



Arizona Jewelers Association

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Customs Reverses Myanmar Ban

By Morgan Beard, Editor-in-Chief



Ruby from Mogok, Myanmar (pictured) can now legally enter the United States.
Photo by Jay Boyle.

A ruling issued by U.S. Customs & Border Protection (CBP) has created a loophole that will allow virtually all gemstones from Myanmar (formerly Burma) to enter the United States legally.

Imports of all goods from Myanmar were banned under the Burmese Freedom and Democracy Act of 2003, which took effect August 30, 2003. Since then, various companies have argued that cutting and polishing rough gemstones from Myanmar in another country constitutes "substantial transformation," and therefore makes the gem a product of the country in which it was cut.

The concept of substantial transformation comes from customs regulations on country of origin: "Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the 'country of origin' within the meaning of this part."

In September 2004, Tiffany & Co. applied for a ruling on whether that concept applied to rubies from Myanmar. The CBP ruling, issued in December 2004, cited a number of previous cases where cutting a diamond was deemed a substantial transformation: ". . . Cutting a gem quality rough diamond by cleaving or sawing and putting 52 facets on each diamond transforms an article with numerous potential uses to one dedicated to a single use as a gem."

The ruling added that "the fact that the processing of the raw rubies also includes heat treatment . . . adds further weight to this conclusion." In other words, not only was the shape of the material transformed, but the color as well.

While the ruling is definitive, it represents little change from the way gem exports have always been counted. For example, experts in the gem industry agree that upwards of 90 percent of the ruby used in jewelry comes from Myanmar. And yet, looking at the import statistics for 2002 - the last full year before the ban went into effect - more than half of the United States' ruby was reported as coming from Thailand, where most Myanmar ruby is cut. A mere 3 percent entered the United States directly from Myanmar.

With the ruling in place, the trade in Myanmar gemstones can legally return to normal. While the ban still covers gemstones imported from Myanmar, that represents such a small percentage of the gem trade that it will prove little hindrance.

However, the issue is far from settled.

Human Rights Concerns

In early March, Tiffany & Co. issued a statement saying that it would "continue its long-standing purchase moratorium on rubies, spinel, and jadeite mined in Burma."

The announcement was immediately hailed by human-rights group U.S. Campaign for Burma (USCB), which had contacted Tiffany & Co. to request a clarification on the retailer's position.

"Tiffany made a public announcement that they would be buying gemstones from Burma," explained Jeremy Woodrum, spokesperson for the USCB. He contacted them to express his concern and was told that they were planning to continue their moratorium on buying after all.

"We are continuing with our policy - which has been in effect since the ban went into effect - not to purchase gemstones from Burma," confirmed Tiffany & Co. spokesperson Linda Buckley in an interview with Colored Stone.

Why request a ruling from the CBP if they didn't plan to start buying gemstones from Myanmar again?

"We just wanted clarification [on the substantial transformation rule]," explained Buckley. "Some people thought it meant this, some people thought it meant that. There were a variety of opinions, and the easiest way to sort that out was to ask for a clarification. Once we had the ruling, we looked at everything and decided to continue our policy."

In fact, Tiffany's moratorium extends to all ruby, spinel, and jadeite, not just the gemstones that are identifiably from Myanmar. "We know that the quality of gemstones we would consider purchasing would come from Burma," Buckley said.

For the moment, Tiffany is standing alone among major retailers. The group that is perhaps most affected is the American Gem Trade Association (AGTA); many of the association's members rely financially on Myanmar gemstones. Right now, the association simply asks its members to obey the law.

"Currently, the AGTA requires all its members to follow the laws of the countries in which they work," said Eric Braunwart, president of the AGTA. "This ruling would allow them to legally sell Burmese stones in the U.S., provided they certified they were cut in a third country."

The Jewelers of America (JA) - the largest trade association representing retail jewelers - takes a similar view.

"If a retailer, JA member or otherwise, chooses not to sell Burmese stones imported via other countries, that is their right," said Clifford Jackson, JA's marketing manager. "However, JA is not encouraging or recommending retailers to take that step."

But the USCB doesn't plan to let the issue rest. "We would definitely urge all Americans and others not to shop at companies who buy gemstones from Burma, and also not to purchase gemstones mined in Burma," Woodrum said. "We have thousands of members across the U.S. They read magazines and surf the Web. . . We will know if a company is doing it."