

AMENDMENT TO RULES COMM. PRINT 116–57

OFFERED BY MR. ENGEL OF NEW YORK

At the end of title XII, add the following new sub-
title:

1 **Subtitle _____—Matters Relating to**
2 **Burma**

3 **SEC. 12_1. IMPOSITION OF EXISTING AND ADDITIONAL**
4 **SANCTIONS FOR THE VIOLATION OF HUMAN**
5 **RIGHTS AND THE COMMISSION OF HUMAN**
6 **RIGHTS ABUSES IN BURMA.**

7 (a) SANCTIONS PURSUANT TO EXISTING AUTHORI-
8 TIES.—The President shall impose sanctions—

9 (1) against officials in Burma, including Com-
10 mander in Chief of the Armed Forces of Myanmar
11 Min Aung Hlaing, under the Global Magnitsky
12 Human Rights Accountability Act (22 U.S.C. 2656
13 note); and

14 (2) against military-owned enterprises, includ-
15 ing the Myanmar Economic Corporation and Union
16 of Myanmar Economic Holding, under the Burmese
17 Freedom and Democracy Act (50 U.S.C. 1701 note),
18 the Tom Lantos Block Burmese JADE (Junta’s

1 Anti-Democratic Efforts) Act of 2008 (50 U.S.C.
2 1701 note), and other relevant statutory authorities.

3 (b) ADDITIONAL SANCTIONS.—For the 8-year period
4 beginning on the date that is 180 days after the date of
5 the enactment of this subtitle, the President shall impose
6 the sanctions described in subsection (c) with respect to
7 each foreign person that the President determines, based
8 on credible evidence—

9 (1) is a current or former senior official of the
10 military or security forces of Burma who—

11 (A) knowingly perpetrated, ordered, or oth-
12 erwise directed serious human rights abuses in
13 Burma; or

14 (B) has taken significant steps to impede
15 investigations or prosecutions of alleged serious
16 human rights abuses, including against the
17 Rohingya community in Rakhine State;

18 (2) is an entity owned or controlled by any per-
19 son described in paragraph (1);

20 (3) is an entity, such as the Myanmar Eco-
21 nomic Cooperation or the Myanmar Economic Hold-
22 ing Corporation, that is owned or controlled, directly
23 or indirectly, by the military or security forces of
24 Burma, including through collective or cooperative
25 structures, from which one or more persons de-

1 scribed in paragraph (1) derive significant revenue
2 or financial benefit; or

3 (4) has knowingly—

4 (A) provided significant financial, material,
5 or technological support—

6 (i) to a foreign person described in
7 paragraph (1) in furtherance of any of the
8 acts described in subparagraph (A) or (B)
9 of such paragraph; or

10 (ii) to any entity owned or controlled
11 by such person or an immediate family
12 member of such person; or

13 (B) received significant financial, material,
14 or technological support from a foreign person
15 described in paragraph (1) or an entity owned
16 or controlled by such person or an immediate
17 family member of such person.

18 (c) SANCTIONS DESCRIBED; EXCEPTIONS.—

19 (1) SANCTIONS.—The sanctions described in
20 this subsection are the following:

21 (A) ASSET BLOCKING.—Notwithstanding
22 the requirements of section 202 of the Inter-
23 national Emergency Economic Powers Act (50
24 U.S.C. 1701), the exercise of all powers granted
25 to the President by such Act to the extent nec-

1 essary to block and prohibit all transactions in
2 all property and interests in property of a for-
3 eign person the President determines meets one
4 or more of the criteria described in subsection
5 (b) if such property and interests in property
6 are in the United States, come within the
7 United States, or are or come within the pos-
8 session or control of a United States person.

9 (B) INELIGIBILITY FOR ADMISSION.—In
10 the case of a foreign person who is an indi-
11 vidual, such person shall be—

12 (i) inadmissible to the United States;

13 (ii) ineligible to receive a visa or other
14 documentation to enter the United States;
15 and

16 (iii) otherwise ineligible to be admitted
17 or paroled into the United States or to re-
18 ceive any other benefit under the Immigra-
19 tion and Nationality Act (8 U.S.C. 1101 et
20 seq.).

21 (C) CURRENT VISAS REVOKED.—

22 (i) The issuing consular officer or the
23 Secretary of State, (or a designee of the
24 Secretary of State) shall, in accordance
25 with section 221(i) of the Immigration and

1 Nationality Act (8 U.S.C. 1201(i)), revoke
2 any visa or other entry documentation
3 issued to a foreign person who is an indi-
4 vidual regardless of when the visa or other
5 entry documentation is issued.

6 (ii) A revocation under clause (i) shall
7 take effect immediately and automatically
8 cancel any other valid visa or entry docu-
9 mentation that is in the person's posses-
10 sion.

11 (D) APPLICABILITY TO FOREIGN ENTITIES
12 AND FOREIGN GOVERNMENTS.—Subparagraphs
13 (B) and (C) of this section shall also apply with
14 respect to aliens who are officials of, agents or
15 instrumentalities of, working or acting on be-
16 half of, or otherwise associated with, a foreign
17 entity or foreign government that is a foreign
18 person subject to the imposition of sanctions
19 under subsection (b), if such aliens are deter-
20 mined by the Secretary of State to have know-
21 ingly authorized, conspired to commit, been re-
22 sponsible for, engaged in, or otherwise assisted
23 or facilitated the actions described in such sub-
24 section.

1 (2) EXCEPTION TO COMPLY WITH UNITED NA-
2 TIONS HEADQUARTERS AGREEMENT.—Sanctions
3 under this section shall not apply with respect to an
4 alien if admitting or paroling the alien into the
5 United States is necessary to permit the United
6 States to comply with the Agreement regarding the
7 Headquarters of the United Nations, signed at Lake
8 Success June 26, 1947, and entered into force No-
9 vember 21, 1947, between the United Nations and
10 the United States, or other applicable international
11 obligations.

12 (d) PENALTIES.—Any person that violates, attempts
13 to violate, conspires to violate, or causes a violation of this
14 section or any regulation, license, or order issued to carry
15 out subsection (c) shall be subject to the penalties set forth
16 in subsections (b) and (c) of section 206 of the Inter-
17 national Emergency Economic Powers Act (50 U.S.C.
18 1705) to the same extent as a person that commits an
19 unlawful act described in subsection (a) of that section.

20 (e) IMPLEMENTATION.—The President may exercise
21 all authorities provided under sections 203 and 205 of the
22 International Emergency Economic Powers Act (50
23 U.S.C. 1702 and 1704) to carry out this section and shall
24 issue such regulations, licenses, and orders as are nec-
25 essary to carry out this section.

1 (f) WAIVER.—The President may annually waive the
2 application of sanctions imposed on a foreign person pur-
3 suant to subsection (b) if the President—

4 (1) determines that a waiver with respect to
5 such foreign person is in the national interest of the
6 United States; and

7 (2) not later than the date on which such waiv-
8 er will take effect, submits to the following commit-
9 tees notice of and justification for such waiver:

10 (A) The Committee on Foreign Affairs, the
11 Committee on Appropriations, and the Com-
12 mittee on Financial Services of the House of
13 Representatives.

14 (B) The Committee on Foreign Relations,
15 the Committee on Appropriations, and the
16 Committee on Banking, Housing, and Urban
17 Affairs of the Senate.

18 (g) EXCEPTION RELATING TO THE IMPORTATION OF
19 GOODS.—

20 (1) IN GENERAL.—The authorities and require-
21 ments to impose sanctions under this subtitle shall
22 not include the authority or requirement to impose
23 sanctions on the importation of goods.

24 (2) GOOD DEFINED.—In this subsection, the
25 term “good” means any article, natural or man-

1 made substance, material, supply or manufactured
2 product, including inspection and test equipment,
3 and excluding technical data.

4 (h) DEFINITIONS.—In this section—

5 (1) ADMITTED; ALIEN.—The terms “admitted”
6 and “alien” have the meanings given those terms in
7 section 101 of the Immigration and Nationality Act
8 (8 U.S.C. 1001).

9 (2) FOREIGN PERSON.—The term “foreign per-
10 son” means a person that is not a United States
11 person.

12 (3) KNOWINGLY.—The term “knowingly”
13 means, with respect to conduct, a circumstance, or
14 a result, means that a person has actual knowledge,
15 or should have known, of the conduct, the cir-
16 cumstance, or the result.

17 (4) UNITED STATES PERSON.—The term
18 “United States person” means—

19 (A) a United States citizen, an alien law-
20 fully admitted for permanent residence to the
21 United States, or any other individual subject
22 to the jurisdiction of the United States; or

23 (B) an entity organized under the laws of
24 the United States or of any jurisdiction within

1 the United States, including a foreign branch of
2 such entity.

3 **SEC. 12_2. GUIDANCE RELATING TO THE MINING SECTOR**
4 **OF BURMA.**

5 (a) FINDINGS.—Congress finds the following:

6 (1) In 2015, the nongovernmental organization
7 Global Witness estimated that the value of total pro-
8 duction of jade in Burma in 2014 was
9 \$31,000,000,000, almost 48 percent of the official
10 gross domestic product of Burma. As much as 80
11 percent of that jade sold is smuggled out of Burma.

12 (2) Burma’s military and associated entities, in-
13 cluding companies owned or controlled by Myanmar
14 Economic Corporation and Myanmar Economic
15 Holding Limited, their affiliated companies, and
16 companies owned or controlled by current and
17 former senior military officers or their family mem-
18 bers, are linked to the mining sector, including the
19 gemstone industry, and benefit financially from
20 widespread illegal smuggling of jade and rubies from
21 Burma.

22 (3) Illegal trafficking in precious and
23 semiprecious stones from Burma, including the trade
24 in high-value jade and rubies, deprives the people of
25 Burma and the civilian government of critical rev-

1 enue and instead benefits military-linked entities,
2 non-state armed groups, and transnational organized
3 criminal networks.

4 (4) In 2016, the Government of Burma began
5 to take steps to reform aspects of the mining sector,
6 but the Gemstone Law adopted in January 2019
7 does not adequately address corruption and tax
8 avoidance, conflicts of interest, or the factors fueling
9 conflict in Kachin State and other gemstone mining
10 areas.

11 (5) The lifting in October 2016 of United
12 States sanctions on the importation of jade and
13 jadeite and rubies from Burma allowed such
14 gemstones to legally enter the United States market,
15 but some retailers have refrained from sourcing
16 gemstones of Burmese origin due to governance and
17 reputational concerns.

18 (b) SENSE OF CONGRESS.—It is the sense of Con-
19 gress that—

20 (1) notwithstanding Burma’s “Trafficking in
21 Persons” ranking, the President should continue to
22 provide assistance to Burma, pursuant to the waiver
23 authority under section 110(d)(4) of the Trafficking
24 Victims Protection Act of 2000 (22 U.S.C.
25 7107(d)(4)), in order to re-engage with the Govern-

1 ment of Burma with respect to the mining sector
2 and should make available technical, capacity-build-
3 ing and other assistance through the Department of
4 State or the United States Agency for International
5 Development to support the Government of Burma
6 in efforts to reform the gemstone industry; and

7 (2) companies that seek to import to the United
8 States gemstones or minerals that may be of Bur-
9 mese origin or articles of jewelry containing such
10 gemstones should—

11 (A) obtain such materials exclusively from
12 entities that satisfy the transparency criteria
13 described in subsection (d)(2) or from third
14 parties that can demonstrate that they sourced
15 the materials from entities that meet such cri-
16 teria; and

17 (B) undertake robust due diligence proce-
18 dures in line with the “Due Diligence Guidance
19 for Responsible Business Conduct” and “Due
20 Diligence Guidance for Responsible Supply
21 Chains of Minerals from Conflict-Affected and
22 High-Risk Areas” promulgated by the Organi-
23 zation for Economic Cooperation and Develop-
24 ment.

1 (c) LIST OF PARTICIPATING WHITE-LIST ENTI-
2 TIES.—Not later than 120 days after the date of the en-
3 actment of this subtitle, and annually thereafter until the
4 date described in subsection (e), the Secretary of State
5 shall submit to the appropriate congressional committees,
6 and publish on a publicly available website, a list of each
7 entity described in subsection (d)(1) that—

8 (1) participates in Burma’s mining sector;

9 (2) publicly discloses beneficial ownership, as
10 such term is defined for purposes of the Myanmar
11 Extractive Industry Transparency Initiative
12 (“Myanmar EITI”);

13 (3) is not owned or controlled, either directly or
14 indirectly, by the Burmese military or security
15 forces, any current or former senior Burmese mili-
16 tary officer, or any person sanctioned by the United
17 States pursuant to any relevant sanctions authority;
18 and

19 (4) is making significant progress toward meet-
20 ing the criteria described in subsection (d)(2).

21 (d) ENTITIES AND CRITERIA DESCRIBED.—

22 (1) ENTITIES DESCRIBED.—The entities de-
23 scribed in this subsection are the following:

24 (A) Entities that produce or process pre-
25 cious and semiprecious gemstones.

1 (B) Entities that sell or export precious
2 and semiprecious gemstones from Burma or ar-
3 ticles of jewelry containing such gemstones.

4 (2) CRITERIA DESCRIBED.—The criteria de-
5 scribed in this subsection are the following:

6 (A) The entity publicly discloses any politi-
7 cally exposed persons, officers, directors or ben-
8 efiticial owners, as defined under the Myanmar
9 EITI.

10 (B) The entity publicly discloses valid au-
11 thorization, license, or permit to produce, proc-
12 ess, sell, or export minerals or gemstones, as
13 applicable.

14 (C) The entity publicly discloses payments
15 to the Government of Burma, including tax and
16 non-tax, license, or royalty payments, and other
17 payments or contract terms as may be required
18 under Myanmar EITI standards.

19 (D) The entity undertakes due diligence, in
20 line with the OECD Due Diligence Guidance
21 for Responsible Supply Chains of Minerals from
22 Conflict-Affected and High-Risk Areas, includ-
23 ing public reporting.

1 (e) PERIODIC UPDATING.—The Secretary shall peri-
2 odically update the publicly available version of the list de-
3 scribed in subsection (c) as appropriate.

4 (f) GUIDANCE AND WHITE-LIST ENTITIES.—The
5 Secretary shall issue guidance for entities in the United
6 States private sector with respect to the best practices for
7 supply-chain due diligence that are applicable to importa-
8 tion of gemstones or minerals that may be of Burmese
9 origin or articles of jewelry containing such gemstones, in-
10 cluding with respect to transactions with entities approved
11 for inclusion in the list published pursuant subsection (c),
12 in order to mitigate potential risks and legal liabilities as-
13 sociated with the importation of such items.

14 (g) TERMINATION.—The date described in this sec-
15 tion is the date on which the President certifies to the
16 appropriate congressional committees that the Govern-
17 ment of Burma has taken substantial measures to reform
18 the mining sector in Burma, including the following:

19 (1) Require the mandatory disclosure of pay-
20 ments, permit and license allocations, project reve-
21 nues, contracts, and beneficial ownership, including
22 the identification any politically exposed persons who
23 are beneficial owners, consistent with the approach
24 agreed under the Myanmar EITI and with due re-
25 gard for civil society participation.

1 (2) Separate the commercial, regulatory, and
2 revenue collection responsibilities within the
3 Myanmar Gems Enterprise and other key state-
4 owned enterprises to remove existing conflicts of in-
5 terest.

6 (3) Monitor and undertake enforcement actions,
7 as warranted, to ensure that entities—

8 (A) adhere to environmental and social im-
9 pact assessment and management standards in
10 accordance with international responsible min-
11 ing practices, the country’s environmental con-
12 servation law, and other applicable laws and
13 regulations; and

14 (B) uphold occupational health and safety
15 standards and codes of conduct that are aligned
16 with the core labor standards of the Inter-
17 national Labour Organisation and with domes-
18 tic law.

19 (4) Address the transparent and fair distribu-
20 tion of benefits from natural resources, including
21 through local benefit-sharing.

22 (5) Reform the process for valuation of
23 gemstones at the mine-site, including developing an
24 independent valuation system to prevent undervalu-
25 ation and tax evasion.

1 (6) Require companies bidding for jade and
2 ruby mining, finishing, or export permits to be inde-
3 pendently audited upon the request of the Govern-
4 ment of Burma and making the results of all such
5 audits public.

6 (7) Establish credible and transparent proce-
7 dures for permit allocations that are independent
8 from external influence, including scrutiny of appli-
9 cants that prevents unscrupulous entities from gain-
10 ing access to concessions or the right to trade in
11 minerals or gemstones.

12 (8) Establish effective oversight of state-owned
13 enterprises operating in such sector, including
14 through parliamentary oversight or requirements for
15 independent financial auditing.

16 **SEC. 12_3. REPORT AND DETERMINATION ON ACCOUNT-**
17 **ABILITY FOR WAR CRIMES, CRIMES AGAINST**
18 **HUMANITY, AND GENOCIDE IN BURMA.**

19 (a) IN GENERAL.—Not later than 90 days after the
20 date of the enactment of this subtitle, the Secretary of
21 State shall submit to the appropriate congressional com-
22 mittees a report that—

23 (1) summarizes credible reports of serious
24 human rights violations, including war crimes, com-
25 mitted against the Rohingya or other ethnic minori-

1 ties in Burma between 2012 and the date of the
2 submission of the report;

3 (2) describes any potential transitional justice
4 mechanisms in Burma;

5 (3) provides an analysis of whether the serious
6 human rights violations summarized pursuant to
7 paragraph (1) amount to war crimes, crimes against
8 humanity, or genocide; and

9 (4) includes a determination of the Secretary
10 whether—

11 (A) the events that took place in the state
12 of Rakhine in Burma, starting on August 25,
13 2017, constitute war crimes, crimes against hu-
14 manity, or genocide; or

15 (B) the situation faced by the Rohingya in
16 Rakhine State, between 2012 and the date of
17 the submission of the report, amounts to or has
18 amounted to the crime of apartheid.

19 (b) ELEMENTS.—The report required by subsection
20 (a) shall also include each of the following:

21 (1) A description of—

22 (A) each incident for which there is cred-
23 ible evidence that the incident may constitute
24 war crimes, crimes against humanity, or geno-
25 cide committed by the Burmese military or se-

1 curity forces against the Rohingya and other
2 ethnic minorities, including the identities of any
3 other actors involved in such incident;

4 (B) the role of the civilian government in
5 the commission of any such incidents;

6 (C) each incident for which there is cred-
7 ible evidence that the incident may constitute
8 war crime, crimes against humanity, or geno-
9 cide committed by violent extremist groups in
10 Burma;

11 (D) each attack on health workers, health
12 facilities, health transport, or patients and, to
13 the extent possible, the identities of any individ-
14 uals who engaged in or organized such incidents
15 in Burma; and

16 (E) to the extent possible, a description of
17 the conventional and unconventional weapons
18 used for any such crimes and the sources of
19 such weapons.

20 (2) A description and assessment, in consulta-
21 tion with the Administrator of the United States
22 Agency for International Development, the Attorney
23 General, and other heads of any other appropriate
24 Federal departments or agencies, of the effectiveness
25 of any programs that the United States has already

1 undertaken to ensure accountability for war crimes,
2 crimes against humanity, and genocide perpetrated
3 against the Rohingya by the military and security
4 forces of Burma, the Rakhine State government,
5 pro-government militias, and all other armed groups
6 operating fighting in Rakhine, including programs
7 to—

8 (A) train civilian investigators within and
9 outside of Burma and Bangladesh on how to
10 document, investigate, develop findings of, iden-
11 tify, and locate alleged perpetrators of war
12 crimes, crimes against humanity, or genocide in
13 Burma;

14 (B) promote and prepare for a transitional
15 justice process or processes for the perpetrators
16 of war crimes, crimes against humanity, and
17 genocide occurring in the State of Rakhine in
18 2017; and

19 (C) document, collect, preserve, and pro-
20 tect evidence of war crimes, crimes against hu-
21 manity, and genocide in Burma, including by
22 providing support for Burmese, Bangladeshi,
23 foreign, and international nongovernmental or-
24 ganizations, the United Nations Human Rights

1 Council's investigative team, and other entities
2 engaged in such investigative activities.

3 (3) A detailed study of the feasibility and desir-
4 ability of potential transitional justice mechanisms
5 for Burma, such as an international tribunal, a hy-
6 brid tribunal, or other international options, that in-
7 cludes—

8 (A) a discussion of the use of universal ju-
9 risdiction or of legal cases brought against the
10 country of Burma by other sovereign countries
11 at the International Court of Justice to address
12 war crimes, crimes against humanity, and geno-
13 cide perpetrated in Burma;

14 (B) recommendations on which transitional
15 justice mechanisms the United States should
16 support, why such mechanisms should be sup-
17 ported, and what type of support should be of-
18 fered; and

19 (C) close consultation regarding transi-
20 tional justice mechanisms with Rohingya rep-
21 resentatives and those of other ethnic minorities
22 who have suffered grave human rights abuses.

23 (c) PROTECTION OF WITNESSES AND EVIDENCE.—
24 The Secretary of State shall ensure that the identification
25 of witnesses and physical evidence for purposes of the re-

1 port required by subsection (a) are not publicly disclosed
2 in a manner that might place such persons at risk of harm
3 or encourage the destruction of such evidence by the mili-
4 tary or Government of Burma.

5 (d) CRIME OF APARTHEID.—In this section, the term
6 “crime of apartheid” means inhumane acts that—

7 (1) are of a character similar to the acts re-
8 ferred to in subparagraphs (A) through (H) of sec-
9 tion 1285(2);

10 (2) are committed in the context of an institu-
11 tionalized regime of systematic oppression and domi-
12 nation by one racial group over any other racial
13 group; and

14 (3) are committed with the intention of main-
15 taining such regime.

16 (e) AUTHORIZATION TO PROVIDE TECHNICAL AS-
17 SISTANCE.—The Secretary of State is authorized to pro-
18 vide assistance to support appropriate civilian or inter-
19 national entities that are undertaking the efforts described
20 in subsection (f) with respect to war crimes, crimes
21 against humanity, and genocide perpetrated by the mili-
22 tary and security forces of Burma, the Rakhine State gov-
23 ernment, pro-government militias, or any other armed
24 groups fighting in Rakhine State.

1 (f) EFFORTS AGAINST HUMAN RIGHTS ABUSES.—

2 The efforts described in this subsection are the following:

3 (1) Identifying suspected perpetrators of war
4 crimes, crimes against humanity, and genocide.

5 (2) Collecting, documenting, and protecting evi-
6 dence of such crimes and preserve the chain of cus-
7 tody for such evidence.

8 (3) Conducting criminal investigations.

9 (4) Supporting investigations conducted by
10 other countries, as appropriate.

11 (g) AUTHORIZATION FOR TRANSITIONAL JUSTICE

12 MECHANISMS.—The Secretary of State, taking into ac-
13 count any relevant findings in the report required by sub-
14 section (a), is authorized to provide support for the cre-
15 ation and operation of transitional justice mechanisms, in-
16 cluding a potential hybrid tribunal, to prosecute individ-
17 uals suspected of committing war crimes, crimes against
18 humanity, or genocide in Burma.

19 **SEC. 12_4. DEFINITIONS.**

20 In this subtitle:

21 (1) APPROPRIATE CONGRESSIONAL COMMIT-
22 TEES.—The term “appropriate congressional com-
23 mittees” means—

24 (A) the Committee on Foreign Affairs, the
25 Committee on Armed Services, and the Com-

1 committee on Ways and Means of the House of
2 Representatives; and

3 (B) the Committee on Foreign Relations
4 and the Committee on Armed Services of the
5 Senate.

6 (2) CRIMES AGAINST HUMANITY.—The term
7 “crimes against humanity” includes, when com-
8 mitted as part of a widespread or systematic attack
9 directed against any civilian population, with knowl-
10 edge of the attack—

11 (A) murder;

12 (B) deportation or forcible transfer of pop-
13 ulation;

14 (C) torture;

15 (D) extermination;

16 (E) enslavement;

17 (F) rape, sexual slavery, or any other form
18 of sexual violence of comparable severity;

19 (G) persecution against any identifiable
20 group or collectivity on political, racial, na-
21 tional, ethnic, cultural, religious, gender, or
22 other grounds that are universally recognized as
23 impermissible under international law; and

24 (H) enforced disappearance of persons.

1 (3) GENOCIDE.—The term “genocide” means
2 any offense described in section 1091(a) of title 18,
3 United States Code.

4 (4) TRANSITIONAL JUSTICE.—The term “tran-
5 sitional justice” means the range of judicial, non-
6 judicial, formal, informal, retributive, and restorative
7 measures employed by countries transitioning out of
8 armed conflict or repressive regimes to redress leg-
9 acies of atrocities and to promote long-term, sustain-
10 able peace.

11 (5) WAR CRIME.—The term “war crime” has
12 the meaning given the term in section 2441(c) of
13 title 18, United States Code.

