | Section 570  | 2003 BFDA  | 2008 JADE Act   |
|---|--------------------------------|--|--|---|
| <b>Report or Publication Requirements</b> | none                           | Every six months after the enactment of the act, the President shall report to the chairmen of the Committee on Foreign Relations, the Committee on International Relations [Foreign Affairs] and the House and Senate Appropriations Committees on: progress towards democratization in Burma; progress on improving the quality of life of the Burmese people; and progress made in developing a multilateral strategy towards Burma | List of banned individuals to be posted on Department of State's web page <sup>a</sup> | No later than 120 days after enactment [November 26, 2008] the President shall transmit to the appropriate congressional committees a list of sanctioned officials; updated sanctioned officials lists shall be provided to the appropriate congressional committees "as new information becomes available" |

- a. According to the State Department, this reporting requirement is no longer in effect. Also, the State Department asserts that visa application information is strictly confidential, making it illegal to post the list on its webpage.

## Restrictions on Financial Services

Restrictions on the provision of certain types of financial services to Burma from the United States or by a "United States person"<sup>38</sup> are in E.O. 13047, E.O. 13310, and the 2008 JADE Act. The 2008 JADE Act also allows the Secretary of the Treasury to place restrictions on the use of correspondent or payable-through accounts in U.S. financial institutions, but the Secretary has not exercised this option.

On April 4, 2012, Secretary Clinton announced that the Obama Administration was "beginning the process of a targeted easing of our ban on the export of U.S. financial services and investment as part of a broader effort to help accelerate economic modernization and political reform."<sup>39</sup> Two unnamed senior Administration officials provided some more details of this proposed easing, indicating that priority will be given to areas and sectors that "are most likely to make an immediate impact on the livelihood of the people in the country," and areas that are "impeding

<sup>38</sup> By the definitions included in both E.O.'s and the 2008 JADE Act, a "United States person" includes a U.S. citizen, permanent resident alien, entity organized under U.S. law, or any person in the United States.

<sup>39</sup> Secretary of State, "Recognizing and Supporting Burma's Democratic Reforms," press release, April 4, 2012.

the process of reform.”<sup>40</sup> Regarding areas impeding the process of reform, the officials specifically mentioned the inability to use credit cards in Burma.

On May 17, Secretary Clinton stated, “Today, I am announcing new steps to permit American investment in the country and the export of U.S. financial services—the most significant adjustments to our sanctions to date.”<sup>41</sup> She also said that the United States will “allow Burmese citizens access to international credit markets and dollar-based transactions.”

Section 5(b)(2) of the 2008 JADE Act prohibits engaging in financial transactions with designated Burmese nationals. Section 2 of E.O. 13310 established the general prohibition on the export or reexport of financial services to Burma, subject to the restrictions on financial transaction sanctions contained in Section 203(b) of IEEPA.<sup>42</sup> Section 13 allows the continuation of financial transactions related to U.S. investments or agreements in Burma that pre-date the implementation of the new investment ban on May 21, 1997.

Given that these provisions of E.O. 13310 are based on IEEPA, the President has the authority to waive, amend, or terminate the general prohibition of the export or reexport of financial services to Burma. However, Section 1703 of IEEPA requires that the President report to Congress anytime he exercises IEEPA authority. The report to Congress must contain

- the circumstances which necessitate such exercise of authority;
- why the President believes those circumstances constitute an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States;
- the authorities to be exercised and the actions to be taken in the exercise of those authorities to deal with those circumstances;
- why the President believes such actions are necessary to deal with those circumstances; and
- any foreign countries with respect to which such actions are to be taken and why such actions are to be taken with respect to those countries.

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<sup>40</sup> State Department, “Background Briefing on Burma,” press release, April 4, 2012.

<sup>41</sup> Office of the Spokesperson, State Department, “Remarks of Secretary of State Hillary Rodham Clinton and Foreign Minister of Burma U Wunna Maung Lwin after their Meeting,” press release, May 17, 2012.

<sup>42</sup> Section 203(b) of IEEPA precludes the President using sanction authority to prohibit financial transactions “ordinarily incident to travel to or from any country.”

**Table 2. Restrictions on Financial Services**

|                                 | <b>E.O. 13047</b>   | <b>E.O. 13310</b>  | <b>2008 JADE Act</b>  |
|---------------------------------|---|--|---|
| <b>Main Provisions</b>          | Prohibits the “approval or other facilitation by a United States person, wherever located, of a transaction by a foreign person where the transaction would constitute a new investment in Burma prohibited by this order if engaged in by a United States person or within the United States”; and “any transaction by a United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order” | Prohibits the export or reexport, directly or indirectly, of financial services to Burma either from the United States or by a “United States person, wherever located”; and “approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by this order if performed by a United States person or within the United States” | No United States person may engage in a financial transaction with the SPDC or with a person ineligible for a U.S. visa under the provisions of this act (see <b>Table 1</b> ); prohibited financial transactions include payments or transfers of property, transactions involving the transfer of anything of economic value; Secretary of the Treasury may prohibit or impose conditions on the opening or maintaining of a correspondent or payable-through account by any financial institution organized under U.S. law if the Secretary determines the account might be used by a foreign banking institution holding property for the SPDC or with a person ineligible for a U.S. visa under the provisions of this act or to conduct a transaction on their behalf |
| <b>Conditions or Exceptions</b> | Provisions do not prohibit the entry into, performance of, or financing of a contract to sell or purchase goods, services, or technology, except new contracts for the development of resources in Burma providing payment for the supervision or guarantee of another person’s performance, payment for shares, equity interest, royalties, earnings, and profits  | Exceptions as provided in Section 203(b) of IEEPA (50 U.S.C. 1702(b)); revokes provisions in E.O. 13047 “to the extent that they are inconsistent with this order”   | Exceptions for transactions authorized under E.O. 13047 and E.O. 13310; restrictions do not apply to contracts or other financial transactions for nongovernmental humanitarian organizations in Burma; Secretary of the Treasury may authorize exceptions to permit the operation of diplomatic missions, to conduct official government business in Burma, to permit U.S. citizens to visit Burma, and permit compliance with international agreements; Secretary of the Treasury must consult with Secretary of State, Attorney General and the Chairman of the Federal Reserve’s Board of Governors prior to invoking option to prohibit or impose conditions on correspondent or payable-through accounts  |
| <b>Waiver Provisions</b>        | None specified  | None specified   | Presidential waiver allowed only if he determines and certifies to the appropriate congressional committees that it is “in the national interests of the United States”   |

|   | <b>E.O. 13047</b> | <b>E.O. 13310</b> | <b>2008 JADE Act</b>   |
|---|-------------------|-------------------|--|
| <b>Termination, Duration, or Renewal Conditions</b> | None specified    | None specified    | Until the President determines and certifies “to the appropriate congressional committees” that the SPDC has released all political prisoners; entered into “a substantial dialogue with democratic forces led by the National League for Democracy and the ethnic minorities of Burma on transitioning to democratic government under the rule of law”; and allowed humanitarian access to people in areas of armed conflict in Burma |
| <b>Report or Publication Requirements</b>           | None specified    | None specified    | No later than 120 days after enactment [November 26, 2008] the President shall transmit to the appropriate congressional committees a list of sanctioned officials; updated sanctioned officials lists shall be provided to the appropriate congressional committees “as new information becomes available”  |

### “Frozen Assets”

The “freezing” of assets of sanctioned Burmese officials is included in three executive orders—E.O. 13310, E.O. 13448, and E.O. 13464—as well as the 2003 BFDA and the 2008 JADE Act. Each of the successive executive orders broadened the list of Burmese persons and entities subjected to the asset freeze. The 2008 JADE Act directly tied the list of sanctioned persons to the visa ban list.

Table 3. “Frozen Assets”

|                        | 2003 BFDA  | E.O. 13310  | E.O. 13448  | E.O. 13464  | 2008 JADE Act  |
|------------------------|--|---|---|---|--|
| <b>Main Provisions</b> | Requires U.S. financial institutions to freeze the funds and assets belonging to the SPDC, the senior officials of the SPDC or the USDA; requires the President to promulgate regulations no later than 60 days after enactment [September 26, 2003] for the enforcement of this act; U.S. financial institutions shall report frozen funds or assets to the Office of Foreign Assets Control (OFAC) | Blocks the transfer, payment, export, or withdrawal of all property and interests in property of sanctions persons if said property is in or comes into the United States, or the property is or comes within the possession or control of U.S. persons; sanctioned persons include persons listed in Annex of the order, or “any person determined by the Secretary of Treasury, in consultation with the Secretary of State, to be: a senior official of the SPDC, USDA, or a successor entity”; or “owned or controlled by, or acting or purporting to act for on the behalf of, directly or indirectly, any person whose property and interests are blocked pursuant to this order” | Blocks the transfer, payment, export, or withdrawal of all property and interests in property of sanctioned persons if said property is in or comes into the United States, or said property or interests in property are or come within the possession or control of U.S. persons; sanctioned persons include persons listed in Annex of the order, or “any person determined by the Secretary of the Treasury, in consultation with the Secretary of State,” to be a senior official of the SPDC, USDA, or a successor entity; “responsible for, or to have participated in, human rights abuses in Burma; engaged in, or have engaged in activities facilitating public corruption by senior officials of the Government of Burma”; providing financial, material, logistical, or technical support for the Government of Burma, the SPDC, the USDA, or successor entities, or senior officials of the foregoing; acting on behalf of a sanctioned person; or spouse or dependent child of sanctioned person | Blocks the transfer, payment, export, or withdrawal of all property and interests in property of sanctioned persons if said property is in or comes into the United States, or said property or interests in property are or come within the possession or control of U.S. persons; sanctioned persons include persons listed in Annex of the order, or “any person determined by the Secretary of the Treasury, in consultation with the Secretary of State,” to be owned or controlled by, directly or indirectly, the Government of Burma, or official(s) of the Government of Burma; to have provided financial, material, logistical, or technical support for the Government of Burma, the SPDC, the USDA, or successor entities, or senior officials of the foregoing; acting on behalf of a person whose property is blocked by E.O. 13310, E.O. 13448, or E.O. 13464 | No property or interest in property of persons ineligible for a U.S. visa under the provisions of this act (see <b>Table I</b> ) may be transferred, paid, exported, or withdrawn if the property is located in the United States; within the possession or control of a U.S. person (including overseas branch of a U.S. person); or the property comes into the possession or control of a U.S. person after the date of enactment of this act |

|   | 2003 BFDA  | E.O. 13310  | E.O. 13448   | E.O. 13464   | 2008 JADE Act   |
|---|--|---|--|--|---|
| <b>Conditions or Exceptions</b>                     | Provides “additional authority” to the President to take action “as may be necessary to impose a sanctions regime to freeze such funds and assets”; allows the President to delegate the duties and authorities to Federal or other officials  | Exceptions as provided under Section 203(b)(1), (3), and (4) of IEEPA; using authority under IEEPA, prohibits the donation of blocked property “intended to be used to relieve human suffering” | Government of Burma includes its agencies, instrumentalities, and controlled entities, and the Central Bank of Burma; using authority under IEEPA, prohibits the donation of blocked property “intended to be used to relieve human suffering” | Government of Burma includes its agencies, instrumentalities, and controlled entities, and the Central Bank of Burma; using authority under IEEPA, prohibits the donation of blocked property “intended to be used to relieve human suffering” | Restrictions do not apply to contracts or other financial transactions for nongovernmental humanitarian organizations in Burma; Secretary of the Treasury may authorize exceptions to permit the operation of diplomatic missions, to conduct official government business in Burma, to permit U.S. citizens to visit Burma, and permit compliance with international agreements  |
| <b>Waiver Provisions</b>                            | None specified   | None specified  | None specified   | None specified   | Presidential waiver allowed only if he determines and certifies to the appropriate congressional committees that it is “in the national interests of the United States”   |
| <b>Termination, Duration, or Renewal Conditions</b> | President may terminate “upon request of a democratically elected government in Burma” and when conditions in Section (3)(a)(3)—progress on human rights, release of all political prisoners, freedom of speech and the press, freedom of association, peaceful exercise of religion, democratic governance, not designated as “a country of interest” for narcotics trafficking—have been met | None specified  | None specified   | None specified   | Until the President determines and certifies “to the appropriate congressional committees that the SPDC has released all political prisoners; entered into “a substantial dialogue with democratic forces led by the National League for Democracy and the ethnic minorities of Burma on transitioning to democratic government under the rule of law”; and allowed humanitarian access to people in areas of armed conflict in Burma |

|   | <b>2003 BFDA</b> | <b>E.O. 13310</b> | <b>E.O. 13448</b> | <b>E.O. 13464</b> | <b>2008 JADE Act</b>  |
|---|------------------|-------------------|-------------------|-------------------|---|
| <b>Report or Publication Requirements</b> | None specified   | None specified    | None specified    | None specified    | No later than 120 days after enactment [November 26, 2008] the President shall transmit to the appropriate congressional committees a list of sanctioned officials; updated sanctioned officials lists shall be provided to the appropriate congressional committees “as new information becomes available” |

**Source:** CRS research

## **General Import Restrictions**

Restrictions on the import of goods of Burmese origin in general are included in two laws—Section 138 of the Customs and Trade Act of 1990 and the 2003 BFDA—and one executive order, E.O. 13310. While the two laws ban the import of Burmese products, the executive order provides a waiver to comply with existing international obligations of the United States. On September 30, 2011, Congress passed the Continuing Appropriations Act of 2012 (H.R. 2017, P.L. 112-33), in which Section 140 extended the general import ban in the 2003 BFDA as of July 26, 2011, for an additional year. On May 18, 2012, Representative Joseph Crowley introduced H.J.Res. 109, which would renew the general import restrictions contained in the Burmese Freedom and Democracy Act of 2003.

Table 4. General Import Restrictions

|                                 | Section 138  | 2003 BFDA  | E.O. 13310  |
|---------------------------------|--|--|---|
| <b>Main Provisions</b>          | <p>“[T]he President shall impose such sanctions upon Burma as the President determines to be appropriate, including any sanctions appropriate under the Narcotics Control Act of 1986,” unless he certifies to Congress prior to October 1, 1990, that Burma has all the conditions listed in subsection (b) of the act; “the President shall give primary consideration to the imposition of sanctions on those products which constitute major imports from Burma, including fish, tropical lumber, and aquatic animals”</p> | <p>“[U]ntil 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 enactment of this Act, the President shall ban the importation of any article that is a product of Burma”</p>  | <p>Waives the ban on the importation of products of Burma if the prohibition “would conflict with the international obligations of the United States under the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, the United Nations Headquarters Agreement, and other legal instruments providing equivalent privileges and immunities”</p> |
| <b>Conditions or Exceptions</b> | <p>The President may decide not to impose sanctions if Burma has met the conditions in subsection (b): Burma meets the certification requirements of Section 802(b) of the Narcotics Control Act of 1986; national government legal authority in Burma has been transferred to a civilian government; martial law in Burma has been lifted; and all political prisoners have been released</p>   | <p>Conditions of paragraph (3) are the SPDC has made “substantial and measurable progress” to end human rights violations; the Secretary of State reports to the appropriate congressional committees that “the SPDC no longer systematically violates workers rights;” the SPDC has made “substantial and measurable progress” to a democratic government, including the release of all political prisoners, allowing freedom of speech, the press, and association, permitting the peaceful exercise of religion, and concluding an agreement between the SPDC, the NLD, and Burma’s ethnic minorities to transfer power to a democratically elected civilian government; and Burma has not been designated as a country that “has failed demonstrably to make substantial efforts to adhere to its obligations under international counternarcotics agreements”</p> | <p>None specified</p>   |
| <b>Waiver Provisions</b>        | <p>None specified</p>  | <p>The President may waive the import ban, in part or full, if he determines and notifies the Committees on Appropriations, Finance, and Foreign Relations of the Senate and the Committees on Appropriations, International Relations [Foreign Affairs], and Ways and Means of the House of Representatives that to do so is in the national interest of the United States</p>  | <p>None specified</p>   |

|   | Section 138   | 2003 BFDA  | E.O. 13310     |
|---|---|--|----------------|
| <b>Termination, Duration, or Renewal Conditions</b> | None specified  | The President may terminate “upon request of a democratically elected government in Burma” and when conditions in Section (3)(a)(3)—progress on human rights, release of all political prisoners, freedom of speech and the press, freedom of association, peaceful exercise of religion, democratic governance, not designated as “a country of interest” for narcotics trafficking—have been met; import ban expires one year from the date of enactment unless Congress passes a resolution renewing the ban for a one-year period before the expiration of the ban; length of renewal limited to three years   | None specified |
| <b>Report or Publication Requirements</b>           | If the President does not impose economic sanctions, he must report to Congress his reasons for not imposing sanctions, and the actions he is taking to see that the conditions in subsection (b) are being achieved; subsequent semiannual reports to Congress are required for two additional years, if no economic sanctions are imposed | No later than 90 days before the import restrictions are to expire, the Secretary of State, in consultation with the U.S. Trade Representative and “the heads of appropriate agencies,” shall submit to the Committees on Appropriations, Finance, and Foreign Relations of the Senate and the Committees on Appropriations, International Relations [Foreign Affairs], and Ways and Means of the House of Representatives a report on bilateral and multilateral efforts to promote human rights and democracy in Burma, the effectiveness of the trade sanctions on improving conditions in Burma and furthering U.S. policy objections towards Burma, and the impact of the trade sanctions on national security, economic, and foreign policy interests of the United States | None specified |

Source: CRS research

## Specific Import Restrictions

Both the 2003 BFDA and the 2008 JADE Act contain specific import restrictions in addition to the general prohibition on the import of products described above. The 2003 BFDA bans import of products and services from certain companies. The 2008 JADE Act prohibits the importation of certain products.

**Table 5. Specific Import Restrictions**

|   | 2003 BFDA  | 2008 JADE Act   |
|---|--|---|
| <b>Main Provisions</b>                              | Bans the import of products from the SPDC, any ministry of the SPDC, a member of the SPDC, an immediate family member of the SPDC; known narcotics traffickers from Burma or their immediate families; the Union of Myanmar Economics Holdings Incorporated (UMEHI) or any company in which the UMEHI has a fiduciary interest; the Myanmar Economic Corporation (MEC) or any company in which the MEC has a fiduciary interest, the USDA; or any successor entity for the SPDC, UMEHI, MEC, or USDA | Amends the 2003 BFDA to prohibit the import of “Burmese covered articles,” which includes jadeite mined or extracted in Burma; rubies mined or extracted in Burma; articles of jewelry containing jadeite or rubies mined or extracted in Burma starting 60 days after the enactment of the act [September 27, 2008]; establishes requirements for the import of “non-Burmese covered articles” |
| <b>Conditions or Exceptions</b>                     | None specified   | Excludes articles that were previously exported from the United States and then reimported into the United States by the same person without improvement in its value or condition while outside the United States; allows the import of non-Burmese covered articles for personal use; also see column on 2003 BFDA of <b>Table 4</b>  |
| <b>Waiver Provisions</b>                            | None specified   | See column on 2003 BFDA of <b>Table 4</b>   |
| <b>Termination, Duration, or Renewal Conditions</b> | None specified   | Amends duration conditions of 2003 BFDA to include covered articles (see <b>Table 4</b> )   |

|   | 2003 BFDA      | 2008 JADE Act   |
|---|----------------|---|
| <b>Report or Publication Requirements</b> | None specified | Not later than 180 days after enactment [January 25, 2009], the President shall transmit to the Committees on Foreign Affairs and Ways and Means of the House of Representatives, and the Committees on Finance and Foreign Relations in the Senate, actions taken during the 60 days after enactment of the act to obtain draft waiver decision from the World Trade Organization, an adoption of a U.N. General Assembly resolution, and the negotiation of an international identification system for covered articles like the Kimberley Process Certification Scheme for diamonds; not later than 14 months [September 29, 2009] after enactment, the U.S. Comptroller General shall submit to the Committees on Foreign Affairs and Ways and Means of the House of Representatives, and the Committees on Finance and Foreign Relations in the Senate, a report on the effectiveness of the implementation of these sanctions |

Source: CRS research

## Investment Ban

The ban on new investments in Burma is in Section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997, and E.O. 13047, with the law providing the presidential authority and the E.O. exercising that authority. On May 16, 2011, President Obama issued an official notice renewing the national emergency with respect to Burma.<sup>43</sup>

On April 4, 2012, Secretary Clinton stated that the Obama Administration is considering easing the ban on new investments in Burma.<sup>44</sup> In a subsequent press briefing, two unnamed senior Administration officials indicated that no final decision has been made on the nature of the easing of the investment ban, but consideration is being given to select certain sectors such as agriculture, tourism, and potentially telecommunications as they are more likely to provide “the most benefit for the average Burmese.”<sup>45</sup> Other sectors, associated with “regressive elements [of] the Burmese economy and Burmese society” such as gems and timber, may not be opened to new investments at this time.<sup>46</sup> The financial services sector is also being considered.

On May 17, 2012, Secretary Clinton stated, “The United States will issue a general license that will enable American businesses to invest across the Burmese economy.”<sup>47</sup> She also said, “The

<sup>43</sup> Executive Notice, “Continuation of the National Emergency with Respect to Burma,” 76 *Federal Register* 28883, May 18, 2012.

<sup>44</sup> Secretary of State, “Recognizing and Supporting Burma’s Democratic Reforms,” press release, April 4, 2012

<sup>45</sup> State Department, “Background Briefing on Burma,” press release, April 4, 2012.

<sup>46</sup> Ibid.

<sup>47</sup> Office of the Spokesperson, State Department, “Remarks of Secretary of State Hillary Rodham Clinton and Foreign (continued...)”

State Department will work with Congress and our colleagues across the government, particularly the Treasury Department, to implement mechanisms to promote responsible investment and deter abuses.”

Neither Secretary Clinton nor the senior Administration officials discussed how the easing of the investment ban would be implemented. One option is to issue a presidential waiver stating that it is in “the national security interests of the United States,” as provided for in Section 570. In addition, the President would have to waive, amend, or revoke the investment ban contained in Section 2 of E.O. 13047.

**Table 6. Investment Ban**

|   | Section 570  | E.O. 13047  |
|---|--|---|
| <b>Main Provisions</b>                              | Authorizes and requires the President to prohibit new investments in Burma   | Prohibits new investments in Burma  |
| <b>Conditions or Exceptions</b>                     | Requires the President prohibit new investments in Burma if he “determines and certifies to Congress that, after the enactment of the Act, the Government of Burma has physically harmed, rearrested for political acts, or exiled Aung San Suu Kyi or has committed large-scale repression of or violence against the Democratic opposition”  | “Except to the extent provided in regulations, orders, directives, or licenses that may be issued in conformity with section 570” of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1997 (P.L. 104-208) |
| <b>Waiver Provisions</b>                            | Temporary or permanent presidential waiver if sanctions are “contrary to the national security interests of the United States”   | None specified  |
| <b>Termination, Duration, or Renewal Conditions</b> | None specified in law; declaration of national emergency with respect to Burma subject to annual renewal by President  | None specified in law; declaration of national emergency with respect to Burma subject to annual renewal by President   |
| <b>Report or Publication Requirements</b>           | Every six months after the enactment of the act, the President shall report to the chairmen of the Committee on Foreign Relations, the Committee on International Relations [Foreign Affairs], and the House and Senate Appropriations Committees on progress towards democratization in Burma; progress on improving the quality of life of the Burmese people; and progress made in developing a multilateral strategy towards Burma | None specified  |

Source: CRS research

## Bilateral and Multilateral Assistance Ban

Restrictions on bilateral assistance to Burma are in Section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997; and Section 307 of the Foreign Assistance Act of 1961, which withholds U.S. funding for international organizations with

(...continued)

Minister of Burma U Wunna Maung Lwin after their Meeting,” press release, May 17, 2012.

programs in Burma, with some specific exceptions. Section 5 of the 2003 BFDA requires the U.S. executive director of each international financial institution (IFI) in which the United States participates to vote against the extension of any loan, financial or technical assistance to Burma. Although the United States lacks enough votes to block an IFI from providing loans or assistance to Burma, in practice, it is unlikely that any IFI will proceed if the United States opposes the aid.

With regard to Secretary Clinton’s announcement that the United States would support the UNDP establishing a “normal country program” in Burma, current sanction laws may preclude the United States contributing funds to the program. Section 307 of the FAA (22 U.S.C. 2227), “Withholding of United States proportionate share for certain programs of international organizations,” states:

Notwithstanding any other provisions of law, none of the funds authorized to be appropriated by this part shall be available for the United States proportionate share for programs for **Burma** [emphasis added], North Korea, Syria, Iran, Cuba, or the Palestine Liberation Organization or for projects whose purpose is to provide benefits to the Palestine Liberation Organization or entities associated with it, or at the discretion of the President, Communist countries listed in section 2370(f) of this title.

In other words, Section 307 prohibits the use of U.S. funds contributed to the UNDP (and other international organizations) for programs for Burma. In practice, according to the State Department, for the past decade it has sent a letter to UNDP indicating that the United States may withhold a portion of its contributions if the UNDP funded new programs and activities in Burma. The UNDP has been running a Human Development Initiative (HDI) program in Burma since 1994.

Subsection (c) provides an exemption for the International Atomic Energy Agency (IAEA) and the United Nations Children’s Fund (UNICEF). The FAA does not grant the President the authority to waive the funding restrictions in Section 307. As a result, the United States cannot financially support a “normal country program” of the UNDP in Burma without Congress passing legislation to permit such funding.

In addition, several past laws—including some appropriation laws—included language that either prohibited the use of U.S. contributions to UNDP for programs and activities in Burma or withheld a portion of U.S. contributions to UNDP until the President or the Secretary of State certified to Congress that the UNDP was in compliance with specific conditions on its programs and activities in Burma. Among the past laws that contained language tying U.S. contributions to UNDP to its programs and activities in Burma were

- Section 431 of the Foreign Relations Authorization Act for Fiscal Years 1994 and 1995 (P.L. 103-236);
- Section 108(c) of the Consolidated Appropriations Act of 2000 (P.L. 106-113); and
- Section 6689b) of the Consolidated Appropriations Act of 2008 (P.L. 110-161).

However, the Consolidated Appropriations Act, 2012 (P.L. 112-74) does not contain language regarding the use of U.S. contributions to UNDP in Burma. It does, however, state in Section 7044(b)(1) that “The Secretary of the Treasury shall instruct the United States executive directors of the appropriate international financial institutions to vote against any loan, agreement, or other financial support to Burma.”

**Table 7. Bilateral and Multilateral Assistance Ban**

|   | <b>Section 307</b>  | <b>Section 570</b>  | <b>2003 BFDA</b>   |
|---|---|---|--|
| <b>Main Provisions</b>                              | Withholds U.S. funding for international organizations with programs in Burma, except for the International Atomic Energy Agency (IAEA) or the United Nations Children’s Fund (UNICEF). | Ban on bilateral assistance to Burma other than humanitarian assistance; counter-narcotics or crop substitution assistance (if the Secretary of State certifies to the appropriate congressional committees that Burma is “fully cooperating” with U.S. counter-narcotics efforts, and the programs are consistent with U.S. human rights concerns in Burma, and serve U.S. national interest); and assistance promoting human rights and democratic values; Secretary of the Treasury shall instruct the U.S. executive director to each appropriate international financial institution “to vote against any loan or other utilization of funds of the respective bank to or for Burma” | Secretary of the Treasury shall instruct the U.S. executive director to each appropriate international financial institution in which the United States participates, to oppose, and vote against the extension by such institution of any loan or financial or technical assistance to Burma.   |
| <b>Conditions or Exceptions</b>                     | None specified  | As required by treaty obligations or to staff of Burmese mission in the United States   | None specified   |
| <b>Waiver Provisions</b>                            | None specified  | Temporary or permanent presidential waiver if sanctions are “contrary to the national security interests of the United States”  | None specified   |
| <b>Termination, Duration, or Renewal Conditions</b> | None specified  | “Until such time as the President determines and certifies to Congress that Burma has made measurable and substantial progress in improving human rights practices and implementing democratic government”  | The President may terminate “upon request of a democratically elected government in Burma” and when conditions in Section (3)(a)(3)—progress on human rights, release of all political prisoners, freedom of speech and the press, freedom of association, peaceful exercise of religion, democratic governance, not designated as “a country of interest” for narcotics trafficking—have been met |

|   | Section 307   | Section 570  | 2003 BFDA      |
|---|---|--|----------------|
| <b>Report or Publication Requirements</b> | Annual review by the Secretary of State reported to the appropriate committees (House Committee on Foreign Affairs and Senate Committee on Foreign Relations) of the “budgets and accounts of all international organizations receiving payments of any funds authorized to be appropriated by this chapter” [Chapter 3—International Organizations and Programs], including the amounts expended for programs in Burma and U.S. contributions to the organizations | Every six months after the enactment of the act, the President shall report to the chairmen of the Committee on Foreign Relations, the Committee on International Relations [Foreign Affairs], and the House and Senate Appropriations Committees on progress towards democratization in Burma; progress on improving the quality of life of the Burmese people; and progress made in developing a multilateral strategy towards Burma | None specified |

Source: CRS research

## Additional Sanctions Based on Functional Issues<sup>48</sup>

In addition to the targeted sanctions, Burma is currently subject to certain sanctions specified in U.S. laws based on various functional issues. In many cases, the type of assistance or relations restricted or prohibited by these provisions is also addressed under Burma-specific sanction laws. The functional issues include

- **Child Soldiers:** Burma is prohibited from receiving certain types of foreign assistance under the provisions of the Child Soldiers Preventions Act of 2008 (Title IV of P.L. 110-457) because of its designation as a foreign government that hosts governmental armed forces or supports armed groups that recruit and use child soldiers.<sup>49</sup> As a result, Burma is ineligible to receive aid under International Military Education and Training (IMET), the Foreign Military Financing (FMF), and Section 1206 assistance, as well as excess defense articles and the issuance of licenses for direct commercial sales of military equipment.<sup>50</sup>
- **Drug Trafficking:** Burma is prohibited from receiving certain types of foreign assistance, as well as other types of foreign policy provisions, because of its

<sup>48</sup> This section based on text provided by Liana Sun Wyler, Analyst in International Crime and Narcotics.

<sup>49</sup> Child soldiers are statutorily defined in Section 402 of the Child Soldiers Prevention Act of 2008 as “(i) any person under 18 years of age who has taken direct part in hostilities as a member of governmental armed forces; (ii) any person under 18 years of age who has been compulsorily recruited into governmental armed forces; (iii) any person under 15 years of age who has been voluntarily recruited into governmental armed forces; and (iv) any person under 18 years of age who has been recruited or used in hostilities by armed forces distinct from the armed forces of a state.” The definition includes any of the above serving in “any capacity, including in a support role as a cook, porter, messenger, medic, guard, or sex slave.”

<sup>50</sup> The list of countries subject to sanction under the Child Soldiers Prevention Act of 2008 is required to be published in the State Department’s annual TIP report. The first list under this provision was published in the June 2010 edition of the TIP report. On October 4, 2011, President Obama issued Presidential Determination No. 2012-1 granting a waiver for the Democratic Republic of the Congo and Yemen – but not for Burma.

designation by the President as a major illicit drug producing and/or drug-transit country under Section 490 of the Foreign Assistance Act of 1961 (FAA, 87-195, as amended) and Section 706 of Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228, as amended).<sup>51</sup>

- **Human Trafficking:** Burma is prohibited from receiving non-humanitarian and non-trade-related foreign assistance because of its designation by the President as a “Tier 3” country in the 2011 Trafficking in Persons (TIP) Report. Tier 3 countries are statutorily defined in the Victims of Trafficking and Violence Protection Act of 2000 (TVPA, P.L. 106-386, as amended) as noncompliant with the minimum standards for the elimination of TIP and not making significant efforts to bring themselves into compliance with such standards. On September 30, 2011, President Obama issued Presidential Determination 2001-28, granting Burma a partial waiver of the aid sanctions of the TVPA, to provide assistance for controlling infectious diseases.<sup>52</sup> On February 3, 2012, he issued a presidential memorandum waiving Section 110(d)(1)(B) of the TVPA with respect to Burma.<sup>53</sup> The memorandum specifically waives the requirement for U.S. Executive Directors to vote against “and use the Executive Director’s best efforts to deny” non-trade, non-humanitarian loans or other utilization of funds to Burma through multilateral development banks and the International Monetary Fund (IMF).<sup>54</sup> Despite the presidential waiver, the requirement that the Executive

<sup>51</sup> Section 481 of the Foreign Assistance Act of 1961 stipulates that U.S. assistance subject to sanction includes any assistance under the Foreign Assistance Act of 1961, including programs under Title IV of Chapter 2, relating to the Overseas Private Investment Corporation, other than: assistance provided under the International Narcotics Control chapter (Chapter 8) of Part I of the Foreign Assistance Act of 1961, which includes all International Narcotics Control and Law Enforcement (INCLE) aid account funds; any other narcotics-related assistance in Part I of the Foreign Assistance Act of 1961, as well as in Chapter 4 of Part II of the Foreign Assistance Act of 1961, which includes the Economic Support Fund (ESF) aid account; disaster relief assistance, including any assistance under the International Disaster Assistance chapter (Chapter 9) of Part I of the Foreign Assistance Act of 1961; assistance that involves the provision of food, including monetization of food, or medicine; and assistance for refugees. Additionally, U.S. assistance subject to sanction under the same provision includes sales, or financing on any terms, under the Arms Export Control Act; the provision of agricultural commodities, other than food, under the Food for Peace Act; and financing under the Export-Import Bank Act of 1945. In certain cases, the performance determinations of drug majors can affect other types of U.S. foreign policy provisions, including foreign country beneficiary status for trade preferences, the transfer of forfeited property and assets to foreign countries, credit sales of defense articles and services, and special debt relief to low income countries.

<sup>52</sup> Section 110 of the TVPA defines excluded assistance as: assistance under Chapter 4 of Part II of the FAA in support of nongovernmental organization (NGO) programs that is made available for programs, projects, or activities eligible for assistance under Chapter 1 of Part I of the FAA; assistance for international narcotics control under Chapter 8 of Part I of the FAA; any other narcotics-related assistance under Part I of the FAA or under Chapter 4 or 5 Part II of the FAA; disaster relief assistance, including any assistance under Chapter 9 of Part I of the FAA; antiterrorism assistance under Chapter 8 of Part II of the FAA; assistance for refugees; humanitarian and other development assistance in support of NGO programs under Chapters 1 and 10 of the FAA; programs under Title IV of Chapter 2 of Part I of the FAA relating to the Overseas Private Investment Corporation; other programs involving trade-related or humanitarian assistance; and sales, or financing on any terms, under the Arms Export Control Act, other than sales or financing provided for narcotics-related purposes.

<sup>53</sup> Office of the Press Secretary, “Presidential Memorandum – Delegation of Authority Pursuant to Sections 110(d)4 and 110(f) of the Trafficking Victims Protection Act of 2000, as Amended,” February 3, 2012.

<sup>54</sup> Section 110(d)(1)(B) of the TVPA had required the U.S. Executive Director of each multilateral development bank (including the IMF) to vote against, “and use the Executive Director’s best efforts to deny,” any loan or other utilization of the bank’s funds to Burma for the subsequent fiscal year if Burma is determined to have not complied with minimum standards for the elimination of human trafficking and is not making significant efforts to bring itself into compliance.

Director of each multilateral development bank oppose and vote against loans and other forms of assistance to Burma remains in force because of Section 5 of the Burmese Freedom and Democracy Act (see “Bilateral and Multilateral Assistance Ban” above).

- **Money Laundering and Organized Crime:** Burma’s Mayflower Bank and Asia Wealth Bank, and the jurisdiction of Burma as a whole, including its state-run banks, are designated as “primary money laundering jurisdictions of concern” under Section 311 of the USA PATRIOT Act (P.L. 107-56, as amended) for the country’s absence of money laundering regulations, weak oversight of the banking sector, and private bank connections to account holders involved in organized crime, particularly drug trafficking. Under this provision, the Treasury Department imposed a “special measure” to prohibit certain U.S. financial institutions from establishing, maintaining, administering, or managing correspondent or payable-through accounts for, or on behalf of, Myanmar Mayflower Bank, Asia Wealth Bank, and any other Burmese banking institution. This prohibition extends to correspondent or payable-through accounts maintained for other foreign banks when such accounts are used to provide banking services to Burmese banks indirectly.<sup>55</sup>
- **Religious Freedom:** The International Religious Freedom Act (IRFA, P.L. 105-292, as amended) requires that the President conduct an annual review of the status of religious freedom in other nations, and authorizes the imposition of various types of sanctions on nations that seriously violate religious freedom.<sup>56</sup> Burma has been designated a “country of particular concern for religious freedom” pursuant to this act since 1999.<sup>57</sup> Burma was most recently re-designated in 2009.<sup>58</sup> As the sanctioning action imposed on Burma pursuant to IRFA and currently in effect, the Secretary of State has elected to continue the existing arms embargo against Burma.<sup>59</sup>

<sup>55</sup> In the *Federal Register* notice regarding the application of Section 311 Special Measures on Burma, the Treasury Department provides the following explanation regarding how this sanction will differ from those already imposed on Burma: “The imposition of Section 311 special measures reinforces the existing restrictions on transactions with Burma that are outlined above. Although they are similar in their effect, the Section 311 special measures differ in certain respects and serve distinct policy goals. First, the Section 311 special measures are potentially broader than the existing sanctions in at least one respect—they apply to all foreign branches of Burmese banking institutions. Second, the purposes served by the Section 311 action differ markedly from the purposes of the economic sanctions described above. This action under Section 311 is premised on the Secretary’s determination that Burma poses an unacceptable risk of money laundering and other financial crimes, due to its failure to implement an effective anti-money laundering regime. The goals of this action include protecting the U.S. financial system and encouraging Burma to make the necessary changes to its anti-money laundering regime. The existing sanctions pursuant to Executive Order 13310, on the other hand, were imposed for different reasons, in particular to take additional steps with respect to the government of Burma’s continued repression of the democratic opposition.” See U.S. Department of Treasury, “Imposition of Special Measures Against Burma: Final Rule,” *Federal Register*, Vol. 69, No. 70, April 12, 2004, p. 19093.

<sup>56</sup> These functions were delegated to the Secretary of State in “Delegation of Responsibilities Under the International Religious Freedom Act of 1998,” *Federal Register*, Vol. 64, No. 168, August 31, 1999.

<sup>57</sup> “Designation of Countries of Particular Concern Under The International Religious Freedom Act,” *Federal Register*, Vol. 64, No. 212, November 3, 1999.

<sup>58</sup> “Secretary of State’s Determination Under the International Religious Freedom Act of 1998,” *Federal Register*, Vol. 74, No. 89, May 11, 2009.

<sup>59</sup> The existing arms embargo is referenced in 22 CFR 126.1(a).

- **Workers Rights:** The Trade Reform Act of 1974 (P.L. 93-618, as amended) grants the President the authority to withdraw preferential trade treatment under the U.S. generalized system of preferences (GSP) program if a country “has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country.” On April 13, 1989, President George H. W. Bush issued Presidential Proclamation 5955 suspending Burma’s preferential treatment under the GSP program, invoking his authority under the Trade Reform Act of 1974.
- **World Peace and the Security and Foreign Policy of the United States:** The President has the authority under the Arms Export Control Act of 1976 (P.L. 94-329) to prohibit all arms exports to a country “in furtherance of world peace and the security and foreign policy of the United States.” On September 23, 1988, President Reagan invoked his powers under this law to impose an arms embargo on Burma. In addition, on June 9, 1993, the State Department issued a public notice implementing an immediate ban on export of defense articles and services to Burma.<sup>60</sup> The U.S. arms embargo on Burma remains in effect.

## Additional Sanctions Previously Proposed

Over the last 20 years, some Members of Congress have proposed, and Congress has at times considered, additional sanctions on Burma. Some of those proposed sanctions would go beyond the current sanctions regime. Others would fall under broader sanctions already enacted.

The notion of a complete ban on the importation of products of Burmese origin first appeared in legislation in the Senate version of the Customs and Trade Act of 1990 (see above). It reappeared in proposed legislation in 1995, when S. 1092 was introduced during the 104<sup>th</sup> Congress. S. 1092 would have prohibited the importation of any article “produced, manufactured, grown, or extracted in Burma.”

As early as June 1989, legislation was introduced in Congress to prohibit the import of selected Burmese products. Initially, these proposed import bans were directed at products of Burmese origin. For example, in the 101<sup>st</sup> Congress, H.R. 2578 would have blocked the importation of teak and fish products from Burma. In the 106<sup>th</sup> Congress, H.R. 5603 and S. 3246 were introduced, proposing a ban on the importation of all textile and apparel products from Burma.<sup>61</sup> Later on, the proposed import bans would have prohibited the importation of goods containing materials, parts, or components originating in Burma, regardless of the country of origin of the imported good. For example, S. 2172 and S. 2257 of the 110<sup>th</sup> Congress would have banned the importation of goods containing “any gemstones or rough unfinished geological materials” and “any teak or other hardwood timber” from Burma, regardless of the country of origin of the imported good.

Various bills and resolutions have also been proposed calling for a broader arms embargo on Burma. In some cases, such as S.Res. 195 of the 102<sup>nd</sup> Congress, the President and the U.S. Permanent Representative to the United Nations were to “take the strongest possible action” in support of a global arms embargo on the country. In other cases, such as H.Con.Res. 308, H.Res.

<sup>60</sup> Department of State, “Suspension of Munitions Export Licenses to Burma,” 58 *Federal Register* 33293, June 16, 1993.

<sup>61</sup> Textile and apparel products were defined as items classified under chapters 50 to 63 of Harmonized Tariff Schedule of the United States.

473, and S.Con.Res. 107 of the 102<sup>nd</sup> Congress, the legislation would have required the President and/or the Secretary of State to press China to end its military assistance to Burma. In the 104<sup>th</sup> Congress, S. 1092 would have required the United States to vote against any loan or assistance to China by a multilateral financial institution “until the President determines and certifies to the appropriate congressional committee that the People’s Republic of China has terminated arms sales and other arms transfers to Burma.”

China is not the only nation specifically identified in congressional legislation to be pressed to support sanctions on Burma. The members of the European Union (EU) and the nine other members of the Association of Southeast Asian Nations (ASEAN)<sup>62</sup> have been mentioned in several bills as countries that should be pushed to tighten their sanction regimes against Burma. In the 110<sup>th</sup> Congress, H.Con.Res. 200 called upon ASEAN to suspend Burma’s membership in the organization. In addition, S. 1092 of the 104<sup>th</sup> Congress would have denied certain trade benefits to countries designed as “beneficiary developing countries” under Title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.), as a “beneficiary country” of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.), or as a “beneficiary country” of the Andean Trade Preference Act (19 U.S.C. 3201 et seq.) unless those nations entered into an agreement with the United States to cease trade and investment in Burma.

There has also been congressional consideration of broader financial sanctions on Burma. The House version of the 2008 JADE Act initially included provisions that would have prohibited “United States persons” from entering into economic-financial transactions, paying taxes, or performing “any contract” with Burmese government institutions or individuals. The prohibition of the payment of taxes specifically included the payments of taxes to the Burmese government by the Yadana natural gas project, in which the U.S. corporation Chevron is a major partner. These stricken provisions were replaced in the final bill by a “sense of Congress” statement that Chevron and the other foreign investors should consider voluntary disinvestment from the project.

Another area targeted by congressional legislation for additional sanctions has been investment in Burma. S. 1092 of the 104<sup>th</sup> Congress would have banned all existing and new investments by U.S. nationals in Burma. Similarly, S. 2172 of the 110<sup>th</sup> Congress would have banned investments in Burma by U.S. persons, including those made prior to May 20, 1997, as well as payments to the SPDC related to the divestment of assets in Burma.

## Options for Congress

Various recent developments in Burma sparked a general reexamination of U.S. policy towards Burma, and a discussion of whether U.S. sanctions continue to be an effective means of achieving policy goals or affecting change in Burma. After Senior General Than Shwe formally dissolved the SPDC on March 30, 2011, and officially transferred power to the new Union Government, an era of political reforms and improved communications with the United States has ensued. Since taking office, President Thein Sein has issued prisoner amnesties on four occasions, resulting in the release of 28,244 prisoners, including 625 political prisoners.<sup>63</sup> The Union Parliament has

<sup>62</sup> The 10 members of ASEAN are Brunei, Burma, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, and Vietnam.

<sup>63</sup> For more about the release of political prisoners in Burma, see CRS Report R42363, *Burma’s Political Prisoners and* (continued...)

enacted laws that allowed the NLD and other opposition parties to participate in parliamentary by-elections in April 2012,<sup>64</sup> and permit the formation of labor unions. In addition, the Union Government has begun ceasefire talks with several of the nation's ethnic-based militias, concluding preliminary agreements in some cases.

However, the human rights situation in Burma still has serious problems. According to one source, over 900 political prisoners remain in detention. The government-backed Union Election Commission refuses to register several ethnic-based political parties. Labor unions have been unable to register, despite the passage of the new law. Although President Thein Sein issued instructions to stop all attacks on ethnic-based militias, the Tatmadaw continues its assaults and commits severe human rights abuses against civilians in conflict areas.

During its first session, the 112<sup>th</sup> Congress generally acted to retain the existing sanctions. It passed H.R. 2017 (P.L. 112-33) on September 30, 2011, extending the general imports restriction in the 2003 BDFFA through July 2012. The Consolidated Appropriations Act, 2012 (P.L. 112-74), passed on December 15, 2011, reaffirmed other existing sanctions by barring the use of funds for international military education and training, foreign military financing, excess defense articles, or Section 1206 assistance;<sup>65</sup> restricting the use of the State Department's Economic Support Fund to humanitarian assistance in Burma; and restating the requirement that the U.S. executive directors to IFIs vote against "any loan, agreement, or other financial support to Burma." Over the last six months, Congress has not passed any legislation related to Burma, seemingly allowing the Obama Administration to decide the best course of action is to selectively ease or waive some of the existing sanctions (see "Recent U.S. Sanctions Policy").

The lack of legislative action during its second session does not imply that the 112<sup>th</sup> Congress has no interest in U.S. policy in Burma. The House Committee on Foreign Affairs Subcommittee on Asia and the Pacific and the Senate Committee on Foreign Relations had held oversight hearings during the second session on U.S. policy in Burma. Several congressional delegations from both the House of Representatives and the Senate have traveled to Burma to assess the extent of the political reforms and discuss U.S. policy with various political leaders. The Obama Administration frequently consults with key Members of Congress regarding possible policy options, as well as to inform Congress of the Administration's interpretation of the situation in Burma. Several Members of Congress have also released statements on Burma, ranging from support for the removal of all sanctions to disapproval of "pragmatic engagement" and a maintenance of all sanctions.

The actual removal of existing sanctions may be a more complex proposition because of the overlapping provisions of the laws governing the current sanction regime. In addition, because Burma is subject to sanctions based on assessments related to certain functional issues (drug trafficking, human trafficking, religious freedoms, etc.), the repeal of Burma-specific sanction laws or E.O.s may not eliminate certain types of restrictions on Burma. For example, removing

(...continued)

*U.S. Sanctions*, by Michael F. Martin.

<sup>64</sup> For more information on the by-elections, see CRS Report R42438, *Burma's April Parliamentary By-Elections*, by Michael F. Martin.

<sup>65</sup> Section 1206 of the National Defense Authorization Act (NDAA) for Fiscal Year 2006, as amended and regularly extended, provides the Secretary of Defense with authority to train and equip foreign military forces for two specified purposes—counterterrorism and stability operations—and foreign maritime security forces for counterterrorism operations.

prohibitions on certain types of assistance may be more difficult than eliminating bans on the importation of selected goods with materials, parts, or components from Burma. In addition, Congress would likely give consideration to matching the importance or weight of the sanction to the intended message it would be trying to convey to the Burmese government and the people of Burma. Such a balance would also heavily depend on the course of events in Burma in the months ahead.

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