

September 2009

# INTERNATIONAL TRADE

## U.S. Agencies Have Taken Some Steps, but Serious Impediments Remain to Restricting Trade in Burmese Rubies and Jadeite



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# Highlights

Highlights of [GAO-09-987](#), a report to congressional committees

## Why GAO Did This Study

Congress passed the Tom Lantos Block Burmese JADE Act in 2008 prohibiting the import of Burmese-origin jadeite, rubies, and related jewelry and calling for certain international actions. The act also requires GAO to assess the effectiveness of the implementation of this section of the act.

This report assesses (1) key characteristics of the trade of Burmese-origin jadeite and rubies; (2) progress agencies have made to restrict imports of Burmese-origin jadeite, rubies, and related jewelry; and (3) the progress agencies have made in pursuing international actions.

GAO reviewed and analyzed policy guidance, reports, and trade data and interviewed officials from the Departments of State (State), Homeland Security (DHS), other U.S. agencies, as well as U.S. and foreign jewelry industry representatives and foreign government officials.

## What GAO Recommends

GAO recommends that DHS, in consultation with relevant agencies, take additional steps to issue guidance regarding imports of non-Burmese-origin goods, and that State, in consultation with DHS and the Department of the Treasury, analyze JADE Act measures and challenges and report to Congress how such measures contribute to its efforts to exert influence on the Burmese regime.

DHS concurred with our first recommendation and State concurred with our second recommendation.

View [GAO-09-987](#) or [key components](#). For more information, contact Loren Yager at (202) 512-4347 or [yagerl@gao.gov](mailto:yagerl@gao.gov).

## INTERNATIONAL TRADE

### U.S. Agencies Have Taken Some Steps, but Serious Impediments Remain to Restricting Trade in Burmese Rubies and Jadeite

#### What GAO Found

The Burmese jadeite and ruby trades are very different from one another and significantly involve China and Thailand. Burmese-origin jadeite is primarily purchased, processed, and consumed by China. Burmese-origin rubies are reportedly largely smuggled into Thailand, yielding little revenue to the Burmese regime, and are significantly processed there.

U.S. agencies have taken some steps but have not shown that they are effectively restricting imports of Burmese-origin rubies, jadeite, and related jewelry while allowing imports of non-Burmese-origin goods. Some U.S. jewelry representatives said import restrictions constrain legitimate ruby imports. Agencies published an interim final rule, but DHS has not developed specific audit guidance or conducted any postentry reviews of importers' records. In addition, there is little guidance to importers on what constitutes verifiable evidence of non-Burmese-origin. Although agencies have begun to collect data on ruby and jadeite imports, further efforts could contribute to an understanding of whether restrictions are effectively targeting Burmese-origin imports.

Agencies sent a required 60-day report to Congress, but it had little information on progress and challenges related to gaining international support to prevent trade in Burmese-origin rubies, jadeite, and related jewelry. Agencies have made no discernible progress in gaining such international support. Strong support and the cooperation of China and Thailand are important to restrict trade in these items, but highly unlikely. The Office of the United States Trade Representative has not requested a World Trade Organization waiver and State has not introduced a United Nations resolution, noting a number of countries would likely oppose a resolution. Finally, there have been no international meetings to negotiate a global arrangement restricting trade in Burmese rubies and jadeite similar to the Kimberley Process for restricting trade in conflict diamonds. Agency officials cited serious impediments to establishing such a framework.

Colored Gemstone Jewelry, Including Ruby and Jadeite Jewelry, for Sale in Rangoon, Burma



Source: GAO.

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## **Abbreviations**

CBP	U.S. Customs and Border Protection
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
HTS	Harmonized Tariff Schedule
JADE	Junta's Anti-Democratic Efforts
KPCS	Kimberley Process Certification Scheme
UN	United Nations
USGS	United States Geological Survey
USTR	United States Trade Representative
WTO	World Trade Organization

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United States Government Accountability Office  
Washington, DC 20548

September 30, 2009

The ruling military regime in Burma routinely restricts freedom of speech, religion, and movement, and commits other serious human rights violations against the Burmese people. Recently, the Secretary of State noted growing concerns about military cooperation between North Korea and Burma, which would be destabilizing for the region and pose a direct threat to Burma's neighbors. The Burmese regime and its supporters reportedly finance their activities through various financial transactions and trade with other countries, including trade in natural resources and gemstones such as rubies and jadeite.

In 2003, Congress passed the Burmese Freedom and Democracy Act, which banned the import of Burmese goods into the United States.<sup>1</sup> To promote a coordinated international effort to restore civilian democratic rule to Burma, in 2008 Congress passed the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (JADE Act).<sup>2</sup> The act affirms that it is the policy of the United States to work with the international community—including China and Thailand—to foster support for the democratic aspirations of the Burmese people and to coordinate efforts to impose sanctions on those directly responsible for human rights abuses in Burma. The act has several provisions, one of which amends the 2003 law to prohibit the import of jadeite and rubies mined or extracted from Burma and jewelry containing such jadeite and rubies into the United States and calls on the Administration to pursue international actions to prevent the global trade in Burmese gemstones. The JADE Act also requires GAO to submit a report to Congress assessing the effectiveness of the implementation of this section, including any recommendations for improving its administration.

Based on these provisions of the JADE Act, we examined the progress U.S. agencies have made in response to the act. Specifically, this report assesses (1) the key characteristics of the trade of Burmese-origin jadeite and rubies; (2) the progress U.S. agencies have made to restrict imports of Burmese jadeite, rubies, and related jewelry into the U.S. market; and (3) the progress U.S. agencies have made in pursuing international actions, including (a) seeking a World Trade Organization (WTO) waiver of U.S.

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<sup>1</sup>Pub. L. No 108-61, July 28, 2003.

<sup>2</sup>Pub. L. No 110-286, July 29, 2008.

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WTO obligations regarding import restrictions of the JADE Act; (b) securing a United Nations (UN) resolution that expresses the need to address trade in Burmese-origin jadeite, rubies, and related jewelry and calls for a workable certification scheme to prevent such trade; and (c) working to negotiate an international arrangement—similar to the Kimberley Process (which certifies the origins of rough diamonds)—to prevent such trade.

To address these objectives, we reviewed and analyzed Presidential Proclamation 8294—To Implement Amendments to the Burmese Freedom and Democracy Act of 2003; U.S. Customs and Border Protection (CBP) guidance, including 19 Code of Federal Regulations (CFR) Parts 12 and 163—the interim final rule; and other documents, cables, reports, and memos from relevant U.S. agencies. We interviewed officials from the Departments of State (State), Homeland Security (DHS), and the Treasury (Treasury), and the Office of the United States Trade Representative (USTR), and other agencies involved in responding to the JADE Act. We also met with representatives of the U.S. jewelry industry in New York. To gather information on the Burmese jadeite and ruby trades and the impact of the JADE Act on these trades, we traveled to Hong Kong, Thailand, and Burma and interviewed U.S. agency officials, foreign government officials, and representatives from the foreign jewelry industry. Appendix I provides more details on our objectives, scope, and methodology.

We conducted this performance audit from December 2008 to September 2009, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

The military regime in Burma has routinely restricted freedom of speech, religion, and movement, and committed other serious human rights violations against the Burmese people. Prior to 1990, Burma was ruled by a military regime known as the State Law and Order Restoration Council. In May 1990, national parliamentary elections were held that resulted in an overwhelming victory for the National League for Democracy party, led by Aung San Suu Kyi. However, the State Law and Order Restoration Council failed to yield power and honor the results of the election and maintained its policies of autocratic rule and repression of democratic opposition. Since 1990, Burma has continued to suffer under this repressive rule; the

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military regime has since changed its name to the State Peace and Development Council. The military regime in Burma has detained or held Aung San Suu Kyi under house arrest for the majority of the past 20 years, continues to imprison democratic political activists in favor of democracy, and commits other serious human rights violations.

In response to the behavior of the military regime in Burma, the United States has taken a number of actions aimed at pressuring the regime and promoting democratic reform in the country. Since 1990, the U.S. Mission in Burma has been headed by a chargé d'affaires. In 1997, the United States prohibited new investment in Burma and later imposed countermeasures on Burma due to its inadequate measures to eliminate money laundering. In 2003, Congress passed the Burmese Freedom and Democracy Act of 2003, which required the President to ban the importation of any Burmese product into the United States in order to strengthen Burma's democratic opposition and support the National League for Democracy as the legitimate representative of the Burmese people.<sup>3</sup>

However, despite the 2003 law, some Burmese gemstones were being cut, polished, and treated in third countries, such as Thailand, and exported as products of those third countries to the United States and other countries. To increase pressure on the military regime to end its human rights violations and restore democracy, Congress passed the JADE Act in 2008. Among its provisions are measures (1) imposing a ban against current and former leaders of the Burmese regime, their immediate family members, and supporters from traveling to the United States; (2) imposing targeted financial sanctions against those same persons; and (3) granting authority to the Secretary of the Treasury to impose additional banking sanctions against those persons. In addition, the JADE Act amends the 2003 law to prohibit the importation into the United States of jadeite and rubies mined or extracted from Burma and jewelry containing jadeite and rubies mined or extracted from Burma (fig. 1). It also calls on the Administration to pursue international actions to prevent the global trade in Burmese-origin gemstones.

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<sup>3</sup>On July 28, 2003, the President issued Executive Order 13310, which, among other measures, prohibits the importation of products of Burma into the United States.



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**Figure 1: Colored Gemstone Jewelry, Including Ruby and Jadeite Jewelry, for Sale in Rangoon, Burma**



Source: GAO.

The JADE Act also calls on the Administration to develop an international arrangement—similar to the Kimberley Process Certification Scheme (KPCS) for conflict diamonds<sup>4</sup>—to prevent global trade in Burmese-origin jadeite and rubies and jewelry containing Burmese-origin jadeite and rubies. In November 2002, diamond-producing and diamond-trading countries launched the KPCS, a voluntary global system to control the trade of rough diamonds and to assure consumers that the diamonds they purchase have not helped to finance violent conflicts. The United States and other KPCS participants are responsible for ensuring that the integrity of the certification scheme is upheld and that the Kimberley Process works toward preventing conflict diamonds from entering the legitimate

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<sup>4</sup>The UN General Assembly defines conflict diamonds as rough diamonds used by rebel movements to finance their military activities, including attempts to undermine or overthrow legitimate governments. UN General Assembly Resolution 55/56 (Jan. 29, 2001).

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trade of rough diamonds. In instances of noncompliance, KPCS can expel or suspend a participant.<sup>5</sup>

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## The Burmese Jadeite and Ruby Trades Are Distinctly Different, and Significantly Involve China and Thailand

### Burmese-Origin Jadeite Is Primarily Purchased, Processed, and Consumed by China

According to foreign jewelry industry representatives, jadeite generally is mined in the northern Kachin state of Burma (fig. 2), where rough jadeite rocks can range in size from that of a small egg up to a 1-ton boulder. According to agency officials and jewelry industry representatives, virtually all of the jadeite exported out of Burma is sold at government auctions in Rangoon. Jewelry industry representatives said that the vast majority of this jadeite is purchased by buyers from China (both the mainland and Hong Kong); a very small amount is bought by buyers from the rest of the world.

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<sup>5</sup>For example, in July 2004, the chair of KPCS expelled the Republic of Congo from participation because it could not account for the origin of large quantities of rough diamonds.

**Figure 2: Major Jadeite and Ruby Mining Areas in Burma**



Sources: GAO and the United Nations.

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According to agency officials, the flow of jadeite generally goes from Burma to South China for processing, cutting, carving, and manufacture into finished jadeite products that are consumed domestically in China. According to foreign jewelry industry representatives, the price of jadeite continues to rise because the consumer demand for articles made of jadeite in China continues to grow.

According to foreign jewelry industry and government officials, the Chinese have a long history of buying and using jade for jewelry, ornaments, and decorations, including statues. Jadeite, a relatively rare and high-quality form of jade that is believed to come mostly from Burma,<sup>6</sup> has positive cultural significance to the Chinese. Figure 3 shows examples of statues carved out of white jadeite. Foreign jewelry industry representatives said that a widely held belief among the Chinese is that jadeite, including wearing jewelry made from jadeite, such as the pieces shown in figure 4, brings good fortune and health.

**Figure 3: White Jadeite Statues, for Sale in Rangoon, Burma**



Source: GAO.

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<sup>6</sup> While the highest-quality jadeite in the world is known to come from Burma, smaller amounts of lower-quality jadeite can be found in Russia and Guatemala.

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**Figure 4: Jadeite Bracelets**



Source: GAO.

According to foreign jewelry industry representatives, there are millions of consumers of jadeite in China; Burmese jadeite products processed and finished in China are consumed directly by China's internal market. According to estimates by these representatives, approximately 100,000 people carve and polish jadeite in China, and as many as 3 million people work in the jade industry overall.

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### **Burmese-Origin Rubies Are Largely Smuggled into Thailand, Yielding Little Revenue to the Burmese Regime, and Are Significantly Processed There**

In contrast to jadeite, rough Burmese ruby stones are relatively small and thus easy to transport and smuggle. They are typically found through small-scale mining techniques, such as panning for stones in riverbeds, digging small pits or trenches, and locally quarrying ruby-bearing marble. The major areas for ruby mining are in Mogok and Mong Hsu in northeast Burma. According to U.S. agency officials, small-scale Burmese miners generally collect rubies and hope to avoid paying taxes to the Burmese government. They sell their stones to small and midlevel mom-and-pop operations that sell the stones at the Thailand-Burma border. Burmese migrants carry the stones over the border to sell to Thai traders.

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Although some of the highest-quality rough rubies might be sold at the government auctions, according to foreign government and industry officials, most rough Burmese rubies processed in Thailand have been smuggled over the border and probably result in little or no revenue for the regime in Burma. Figure 5 shows some Burmese-origin rubies that have been processed and are for sale in Thailand. The very nature of smuggling prevents the Burmese regime from extracting much revenue from these stones. U.S. agency officials said that the Burmese regime probably derives much more revenue from gemstones (such as jadeite) that are almost exclusively sold at government auctions in Rangoon.

**Figure 5: Processed and Finished Burmese-Origin Rubies for Sale in Thailand**



Source: GAO.

Jewelry industry representatives told us that most rough stones found in Burma are of uncertain value until they are heat treated and then cut and polished in Thailand. Once Burmese rubies in rough form enter Thailand, the rubies typically find their way to Chanthaburi or Bangkok for cutting, heat treatment, polishing, and setting in jewelry.<sup>7</sup> Thai government officials claim that as rough Burmese rubies go through these processes, they

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<sup>7</sup>Rubies can go through significant treatments before entering the marketplace, such as filling and heat treatment, to eliminate any irregularities and produce market-ready stones.

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undergo substantial transformation (fig. 6), and become products of Thailand.

**Figure 6: Transformation of Rough Burmese-Origin Ruby into Finished Thai Ruby**



Source: GAO.

Thai officials claim that the value of a rough ruby is only 10 percent of the value of an average piece of finished Thai ruby jewelry exported to the United States. The rest is Thai value-added processing. Generally, a high-quality finished Burmese ruby is known for its special character, such as its translucent and brilliant color scheme, known as “pigeon-blood” red. According to agency officials, rubies of Burmese origin have historically commanded a price premium that is recognized in industry price guides. This premium has created an incentive for traders to try to pass high-quality non-Burmese stones as being of Burmese origin.

Thai gemstone industry representatives said they are seeking to use rubies from non-Burmese sources such as Madagascar, Tanzania, and Kenya, but said that there are challenges to using stones from these sources. According to these representatives, Madagascar has some high-quality rubies, but requires that the value-added processes on these rubies be performed within its borders. Working with Burmese rubies is a competitive advantage for Thailand because it has easy access to the stones, the stones are generally cheaper because they are smuggled, and Thai traders have developed social and cultural networks with the Burmese ruby traders.

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According to Thai government and jewelry industry officials, the United States is one of Thailand's top five overall trading partners, and jewelry remains one of the top three Thai exports to the United States.<sup>8</sup> The United States and Europe are Thailand's main export markets for finished ruby jewelry. Based on information from Thai jewelry industry representatives, in 2008 Thailand's jewelry exports to the United States were valued at \$8 billion.<sup>9</sup> Also in 2008, according to these representatives, Thailand exported approximately \$12.6 million (429 million Thai baht) worth of rubies to the United States.

Thai jewelry industry representatives stated that from October to December 2008, Thai jewelry exports to the United States, on average, declined by 30 percent. Moreover, they stated that roughly 1.2 million Thais worked in the jewelry industry in October 2008 and estimated that 100,000 to 120,000 jewelry industry jobs had been lost by March 2009.<sup>10</sup> Thai jewelry industry representatives claim that these declines are due, in large part, to the import restrictions under the JADE Act.<sup>11</sup>

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<sup>8</sup>According to Thai jewelry industry representatives, the volume of Thailand's gem and jewelry exports to the United States has declined due to the U.S. decision to discontinue Generalized System of Preferences privileges for Thailand in 2005. Thai export volume of gems and jewelry to the United States had negative growth of -6.63 percent and -1.14 percent in 2006 and 2007, respectively.

<sup>9</sup>There are no official data specifically for ruby jewelry exports to the United States.

<sup>10</sup>According to the results of a survey by Thai jewelry industry representatives, 50,000 to 60,000 people lost jobs or were laid off due to the drop in gemstone sales from October 2008 through March 2009. Since the survey went out only to association members (and not all Thai businesses engaged in the jewelry industry were members), the association estimates that the real number of jobs lost was 100,000 to 120,000.

<sup>11</sup>Regarding the accuracy and reliability of jewelry trade information, exports to the United States, and employment figures provided by Thai government and jewelry industry officials, U.S. agency officials said that the numbers are probably on the higher end of estimates but give a general picture of the situation. For example, agency officials could not definitively say that 50,000 or 100,000 people in Thailand have been laid off in the jewelry industry, but they concur that significant cutbacks in the Thai jewelry industry have recently taken place.



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## U.S. Agencies Have Taken Steps to Prohibit Imports of Burmese-Origin Rubies, Jadeite, and Related Jewelry, but Have Not Shown That They Are Effectively Targeting These Imports

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### Agencies Held Outreach Meetings with U.S. Jewelry Representatives; Some Representatives Said Import Restrictions Constrain Legitimate Ruby Imports

According to agency officials, the National Security Council convened an interagency working group and tasked the Department of Commerce (Commerce) with holding meetings with group members and U.S. jewelry industry and laboratory representatives to obtain information about the trade in jadeite and rubies. In response, Commerce arranged four meetings, one with U.S. agency gemstone experts in October 2008, and three with U.S. jewelry industry representatives and agency officials in October and November 2008. In addition to Commerce, agency officials from Treasury, DHS, the United States Geological Survey, the United States Trade Representative, State, and the International Trade Commission attended. According to agency officials, some industry representatives who attended these meetings have spoken broadly in favor of U.S. import restrictions on Burmese-origin rubies, jadeite, and related jewelry because they believe the restrictions will negatively impact the Burmese regime. Other representatives have expressed doubts about the government's ability to impose an import restriction regime that will not compromise legitimate non-Burmese ruby imports, noting that the nature of the ruby trade is decentralized and informal, which complicates definitive certification of country-of-origin determination.

Some representatives of the U.S. and foreign jewelry industries we interviewed also expressed concern about U.S. import restrictions under the JADE Act. They said that U.S. import restrictions have little impact on the military regime in Burma and negatively impact small-scale miners and traders in Burma and jewelry workers in Thailand. According to jewelry industry representatives, as a result of the act, some U.S. dealers have become reluctant to deal in rubies, jadeite, and related jewelry whether or

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not they were from Burma. Although the import restrictions in the JADE Act allow trade in non-Burmese-origin rubies, jadeite, and related jewelry, some industry representatives said that the restrictions imposed by the act have reduced trade in rubies overall, not just trade in Burmese rubies. For example, one gemological lab director noted that since the inception of the law, few dealers have submitted rubies for testing, suggesting that dealers are less inclined to trade in rubies overall.

Some representatives of colored gemstone dealers expressed concern that CBP agents may not have the ability to differentiate between Burmese and non-Burmese rubies, jadeite, or related jewelry and this could lead to wrongful seizures. For example, a ruby dealer we met with said he wanted to purchase a 5-carat, reportedly non-Burmese, ruby during an overseas trip. The dealer paid a gemological laboratory to have the stone tested for a country-of-origin determination. However, he decided not to purchase the ruby because (1) as a result of testing, the stone was judged as originating from one of six possible countries, one of which was Burma, and (2) with no way to definitively prove the stone was not from Burma, the dealer was concerned CBP officials might mistakenly or arbitrarily seize the stone.

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## U.S. Agencies Modified the Harmonized Tariff Schedule Codes and Published an Interim Final Rule, but Ambiguities in the Rule Remain

The President issued Presidential Proclamation 8294 on September 26, 2008, implementing prohibitions and conditions in the JADE Act and authorizing U.S. agencies to take actions called for in the act.<sup>12</sup> Specifically, the proclamation modified the Harmonized Tariff Schedule (HTS) of the United States to prohibit the importation of certain goods of Burma.<sup>13</sup> In addition, according to agency officials, in October 2008, the HTS was amended to include new HTS subheadings that identify and can be used to

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<sup>12</sup>Prior to the proclamation, U.S. Customs and Border Protection issued an instruction to the U.S. jewelry industry in September 2008, requiring importers of non-Burmese ruby, jadeite, and related jewelry to produce certification that articles were of non-Burmese origin. U.S. jewelry industry officials expressed concern over the certification process, including lack of understanding and clarity over standards of evidence needed to certify a ruby, jadeite, or related jewelry was of non-Burmese origin. U.S. agencies later withdrew this instruction and replaced it with more detailed instructions in the interim final rule.

<sup>13</sup>See app. II, Modification of Chapter 71 of the Harmonized Tariff Schedule of the United States. The HTS is the primary resource for determining tariff classifications for goods imported into the United States. The HTS is used to classify a good (a 10-digit tariff classification number), which is based on such characteristics as its name, use, and the material used in its construction.

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track the import of non-Burmese-origin rubies, jadeite, and related jewelry.<sup>14</sup>

Acting to implement the JADE Act and Presidential Proclamation 8294, in January 2009, Treasury and CBP published an interim final rule detailing requirements and responsibilities for U.S. importers and foreign exporters on imports of non-Burmese-origin rubies, jadeite, and related jewelry into the United States. The interim final rule detailed conditions on the importation of rubies, jadeite, and related jewelry and offered guidance and details about importer and exporter responsibilities, including the exporter written certification process, importer certification scheme with a verifiable evidence standard, and importer record-keeping requirements.

According to the amended regulations, if an importer brings rubies, jadeite, or related jewelry into the United States, using the non-Burmese-origin HTS codes serves as a certification by the importer that these goods were not mined or extracted from Burma. CBP officers do not verify the authenticity of the certification. Agency officials said that to determine rubies, jadeite, and related jewelry are not from Burma, CBP officers rely on (1) the non-Burmese-origin HTS codes under which the items are shipped, and (2) statements on accompanying commercial invoices that the items did not originate in Burma. Agency officials stated that CBP officers will likely have difficulty authenticating country-of-origin statements on commercial invoices. U.S. jewelry industry officials also expressed concern over the reliability of statements on foreign invoices from exporters, because of the potential for fraud or abuse by exporters trying to access the U.S. market, and U.S. agency officials acknowledged this possibility.

Further, agency officials said that there is little CBP officers can do to challenge such exporter statements unless there is obvious and clear conflicting evidence on the commercial invoice or in the shipment itself. Agency officials and U.S. jewelry representatives said that a CBP officer has no way to discern where a stone is from, or even if a stone is authentic or not. CBP officials could have problems distinguishing one colored gemstone, such as garnet, from another, such as ruby. Jadeite jade and

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<sup>14</sup>The Department of the Treasury's Office of Foreign Assets Control is also preparing to amend the Burmese Sanctions Regulations, 31 Code of Federal Regulations part 537, to implement provisions of the JADE Act.

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nephrite jade also share similar characteristics, including colors and texture.

The interim final rule also mandates that at the time of importation, the importer must have in his possession written certification from the exporter certifying that the jadeite or rubies were not mined or extracted from Burma, with verifiable evidence that tracks the stones from the mine to exportation or the place of final finishing. The importer is required to maintain these records of certification for at least 5 years. However, U.S. jewelry industry representatives have expressed concern that the rule does not offer practical instruction on what constitutes verifiable evidence. Agency officials stated that there are no set standards to evaluate verifiable evidence provided by importers. Agency officials acknowledged that currently, CBP officers rely on experience to determine what is valid, verifiable evidence. U.S. jewelry representatives said that without clear guidance as to what constitutes verifiable evidence, the importer would have to rely on whatever documentation the exporter can provide as evidence of the articles' origin. Though the interagency working group discussed the option of developing further guidance on what constitutes verifiable evidence, this has not yet occurred. As a result, there is no further guidance from U.S. agencies to importers as to what constitutes acceptable verifiable evidence to maintain records on articles of non-Burmese origin.

Since the implementation of the interim final rule, DHS has not developed specific guidance to conduct postentry reviews of importers' records of verifiable evidence nor has it conducted any such postentry reviews. As a result, U.S. agencies have no process for validating that Burmese-origin rubies, jadeite, or related jewelry have been effectively restricted from entering the United States. According to CBP officials, CBP is in the process of developing a postentry review operation to verify that the recordkeeping requirements laid out in the interim final rule are being met. Agency officials acknowledge that it will be difficult to track a ruby's movement from the mine to the final marketplace to properly authenticate a gemstone's country of origin because of the decentralized, informal, and fractured nature of the ruby-trading business. CBP officials said that they plan to conduct postentry reviews of importer information on rubies, jadeite, and related jewelry entering the country in order to verify that a certification from the exporter is on file as required by the interim final rule. However, to date, CBP has not executed this plan.

The JADE Act does not require, and the interim final rule does not provide, any mechanism to test gemstones for country-of-origin determination, and

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there are impediments to accurate and definitive determination of whether a ruby is of Burmese origin.<sup>15</sup> Specialized gemological laboratories in the United States and abroad offer a variety of testing services for gemstones such as rubies. According to jewelry industry representatives, country-of-origin testing involves the use of various tests to identify distinguishing characteristics of a gemstone and compare those characteristics with those of reference stones from other sources around the world. In some cases, the tests may identify characteristics that are unique to a particular source and provide a high degree of certainty that a stone is from a certain location. In other cases, the tests may indicate that the gemstone could have originated from multiple sources around the world. In particular, rubies from some African countries often have characteristics similar to those of rubies from Burma, which reduces the certainty of the results and complicates the use of country-of-origin testing for the purposes of the act. As a result, making a definitive determination as to the country of origin of a particular gemstone or group of gemstones will be challenging for a U.S. importer or agencies attempting to enforce U.S. import restrictions.

In addition, according to agency and jewelry industry officials, for relatively low-value jewelry that may include multiple, low-value rubies, the cost of testing the rubies could be significantly higher than the value of the jewelry. During our visit to the gemstone trading marketplace in Chanthaburi, Thailand, we saw fully finished and processed Madagascar-origin rubies being sold for 10 cents apiece. However, a gemological lab we visited in New York charged \$50 per ruby to produce a country-of-origin determination. Industry representatives and agency officials confirmed that testing may be cost-prohibitive. In addition, industry representatives said that it can be extremely difficult to test large numbers of rubies or jadeite set in jewelry because some stones are too small to test or are obscured by their settings.

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<sup>15</sup>According to agency officials, there is no definitive way to determine jadeite's country of origin, but the United States imports very little jadeite.

**U.S. Agencies Have Begun to Track Non-Burmese-Origin Ruby and Jadeite Imports, but Lack Data to Determine Whether Restrictions Are Effectively Targeting Imports**

DHS has tracked the imports of reportedly non-Burmese rubies, jadeite, and related jewelry into the United States since October 2008, but there are insufficient data to fully assess the impact of import restrictions under the JADE Act. Our analysis of the limited data from DHS on imports from October 2008 to May 2009 shows that ruby, jadeite, and related jewelry, reportedly of non-Burmese origin, are continuing to be imported into the United States.<sup>16</sup> (See table 1.) According to DHS data, Thailand, China, Pakistan, and India reportedly exported more than \$70 million dollars worth of non-Burmese-origin rubies, jadeite, and related jewelry into the United States from October 2008 to May 2009.<sup>17</sup>

**Table 1: Top 10 Exporters of Reportedly Non-Burmese Rubies, Jadeite, and Related Jewelry to the United States from October 2008 to May 2009**

Country of origin	Value of exports
Thailand	\$23,277,674
China (mainland and Hong Kong)	17,401,152
Pakistan	17,038,923
India	16,815,604
Switzerland	6,617,152
Italy	5,622,562
Dominican Republic	3,229,973
France	2,662,960
United Arab Emirates	1,273,864
Canada	1,256,643
<b>Total</b>	<b>\$95,196,507</b>

Source: DHS/CBP.

The data show that the United States imported more rubies, jadeite, and related jewelry from Thailand, in terms of value, than from any other country. There were also a number of reportedly non-Burmese-origin jadeite imports (excluding jewelry), worth approximately \$2.6 million, although U.S. and foreign jewelry industry officials told us almost all

<sup>16</sup>This analysis is based on reported imports under the new HTS subheadings. By using these subheadings, these imports are categorized as having non-Burmese origin. These data rely on information self-declared by foreign exporters of such products to the United States.

<sup>17</sup>For the full list of exporting countries, see app. III (DHS Data on Exporter Reported Imports of Non-Burmese Rubies, Jadeite, and Related Jewelry into the United States, October 2008 – May 2009).

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jadeite is of Burmese origin. During this time period, no shipments were seized by CBP on the grounds that they were suspected to be of Burmese origin.

However, even with the data generated from the recent tracking of reportedly non-Burmese-origin imports, it is still difficult to determine whether or not the import restrictions imposed under the JADE Act are effectively targeting Burmese-origin items. First, DHS did not track data on the import of non-Burmese-origin rubies, jadeite, and related jewelry prior to September 2008. As a result, it is not possible to compare the amount of rubies, jadeite, or related jewelry that entered the United States prior to the implementation of the law, in order to analyze the effect of the law. Second, using current HTS codes, CBP does not separately track imports of ruby jewelry and jadeite jewelry because both are currently categorized under the same HTS codes. Without this information, CBP cannot determine the amount of (1) rubies, plus ruby jewelry, and (2) jadeite, plus jadeite jewelry, imported over time and cannot analyze the effect of the law on U.S. importation of these distinct gemstone products. Third, less than 2 percent of shipments (41 out of more than 2,500) had quantities of rubies, jadeite, or related jewelry listed. Without accurate data on the quantity of products imported, and the corresponding per unit value of items in such shipments, CBP cannot assess the total quantity of reportedly non-Burmese-origin rubies, jadeite, and related jewelry imported into the United States. Without this information or the corresponding per unit value of items in such shipments, CBP cannot analyze patterns of trade, such as whether higher- or lower-value items are coming from particular countries, exporters, and so forth. Such information could be useful in the event that CBP considers testing on some subset of the stones, such as those with a high per unit value.

In addition, agencies lack accurate and reliable data on gemstone exports from Burma to other countries, which hinders efforts to analyze the impact U.S. import restrictions are having on Burmese production and supply of gemstones.<sup>18</sup> According to agency officials, the Burmese regime's records on ruby and jadeite production and exports cannot be verified. Agency officials stated that data on Burmese ruby and jadeite production

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<sup>18</sup>The United States Geological Survey tracks worldwide mineral production figures, including ruby production in Burma. However, officials said that because of the unsubstantiated nature of the Burmese government reports and because the Burmese government may lack full control over mining areas, the ruby production numbers may not be accurate.

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is limited to official Burmese government sources and may be unreliable. A leading economic scholar on Burma noted that Burma's official economic statistics are incomplete, internally contradictory, and frequently subject to dramatic revision.

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## U.S. Agencies Have Made No Discernible Progress in Gaining International Support to Prevent Global Trade in Burmese Gemstones

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### Strong Support and Cooperation of China and Thailand Are Important to Restrict Global Trade in Burmese-Origin Jadeite, Rubies, and Related Jewelry, but Highly Unlikely

China's support and cooperation are critical if the United States government hopes to prohibit international trade in Burmese jadeite and jadeite jewelry. However, according to U.S. agency officials and foreign jewelry industry representatives, it is nearly impossible to secure Chinese cooperation to stop the trade in Burmese jadeite because of the strong demand for jadeite in China and because finishing and processing it is a source of employment. According to U.S. agency officials and foreign jewelry industry representatives, because almost all Burmese jadeite is imported by China and the Chinese have a very strong internal demand for it and economic interests in processing it, as discussed earlier, the United States has very little leverage in attempting to gain China's active support and cooperation in order to stem the international trade of Burmese jadeite. In addition, agency officials said China would not support implementing a ban on Burmese jadeite because they oppose all sanctions against Burma; China fundamentally opposes the concept of sanctions against Burma as a policy tool.

Thailand's support and cooperation are also critical if the United States hopes to effectively prohibit international trade in Burmese rubies and ruby jewelry. However, it is highly unlikely that Thailand will support measures under the JADE Act given the act's impact on Thailand's economy. In addition, U.S. agency officials, foreign government officials, and Thai jewelry industry representatives told us that import controls under the JADE Act are hurting small-scale miners and traders in Burma and dealers and laborers in Thailand, not the military regime in Burma.



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Thai government officials also said they are concerned that European governments could follow the United States and adopt JADE Act-style restrictions on Burmese-origin rubies and ruby jewelry.

According to U.S. agency officials, the fact that Thai government officials are willing to publicly voice their concerns about the import restrictions in the JADE Act can be taken as evidence that the act is having a negative impact on the Thai jewelry industry. Agency officials said, however, that it is difficult to determine whether this impact is caused by the global economic downturn, the JADE Act, or some combination of both. U.S. agency officials stated that Thailand already felt challenged by the United States on other trade issues, such as intellectual property rights and accusations of questionable labor practices regarding shrimp production.

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**Required 60-Day JADE Act Report Was Sent to Congress, but Has Little Information on Progress Made in Gaining International Support**

The JADE Act required the President to transmit a report to Congress describing actions the United States has taken during the first 60 days after the enactment of the act to seek (1) the issuance of a draft WTO waiver, (2) the adoption of a UN resolution, and (3) the negotiation of an international arrangement—similar to the Kimberley Process Certification Scheme for conflict diamonds. Presidential Proclamation 8294 authorized the Secretary of State, in consultation with the United States Trade Representative, to transmit the report to Congress. According to State, this report was sent to Congress on February 23, 2009.

The report states that during the 60-day period following enactment of the act, the Administration was engaged in developing regulations to implement the act's provisions. However, the report submitted is just a page and a half long and only provides basic statements on actions taken, such as a Presidential Proclamation being issued and the HTS being amended. According to the report, State informed two countries engaged in processing and trading rubies and jadeite of the new import restrictions under the JADE Act. The report also states that State engaged European Union counterparts to discuss the act and how to best harmonize respective sanctions against Burma. Beyond these basic statements covering actions taken during the first 60 days, the report has little information on the overall progress agencies have made or the challenges they face in gaining international support.

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## USTR Officials Have Not Taken Steps to Request a WTO Waiver

According to the President's Proclamation, USTR is responsible for taking all appropriate actions to seek the issuance of a draft waiver decision by the WTO Council for Trade in Goods waiving applicable WTO obligations with respect to the import restrictions of the JADE Act. However, USTR officials said that they have taken no formal steps to initiate a waiver request at the WTO. The Administration has not indicated that it considers U.S. import restrictions under the JADE Act to be inconsistent with U.S. WTO obligations.

According to USTR officials, a WTO member requests a waiver when it implements a measure that it acknowledges is inconsistent with its WTO obligations but believes that other WTO members would not be opposed to the measure's continued application. Thus, requesting a waiver for the JADE Act would represent an acknowledgment that the import restrictions on Burmese articles are inconsistent with U.S. WTO obligations.

According to agency officials, if the Administration decides that a WTO waiver is necessary, USTR would submit a waiver request to the WTO Council for Trade in Goods, which would then consider the request. Agency officials also said if the council approves the waiver request, it would submit a report to the WTO General Council, which would then formally endorse the Council for Trade in Goods' report, and the waiver would be approved. The Council for Trade in Goods and the General Council would make these decisions based on a consensus of the entire WTO membership. An approved WTO waiver would allow the United States to apply import restrictions on Burmese jadeite, rubies, and related jewelry entering the United States without running afoul of its WTO obligations. If consensus is not reached in the Council for Trade in Goods, the waiver request does not move forward and the continued use of the measure by the United States or other country may be challenged by a WTO member under the WTO dispute settlement mechanism.

Because of the WTO's consensus decision-making process, any WTO member—including Thailand, Burma, or any country that feels directly or indirectly negatively affected by the law—could effectively veto a WTO waiver request by the United States. Agency officials said WTO members rarely initiate a waiver request unless they believe that a consensus exists for its approval. In addition, agency officials said the process of seeking and acquiring a WTO waiver request may take a long time because the decision to get a waiver is predicated on a consensus decision. USTR officials noted that past WTO waiver requests submitted by the United

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States were held up for a number of years; even very small countries have held up waiver requests.

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### State Has Not Introduced a UN Resolution against Burma, Noting That a Number of Countries Would Likely Oppose It

State has not introduced a UN resolution, noting that a number of countries at the UN are generally opposed to resolutions against Burma. Officials said that the Administration is currently undertaking a review of the U.S. government's Burma policy that, when completed, would enable it to determine how to best integrate the objectives of the JADE Act into its overall diplomatic strategy. State has also taken some basic steps to gather information about ruby markets in certain countries. For example, according to agency officials, as the JADE Act was being developed, the embassy in Bangkok produced several reporting cables on the ruby industry in Thailand. Agency officials said these cables provided background information on topics such as where the rubies were from, the process of finishing rubies, the sales of rubies and ruby jewelry to the United States and Europe, and the extent of Burmese ruby smuggling into Thailand.

In December 2008, State headquarters sent a cable to posts in response to the JADE Act. According to State officials, State headquarters sought information on the import and processing of Burmese rubies in countries thought to be involved in the ruby trade, including Thailand and China. In response, State staff at overseas posts met with jewelry industry representatives or government officials in their respective countries to discuss the ruby trade. However, State headquarters did not ask posts about the importation or processing of Burmese jadeite. According to agency officials, posts were not asked about the importation or processing of Burmese jadeite because the United States is not an export market for jadeite. In addition, the cable did not explicitly ask staff to conduct diplomatic outreach to secure their host governments' support for the JADE Act. According to agency officials, the cable was intended to solicit information on the trade in rubies rather than to seek to secure host government support for the JADE Act. On their own, officials at some posts we visited reported that they conducted outreach, particularly with those governments that wished to discuss their positions on U.S. import restrictions under the JADE Act with State officials.

According to State officials, a number of countries at the UN are generally opposed to resolutions targeted at Burma. State has approached a couple of other countries about the feasibility of a UN resolution, but has not yet introduced one. Agency officials said a proposal calling for the creation of a workable certification scheme for Burmese rubies and jadeite will likely

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be challenged by some countries at the UN on the basis of its technical feasibility. According to these officials, even with a reliable technical process to establish which rubies, jadeite, and related jewelry are of Burmese origin, it is doubtful such a resolution would pass.

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**There Have Been No International Meetings Convened to Negotiate a Kimberley-like Framework, and Agency Officials Cite Serious Impediments to Establishing a Framework**

State officials said they have had working-level discussions with like-minded countries about the possibility of negotiating a Kimberley-like framework to prevent the global trade in Burmese-origin rubies, jadeite, and related jewelry. State officials said they would, to the extent possible, continue discussions with like-minded states to develop a framework that could win sufficient international support to trace and document the origin of these products. However, to date, there have been no international meetings convened among relevant countries, private industry, and nongovernmental organizations to negotiate a Kimberley-like framework, as occurred for conflict diamonds. Agency officials said there are serious impediments to achieving this objective, such as lack of international support and the inherent difficulty in identifying the country of origin for rubies and ruby jewelry, as discussed earlier. In addition, agency officials said there are key differences between the global diamond and Burmese ruby industries that could complicate establishing a Kimberley-like framework.

According to agency officials, the Burmese ruby industry mostly consists of decentralized small-scale operations, is subject to significant smuggling, lacks documentation, and is often carried out through cash exchanges. In contrast, while some diamonds are extracted using small-scale mining techniques, the deep diamond mining industry tends to be more centralized, with large, highly capitalized resource extractors like DeBeers that can more effectively control and track mining through all stages of production.<sup>19</sup> Further, according to agency officials, low-quality rubies are much more common than low-quality diamonds. There are very large quantities of small, low-value rubies; much smaller quantities of large, high-value rubies; and a tremendous variety of rubies in between.

For example, based on our analysis of DHS's data on ruby shipments (that had a declared quantity) coming into the United States between October 2008 and May 2009, the average value of a ruby article was less than 1

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<sup>19</sup>Due to the substantial capital required for deep mining, just four companies mine a large majority of the world's supply of rough diamonds.

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cent.<sup>20</sup> Moreover, according to these same data, a single shipment of rough rubies arrived in Charleston, South Carolina, in October 2008 that included 89 million rubies worth a total of only \$35,600 (on average, each ruby was worth less than 1/10 cent). Rubies and jadeite can be used in products unimaginable in the diamond context; while conducting our audit in Rangoon, we saw numerous examples of “paintings” composed entirely of various colors of ruby, jadeite, and other colored gemstones glued to canvases (fig. 7). Such products are composed of literally thousands or tens of thousands of stones; each stone could have come from one of any number of sources.

**Figure 7: A “Painting” Composed Primarily of Green Jadeite and Other Colored Gemstones Glued to Canvas, for Sale in Rangoon, Burma**



Source: GAO.

In addition, according to agency officials, the effort to restrict the trade of Burmese-origin rubies and jadeite has, thus far, been a unilateral effort by the U.S. government led by Congress. In contrast, the effort to develop the

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<sup>20</sup>This calculation is based on a limited, nonrepresentative sample of shipments (41 out of more than 2,500 shipments) where there are data on the shipment value and quantity of rubies, jadeite, and related jewelry. DHS reports value and quantity based on what is declared on each shipment. We sorted the declared value and quantity of ruby shipments (35 out of the 41 shipments), calculated their total quantity and value, and calculated the average value of a ruby article in these 35 shipments.

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Kimberley Process for conflict diamonds was a multilateral effort. For conflict diamonds, the diamond-producing countries and the international diamond industry supported efforts to restrict trade in conflict diamonds. Because of this broad international support, other countries, the international diamond industry, and nongovernmental organizations have worked to establish and maintain the Kimberley Process and its mechanisms to restrict the flow of conflict diamonds.

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## Conclusions

One of the purposes of the JADE Act is to promote a coordinated international effort to restore civilian democratic rule to Burma, and recent events further demonstrate the human rights violations of the regime. U.S. measures to exert pressure on the regime include two types of trade measures: one designed to restrict U.S. imports of jadeite and ruby originating from Burma and the other to utilize mechanisms such as the UN to restrict worldwide trade in Burmese jadeite and rubies. However, as the evidence in this report indicates, U.S. agencies have not shown that they are effectively targeting imports of Burmese-origin rubies, jadeite, and related jewelry while allowing imports of non-Burmese-origin goods. While agencies have published an interim final rule, they have not developed specific audit guidance or initiated any postentry reviews of importers' records. In addition, there is little guidance to importers on what constitutes verifiable evidence. Additional steps to implement this rule, along with further improvements in the data collected on imported rubies and jadeite, could contribute to an understanding of whether import restrictions are effectively targeting Burmese-origin goods.

With regard to the goal of restricting worldwide trade, the Department of State submitted a required 60-day report to Congress, but the report had little information on progress or the challenges involved in gaining international support. Since that report, USTR has not requested a WTO waiver and State has made no discernible progress in introducing a UN resolution or negotiating a Kimberley-like process. Although agencies cite a number of factors that could impede progress, the current status has not been communicated to Congress. In order for Congress to provide oversight and assist in the design of an effective set of policies to exert pressure on the regime in Burma, it needs accurate and complete information about the effectiveness of existing policies and challenges in implementing those policies, and our review demonstrates that this information has not been provided.

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## Recommendations for Executive Action

In order to effectively implement the sections of the JADE Act prohibiting the importation of Burmese-origin rubies, jadeite, and related jewelry while allowing imports of non-Burmese-origin goods, we recommend that DHS, in consultation with relevant agencies, develop and implement guidance to conduct postentry reviews of importers' records and provide improved guidance to importers on the standards of verifiable evidence needed to certify articles are of non-Burmese origin.

To enhance the effectiveness of U.S. policy against the military regime in Burma, we recommend that State, in consultation with DHS and Treasury, analyze the efficacy, challenges, and difficulties faced in implementing measures to restrict trade in Burmese-origin rubies, jadeite, and related jewelry in the context of the broader U.S. sanctions provisions in the JADE Act, and report to Congress how these measures will contribute to its efforts to influence the military regime in Burma.

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## Agency Comments and Our Evaluation

We provided a draft of this report to USTR and the Secretaries of State, Homeland Security, the Treasury, and Commerce for their review and comment. We received written comments from DHS, Commerce, and State that are reprinted in appendixes V, VI, and VII; we also received technical comments from USTR, DHS, and the Treasury, which we incorporated as appropriate. DHS concurred with our first recommendation and State concurred with our second recommendation.

DHS concurred with our first recommendation and noted in its comments that its work to implement the recommendation will rely on consultation with other relevant agencies of the U.S. government. DHS also stated that it believes a U.S. governmentwide effort to establish international agreement and standards to restrict trade in Burmese rubies, jadeite, and related jewelry will offer a more comprehensive and realistic solution to achieving the goals of the JADE Act, beyond DHS's enforcement of U.S. import restrictions. We acknowledge that the Kimberley Process for conflict diamonds could offer a model for establishing such an international agreement but, as we have noted in this report, there are serious challenges that could make the establishment of such a process difficult for preventing international trade in Burmese rubies, jadeite, and related jewelry. In its comments, Commerce expressed concern about language in our report characterizing its involvement in the interagency working group to develop further guidance on what constitutes verifiable evidence. In response, we modified this sentence in our report to more accurately portray the entities involved.

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State concurred with our second recommendation, to analyze the efficacies, challenges, and difficulties in implementing measures under the JADE Act. State noted that it would include the findings from this analysis in its Semi-Annual Report on Conditions in Burma, due to Congress on November 15, 2009. State also noted it would include our second recommendation in the Administration's overall policy review of Burma.

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We are sending copies of this report to interested congressional committees. In addition, this report will be available on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4347 or [yagerl@gao.gov](mailto:yagerl@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix VIII.

A handwritten signature in black ink that reads "Loren Yager". The signature is written in a cursive style with a large initial "L" and "Y".

Loren Yager, Director  
International Affairs and Trade



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*List of Congressional Committees*

The Honorable Max Baucus  
Chairman  
The Honorable Charles E. Grassley  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable John F. Kerry  
Chairman  
The Honorable Richard G. Lugar  
Ranking Member  
Committee on Foreign Relations  
United States Senate

The Honorable Howard L. Berman  
Chairman  
The Honorable Ileana Ros-Lehtinen  
Ranking Member  
Committee on Foreign Affairs  
House of Representatives

The Honorable Charles B. Rangel  
Chairman  
The Honorable Dave Camp  
Ranking Member  
Committee on Ways and Means  
House of Representatives

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# Appendix I: Objectives, Scope, and Methodology

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To examine U.S. agencies' efforts in response to the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (JADE Act) (Pub. L. No. 110-286), we assessed (1) the key characteristics of the trade of Burmese-origin jadeite and Burmese-origin rubies; (2) the progress U.S. agencies have made to restrict imports of Burmese-origin jadeite, rubies, and related jewelry into the U.S. market; and (3) the progress U.S. agencies have made in pursuing international actions, including (a) seeking a World Trade Organization (WTO) waiver, (b) securing a United Nations (UN) resolution, and (c) working to negotiate an international arrangement—similar to the Kimberley Process—to prevent global trade in Burmese-origin jadeite, rubies, and related jewelry. To address these objectives, we reviewed and analyzed documents, memos, reports, guidance, papers, and cables from the Department of State in Washington, D.C.; embassies in Rangoon and Bangkok; consulates in Chiang Mai and Hong Kong; the United States Geological Survey (USGS); the Office of the United States Trade Representative; the Departments of Homeland Security, the Treasury, and Commerce; U.S. and foreign jewelry industries; nongovernmental organizations; and academics.

We reviewed the JADE Act; Presidential Proclamation 8294—To Implement Amendments to the Burmese Freedom and Democracy Act of 2003; U.S. Customs and Border Protection (CBP) guidance, including 19 Code of Federal Regulations (CFR) Parts 12 and 163—the interim final rule; other documents, cables, reports, and memos from relevant U.S. agencies; and documents from gemological laboratories, such as country-of-origin reports. In addition, we reviewed and analyzed Department of Homeland Security/U.S. Customs and Border Protection data on the source and value of reportedly non-Burmese-origin rubies, jadeite, and related jewelry entering the United States from October 2008 to May 2009.

During the course of our review, we interviewed officials from the Department of State in Washington, D.C.; embassies in Rangoon and Bangkok; consulates in Chiang Mai and Hong Kong; USGS; the Office of the United States Trade Representative; and the Departments of Homeland Security, the Treasury, and Commerce, as well as foreign government officials in Thailand and Burma to gather information on the Burmese jadeite and ruby trades and the impact of the JADE Act on these trades. To understand the perspectives of ruby and jadeite industry traders, dealers, and association members, we interviewed U.S. jewelry industry officials in New York City and foreign jewelry industry officials in Hong Kong, Thailand, and Burma. In addition, to assess the validity of and collect information on gemstone testing processes, we interviewed gemologists and gemstone testing experts at three major U.S. laboratories in New York

City, and interviewed foreign gemstone testing experts at laboratories in Bangkok. To collect detailed qualitative and contextual information about Burma, including economic, political, social, and geopolitical variables, we interviewed academic scholars from Harvard University, Georgetown University, Macquarie University (Sydney, Australia), and the Brookings Institution. We selected officials with a wide range of views and experiences on the subject, including scholars with a range of expertise on Burma's economy and political situation.

The scope of our review was set by the JADE Act. The act has several provisions, one part of which amends the Burmese Freedom and Democracy Act of 2003 to prohibit the import of Burmese-origin jadeite and rubies and jewelry containing Burmese-origin jadeite and rubies into the United States and calls on the Administration to pursue certain international actions to prevent the global trade in Burmese gemstones. The JADE Act also requires GAO to submit a report to Congress assessing the effectiveness of the implementation of this section of the act, including any recommendations for improving its administration. We conducted this performance audit from December 2008 to September 2009, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix II: Modification of Chapter 71 of the Harmonized Tariff Schedule of the United States

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

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## Prohibition on the importation of certain goods of Burma:

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

i) jadeite mined or extracted from Burma and classifiable in heading 7103 of the tariff schedule,

ii) rubies mined in or extracted from Burma and classifiable in heading 7103 of the tariff schedule,

iii) articles of jewelry containing jadeite described in subdivision (a)(i) of this note, whether classifiable in heading 7113 or 7116 of the tariff schedule; and

iv) articles of jewelry containing rubies described in subdivision (a)(ii) of this note, whether classifiable in heading 7113 or 7116 of the tariff schedule.

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

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

i) jadeite mined in or extracted from a country other than Burma and classifiable in heading 7103 of the tariff schedule,

ii) rubies mined in or extracted from a country other than Burma and classifiable in heading 7103 of the tariff schedule,

iii) articles of jewelry containing jadeite described in subdivision (b)(i) or rubies described in subdivision (b)(ii) of this note, whether classifiable in heading 7113 or 7116 of the tariff schedule, is not permitted unless such goods comply with the terms of any regulations issued by the Secretary of the Treasury to implement section 3A(c)(1) of the Burmese Freedom and Democracy Act of 2003, as amended, or are covered by any waiver or certification scheme that may be established pursuant to the provisions of sections 3(b) and 3A of the act, as amended.

(c) The provisions of this note shall not apply to Burmese covered articles and non-Burmese covered articles that were previously exported from the United States, including those that accompanied an individual outside the United States for personal use, if they are reimported into the United States by the same person, without having been advanced in value or improved in condition by any process or other means while outside the United States.

(d) The certification established under subdivision (a) of this note shall not apply to the importation of non-Burmese covered articles by or on behalf of an individual for personal use and accompanying an individual upon entry into the United States, with a proper claim under subheading 9804.00.20, 9804.00.45 or other appropriate provision of chapter 98 of the tariff schedule.

# Appendix III: DHS Data on Exporter-Reported Imports of Non-Burmese Rubies, Jadeite, and Related Jewelry

The following table shows Department of Homeland Security (DHS) data on exporter-reported imports of non-Burmese rubies, jadeite, and related jewelry into the United States from October 2008 to May 2009 (ranked according to U.S. dollar value).

**Table 2: DHS Data on Exporter-Reported Imports of Non-Burmese Rubies, Jadeite, and Related Jewelry into the United States, October 2008-May 2009**

Country of origin	Value of exports
Thailand	\$23,277,674
China (mainland and Hong Kong)	17,401,152
Pakistan	17,038,923
India	16,815,604
Switzerland	6,617,152
Italy	5,622,562
Dominican Republic	3,229,973
France	2,662,960
United Arab Emirates	1,273,864
Canada	1,256,643
Brazil	1,147,167
Tanzania	1,036,624
United Kingdom	952,618
Australia	824,065
Republic of South Africa	793,445
Turkey	725,982
Sri Lanka	687,601
Indonesia	558,386
Colombia	471,735
Costa Rica	457,512
Mexico	403,089
Federal Republic of Germany	390,883
Vietnam	347,350
Spain	337,052
Israel	314,668
Greece	255,587
Denmark	221,740
United States	215,643
Croatia	209,361
Kenya	188,930

**Appendix III: DHS Data on Exporter-Reported Imports of Non-Burmese Rubies, Jadeite, and Related Jewelry**

<b>Country of origin</b>	<b>Value of exports</b>
Madagascar (Malagasy)	156,950
Japan	150,685
Republic of Korea	137,383
Singapore	134,770
Nicaragua	106,965
Oman	103,278
Poland	86,098
China (Taiwan)	84,252
Guatemala	81,605
Belgium	62,593
Peru	42,657
Argentina	37,705
Lebanon	36,682
Bolivia	32,421
Mozambique	28,548
Austria	26,759
Nepal	25,832
Chile	23,678
Congo (Brazzaville)	19,353
Mauritius	15,384
Netherlands	14,083
Portugal	9,908
Nigeria	8,385
Malaysia	7,166
Ireland	7,138
New Zealand	5,859
Venezuela	5,590
Philippines	5,551
Laos	4,935
Uruguay	2,500
Afghanistan	2,090
Morocco	765
El Salvador	698
Paraguay	473
Niger	472
Sweden	417
Honduras	316

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**Appendix III: DHS Data on Exporter-  
Reported Imports of Non-Burmese Rubies,  
Jadeite, and Related Jewelry**

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<b>Country of origin</b>	<b>Value of exports</b>
Russia	254
Lithuania	237
Norway	223
Egypt	161
Saudi Arabia	65
Cambodia	65
Zambia	50
Moldova	47
Mali	10
Ethiopia	10
Tunisia	4
<b>Total</b>	<b>\$107,207,015</b>

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Source: GAO analysis of DHS data.



# Appendix IV: United States Geological Survey Estimates of Ruby Production 2000-2005 (by Weight Measured in Kilograms)



Rank	1	2	3	4	5	6	7	8	9	10
	<b>Kenya</b>	<b>Tanzania</b>	<b>Madagascar</b>	<b>Burma</b>	<b>Nepal</b>	<b>Malawi</b>	<b>Vietnam</b>	<b>Afghanistan</b>	<b>Thailand</b>	<b>Pakistan</b>
2000	5,896	1,070	8	633	150	0	70	70	20	5
2001	5,862	1,174	941	393	150	12	70	55	20	8
2002	3,043	1,800	889	402	150	0	70	55	30	21
2003	2,310	2,675	800	286	150	120	70	55	15	9
2004	4,758	2,800	741	386	150	120	30	30	20	16
2005	5,100	2,800	920	669	150	180	30	0	20	46
<b>Total</b>	<b>26,969</b>	<b>12,319</b>	<b>4,299</b>	<b>2,769</b>	<b>900</b>	<b>432</b>	<b>340</b>	<b>265</b>	<b>125</b>	<b>105</b>

Sources: GAO analysis of USGS data; Map Resources (map).

Note: USGS collects data on the international mineral production of various commodities from different sources, often using foreign publications to produce such data. To estimate Burma's figures, USGS uses information from the Foreign Broadcast Information Service, which collects and translates data produced by foreign governments. In the case of Burma, the Central Statistical Organization of Burma produces annual mineral production data. However, it should be noted that Burmese government data may be incomplete or inaccurate.

# Appendix V: Comments from the Department of Homeland Security

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

September 21, 2009

Loren Yager  
Director  
International Affairs and Trade  
U.S. Government and Accountability Office  
441 G St, NW  
Washington, DC 20548

Dear Mr. Yager:

We appreciate the opportunity to review Draft Report GAO-09-987, "International Trade: U.S. Agencies Have Taken Some Steps, But Serious Impediments Remain to Restricting Trade in Burmese Rubies and Jadeite." The Department of Homeland Security (DHS) concurs with the GAO recommendation that once the interagency experts group develops standards of verifiable evidence, DHS will develop and implement guidance to conduct post-entry reviews of importers' records and provide guidance to importers on the standards of verifiable evidence needed to certify articles are of non-Burmese origin. The guidance developed by DHS will be based on the standards of verifiable evidence developed in the interagency experts group.

The Department of Homeland Security has worked closely with other U.S. government agencies within the inter-agency process to implement the relevant portions of the JADE Act. As detailed in the GAO report, DHS/U.S. Customs and Border Protection (CBP) expended resources and time in working with the U.S. International Trade Commission (ITC) to institute a new Harmonized Tariff Schedule (HTS) breakout code for jadeite and rubies. The new HTS code established the basis for importers certifying that the rubies and jadeite and related items are not of Burmese origin. Additionally, CBP coordinated with the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) to amend regulations concurrently in order to implement relevant portions of the JADE Act.

DHS will continue to work alongside the other agencies of the U.S. government to implement the JADE Act within its scope of responsibilities and expertise. Under current direction from the National Security Council, other agencies of the U.S. government are better positioned to identify and are in the process of developing what the U.S. government will rely upon for verifiable evidence for this program. DHS remains ready to implement and enforce the requirements for such standards once the U.S. government has determined which documents would satisfy this requirement. DHS understands this document identification effort is to be led by other agencies with the appropriate expertise, in communication with the enforcement agencies, including DHS. DHS has provided technical corrections to the GAO report to capture this direction as understood by DHS. Once such standards are established, DHS will include the related documents on the list of required certification that importers must maintain

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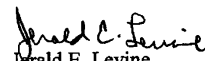
Appendix V: Comments from the Department  
of Homeland Security

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at the time of importation of rubies, jadeite, and related items. DHS believes that a U.S. government-wide effort to reach international agreement and standards vis-à-vis trade sanctions targeted at Burmese jadeite, rubies, and related items will offer a more comprehensive and realistic solution to implementing the JADE Act, beyond DHS and CBP's enforcement role.

We thank you for considering our comments on these very important issues. We look forward to working with the GAO on future Homeland Security issues.

Sincerely,



Gerald E. Levine  
Director  
Departmental GAO/OIG Liaison Office

# Appendix VI: Comments from the Department of Commerce

SEP 11 2009



UNITED STATES DEPARTMENT OF COMMERCE  
The Under Secretary for International Trade  
Washington, D.C. 20230

Mr. Loren Yager  
Director, International Affairs and Trade  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, DC 20548

Dear Mr. Yager:

Thank you for sending the Department the draft GAO Report entitled, "U.S. Agencies Have Taken Some Steps, but Serious Impediments Remain to Restricting Trade in Burmese Rubies and Jadeite."

Commerce has concerns with two specific sentences in the report, which mischaracterize the results of a series of meetings that Commerce hosted with interested parties (other Federal agencies, gem retailers and wholesalers, gemological testing firms, and others). The draft GAO report indicates that U.S. jewelry representatives are concerned that the interim rule "does not provide practical instruction on what constitutes verifiable evidence" that imported gems or Jadeite are not of Burmese origin. Commerce's position is that this is an implementation issue that is the responsibility implementing agencies (the Department of Homeland Security and Customs and Border Protection).

Below is text from the September 2009 GAO Draft Report: "U.S. Agencies Have Taken Some Steps, but Serious Impediments Remain to Restricting Trade in Burmese Rubies and Jadeite," page 15:

Though an interagency working group was convened by Commerce in September 2008 to provide further guidance as to what constitutes verifiable evidence, the group never completed its work and has not met since November 2008. As a result, there is not further guidance from U.S. agencies to importers as to what constitutes acceptable verifiable evidence to maintain records on articles of non-Burmese origin.

Commerce disagrees with the conclusion implied in the draft report that the interagency group never completed its work. Our recommended change, which has been discussed with GAO, is as follows:



Mr. Loren Yager  
Page 2

Though the implementing agencies discussed the option of developing further guidance on what constitutes verifiable evidence, this has not yet occurred. As a result, there is not further guidance from U.S. agencies to importers as to what constitutes acceptable verifiable evidence to maintain records on articles of non-Burmese origin.

We hope you take these comments into consideration when issuing the final version of this report.

Sincerely,



Michelle O'Neill, Acting

# Appendix VII: Comments from the Department of State



United States Department of State

Washington, D.C. 20520

SEP 14 2009

Ms. Jacquelyn Williams-Bridgers  
Managing Director  
International Affairs and Trade  
Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548-0001

Dear Ms. Williams-Bridgers:

We appreciate the opportunity to review your draft report, "INTERNATIONAL TRADE: U.S. Agencies Have Taken Some Steps, But Serious Impediments Remain to Restricting Trade in Burmese Rubies and Jadeite," GAO Job Code 320644.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Laura Scheibe, Desk Officer, East Asian & Pacific Affairs at (202) 647-7750.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Millette".

James L. Millette

cc: GAO – Goodwin Agbara  
EAP – Kurt M. Campbell  
State/OIG – Mark Duda

**Department of State Comments on GAO Draft Report**

**INTERNATIONAL TRADE: U.S. Agencies Have Taken Some Steps, But  
Serious Impediments Remain to Restricting Trade in  
Burmese Rubies and Jadeite**  
**(GAO-09-987, GAO Code 320644)**

The Department of State appreciates the opportunity to comment on GAO's draft report entitled: *International Trade: U.S. Agencies Have Taken Some Steps, But Serious Impediments Remain to Restricting Trade in Burmese Rubies and Jadeite*.

The GAO recommends to the Secretary of State that to enhance effectiveness of U.S. policy against the military regime in Burma, State, in consultation with DHS and Treasury, analyze the efficacy, challenges, and difficulties faced in implementing measures to restrict trade in Burmese-origin rubies, jadeite, and related jewelry in the context of the broader U.S. sanctions provisions in the JADE Act, and report to Congress how these measures will contribute to its efforts to influence the military regime in Burma.

The Department of State agrees with GAO's recommendation to analyze the efficacies, challenges, and difficulties faced in implementing these measures. The Department has undertaken these efforts and will continue to undertake these efforts, and will include these findings in the *Semi-Annual Report to Congress on Conditions in Burma*, due to Congress on November 15.

The Department of State appreciates the context the GAO has reported in the difficulties faced with implementing the respective aspects of the ban on Burmese-origin rubies and jadeite. The Department notes that the characteristics of the trade in jadeite and rubies (and, in fact, all colored gemstones) make implementation of the ban in the United States and on an international scale logistically difficult, cumbersome, and possibly expensive. The Department also notes that a world-wide consensus on the need for such a ban is clearly lacking, despite efforts by United States government officials to reach out to international partners. As the Administration concludes its review of Burma policy, postponed due to the trial of Aung San Suu Kyi, we will look to include the GAO's proposed recommendation in our overall policy review.

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# Appendix VIII: GAO Contact and Staff Acknowledgments

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## GAO Contact

Loren Yager, (202) 512-4347, or [yagerl@gao.gov](mailto:yagerl@gao.gov)

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## Staff Acknowledgments

In addition to the individual named above, Godwin Agbara, Assistant Director; Ian Ferguson; Rajneesh Verma; Mary Moutsos; Etana Finkler; and Karen Deans made key contributions to this report.



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