

Council Regulation (EC) No 194/2008 of 25 February 2008 renewing
and strengthening the restrictive measures in respect of Burma/
Myanmar and repealing Regulation (EC) No 817/2006 (repealed)

CHAPTER 1

Definitions

Article 1

For the purposes of this Regulation, the following definitions shall apply:

- (a) ‘import’ means any entry of goods into the customs territory of the Community or other territories to which the Treaty applies, under the conditions laid down in Article 299 thereof. It includes, within the meaning of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽¹⁾, the placing in a free zone or free warehouse, the placing under a suspensive procedure and the release for free circulation, but it excludes transit and temporary storage;
- (b) ‘export’ means any departure of goods from the customs territory of the Community or other territories to which the Treaty applies, under the conditions laid down in Article 299 thereof. It includes, within the meaning of Regulation (EEC) No 2913/92, the departure of goods that requires a customs declaration and the departure of goods after their storage in a free zone of control type I or free warehouse, but it excludes transit;
- (c) ‘exporter’ means any natural or legal person on whose behalf an export declaration is made, that is to say the person who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power for determining the sending of the item out of the customs territory of the Community or other territories to which the Treaty applies;
- (d) ‘technical assistance’ means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take such forms as instruction, advice, training, transmission of working knowledge or skills or consulting services; technical assistance shall include verbal forms of assistance;
- (e) ‘funds’ means financial assets and benefits of every kind, including but not limited to:
 - (i) cash, cheques, claims on money, drafts, money orders and other payment instruments;
 - (ii) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
 - (iii) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
 - (iv) interest, dividends or other income on or value accruing from or generated by assets;

- (v) credit, right of set-off, guarantees, performance bonds or other financial commitments;
- (vi) letters of credit, bills of lading, bills of sale;
- (vii) documents evidencing an interest in funds or financial resources;
- (f) 'freezing of funds' means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management;
- (g) 'economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but may be used to obtain funds, goods or services;
- (h) 'freezing of economic resources' means preventing their use to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them;
- (i) 'territory of the Community' means the territories to which the Treaty is applicable, under the conditions laid down in the Treaty.

CHAPTER 2

Import and purchase restrictions

Article 2

- 1 Annex I shall include goods belonging to the following categories:
 - a round logs, timber and timber products;
 - b coal and certain metals; and
 - c precious and semi-precious stones.
- 2 It shall be prohibited:
 - a to import goods listed in Annex I, if such goods
 - (i) originate in Burma/Myanmar; or
 - (ii) have been exported from Burma/Myanmar;
 - b to purchase goods located in Burma/Myanmar which are listed in Annex I;
 - c to transport goods listed in Annex I, if such goods originate in Burma/Myanmar or are being exported from Burma/Myanmar to any other country, and their final destination is in the Community; or
 - d to participate, knowingly and intentionally, in activities whose object or effect is, directly or indirectly, to circumvent the prohibitions in points (a), (b) or (c).
- 3 The origin of goods shall be determined in accordance with the relevant provisions of Regulation (EEC) No 2913/92.
- 4 Imports, purchases and transport of goods which are occasional and consist solely of products for the personal use of the recipients or travellers or their families shall not be considered as prohibited by paragraph 2.

Article 3

1 Article 2(2) shall not apply to goods which were, pursuant to a contractual obligation to supply the goods concerned to a contracting party in the Community, in the course of shipment before the 10 March 2008. Goods shall be deemed to be in the course of shipment if they left Burma/Myanmar before that date for a final destination in the Community.

2 It shall be the responsibility of the interested party to show to the customs authorities by means of relevant documents that the conditions set out in paragraph 1 are met. If the documents are not submitted when the goods are declared, the customs authorities shall detain the goods.

3 If the necessary documents are not provided within two months or if, after submission of the documents, the customs authorities are not satisfied that the conditions set out in paragraph 1 are met, the customs authorities shall dispose of the detained goods in accordance with applicable national legislation.

CHAPTER 3

Export restrictions

Article 4

1 It shall be prohibited to sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression as listed in Annex II, whether or not originating in the Community, to any natural or legal person, entity or body in, or for use in Burma/Myanmar.

2 Paragraph 1 shall not apply to protective clothing, including flak jackets and helmets, temporarily exported to Burma/Myanmar by United Nations personnel, personnel of the European Union, the Community or its Member States, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.

Article 5

1 It shall be prohibited to sell, supply, transfer or export goods or technology listed in Annex III, directly or indirectly, to enterprises in Burma/Myanmar engaged in the following industries:

- a logging and timber processing;
- b mining of coal, gold, silver, iron, tin, copper, tungsten, lead, manganese, nickel and zinc;
- c mining and processing of precious and semi-precious stones, including diamonds, rubies, sapphires, jade and emeralds.

2 Annex III shall include equipment and technology used in the industries mentioned in paragraph 1. Annex III shall not include items included in the Common Military List of the European Union.

3 With a view to implementing paragraph 1, a prior authorisation shall be required for the export, directly or indirectly, of the goods and technology listed in Annex III, to any natural or legal person, entity or body in, or for use in, Burma/Myanmar.

4 Exporters shall supply the competent authorities with all relevant information required for their application for an authorisation. If the exporter is not established in the Community, responsibility for seeking the necessary prior authorisation shall lie with either the seller, the supplier or the transferring party, whichever is established in the Community. The application shall be lodged with the competent authorities in the Member State where the applicant is

established, as indicated in the websites listed in Annex IV. Transporters shall be presented with the necessary authorisation before the export takes place.

5 The competent authorities in the Member States, as indicated in the websites listed in Annex IV, shall not grant any authorisation for any export of the goods and technology listed in Annex III, where there are reasonable grounds to believe that the goods and technology will be made available to an enterprise in Burma/Myanmar engaged in the industries mentioned in paragraph 1.

6 Authorisations shall be granted only by a competent authority in the Member State where the applicant is established, as indicated in the websites listed in Annex IV. Authorisations shall be valid throughout the Community.

7 The competent authorities may grant authorisations under such conditions as they deem appropriate, such as an obligation to provide an end-user statement. The competent authorities, acting in accordance with paragraph 4 or 5, may annul, suspend, modify or revoke authorisations which they have already granted.

8 Where the competent authorities in a Member State refuse to grant an authorisation, or annul, suspend, substantially limit or revoke an authorisation, the Member State concerned shall inform the other Member States and the Commission thereof, and share relevant information with them, notably on the items, end-user or enterprise in Burma/Myanmar involved, in accordance with the confidentiality requirements provided by Council Regulation (EC) No 515/97⁽²⁾.

9 Before a Member State grants an authorisation which concerns the same end-user or enterprise in Burma/Myanmar, it shall first consult the Member State which issued the denial. If, following such consultations, the Member State concerned decides to grant an authorisation, it shall inform the other Member States and the Commission thereof, providing all relevant information to explain the decision.

Article 6

Article 5 shall not apply to goods which were in the course of shipment before the 10 March 2008. Goods shall be deemed to be in the course of shipment if they have left the Community before that date for a final destination in Burma/Myanmar.

Article 7

- 1 It shall be prohibited:
 - a to provide technical assistance related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, directly or indirectly to any natural or legal person, entity or body in, or for use in Burma/Myanmar;
 - b to provide financing or financial assistance related to military activities, including, in particular, grants, loans and export credit insurance for any sale, supply, transfer or export of arms and related materiel, directly or indirectly to any natural or legal person, entity or body in, or for use in Burma/Myanmar.
- 2 It shall be prohibited:
 - a to provide technical assistance related to the equipment which might be used for internal repression as listed in Annex II, directly or indirectly to any natural or legal person, entity or body in, or for use in Burma/Myanmar;

- b to provide financing or financial assistance related to the equipment listed in Annex II, including, in particular, grants, loans and export credit insurance, directly or indirectly to any natural or legal person, entity or body in, or for use in Burma/Myanmar.

3 As regards any of the enterprises, legal persons, entities or bodies listed in Annex V, it shall be prohibited to provide financing or financial assistance for any sale, supply, transfer or export of goods and technology listed in Annex III or for the provision of related technical assistance or training.

4 Annex V shall include:

- a enterprises in Burma/Myanmar engaged in the following industries:
 - (i) logging and timber processing;
 - (ii) mining of coal, gold, silver, iron, tin, copper, tungsten, lead, manganese, nickel and zinc;
 - (iii) mining and processing of precious and semi-precious stones, including diamonds, rubies, sapphires, jade and emeralds; and
- b legal persons, entities or bodies owned or controlled by, or acting for or on behalf of, enterprises owned or controlled by, or acting for or on behalf of, such enterprises.

5 It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in paragraphs 1, 2 and 3.

6 The prohibitions set out in paragraphs 1(b), 2(b) and 3 shall not give rise to liability of any kind on the part of the natural or legal persons or entities concerned, if they did not know, and had no reasonable cause to suspect, that their actions would infringe these prohibitions.

Article 8

1 It shall be prohibited to provide technical assistance related to goods or technology listed in Annex III, directly or indirectly, to enterprises in Burma/Myanmar engaged in the industries listed in Article 5(1).

2 With a view to implementing paragraph 1, a prior authorisation shall be required for the provision of technical assistance related to goods and technology listed in Annex III, to any natural or legal person, entity or body in, or for use in, Burma/Myanmar.

3 The natural or legal persons, entities or bodies providing the technical assistance shall supply the competent authorities with all relevant information required for their application for an authorisation. The application shall be lodged with the competent authorities in the Member State where the applicant is established, as indicated in the websites listed in Annex IV.

4 The competent authorities in the Member States, as indicated in the websites listed in Annex IV, shall not grant any authorisation for the provision of the technical assistance related to the goods and technology listed in Annex III, where there are reasonable grounds to believe that the technical assistance will be provided to, or in any other way be beneficial to, an enterprise in Burma/Myanmar engaged in the industries listed in Article 5(1).

5 Paragraphs 5 to 8 of Article 5 shall apply where applications for authorisations are made in accordance with this Article.

Article 9

1 By way of derogation from Articles 4 and 7(2), the competent authorities in the Member States, as indicated in the websites listed in Annex IV, may authorise, under such conditions as they deem appropriate:

- a the sale, supply, transfer or export of equipment which might be used for internal repression as listed in Annex II, intended solely for humanitarian or protective use, or for institution-building programmes of the United Nations, the European Union and the Community, or for European Union and United Nations crisis-management operations;
- b the sale, supply, transfer or export of de-mining equipment and material for use in de-mining operations; and
- c the provision of financing and financial assistance and technical assistance related to equipment, material, programmes and operations referred to in subparagraphs (a) and (b).

2 By way of derogation from Articles 5(1) and (6), 7(3) and 8, the competent authorities in the Member States, as indicated in the websites listed in Annex IV, may authorise, under such conditions as they deem appropriate, the sale, supply, transfer or export of the goods and technology listed in Annex III destined for enterprises mentioned in Article 5(1), or the provision of related technical assistance, financing or financial assistance, if all of the following conditions are met:

- a the transaction constitutes performance of a contractual obligation to sell, supply or transfer the goods concerned, or to provide the assistance or financing concerned, to an enterprise or joint venture in Burma/Myanmar;
- b the contract or agreement which created the obligation was concluded by the seller, supplier or transferring party before the 10 March 2008; and
- c that contract or agreement relates to an investment in, the acquisition or creation of the enterprise concerned or the creation of the joint venture concerned.

3 By way of derogation from Article 7(1), the competent authorities in the Member States, as listed in Annex IV, may authorise, under such conditions as they deem appropriate, the provision of financing and financial assistance and technical assistance related to:

- a non-lethal military equipment intended solely for humanitarian or protective use, or for institution-building programmes of the United Nations, the European Union and the Community;
- b materiel intended for European Union and United Nations crisis-management operations.

Article 10

The authorisations referred to in this Chapter shall not be granted for activities that have already taken place.

CHAPTER 4

Freezing of funds and economic resources

Article 11

1 All funds and economic resources belonging to, owned, held or controlled by the individual members of the Government of Burma/Myanmar and to the natural or legal persons, entities or bodies associated with them, as listed in Annex VI, shall be frozen.

2 No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in Annex VI.

3 The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to promote the transactions referred to at paragraphs 1 and 2 shall be prohibited.

4 The prohibition set out in paragraph 2 shall not give rise to liability of any kind on the part of the natural or legal persons or entities concerned, if they did not know, and had no reasonable cause to suspect, that their actions would infringe this prohibition.

Article 12

1 Article 11(2) shall not apply to the addition to frozen accounts of:

- a interest or other earnings on those accounts; or
- b payments due under contracts, agreements or obligations that were concluded or arose before the date on which those accounts became subject to the provisions of Regulation (EC) No 1081/2000⁽³⁾, Regulation (EC) No 798/2004⁽⁴⁾, Regulation (EC) No 817/2006⁽⁵⁾ or this Regulation, whichever is the earlier, provided that any such interest, other earnings and payments continue to be subject to Article 11(1).

2 Article 11(2) shall not prevent financial or credit institutions in the Community from crediting frozen accounts where they receive funds transferred by third parties to the account of a listed natural or legal person, entity or body, provided that any additions to such accounts will also be frozen. The financial or credit institution shall inform the competent authorities about such transactions without delay.

Article 13

1 The competent authorities in the Member States, as indicated in the websites listed in Annex IV, may authorise the release of certain frozen funds or economic resources or the making available of certain funds or economic resources, under such conditions as they deem appropriate, after having determined that the funds or economic resources concerned are:

- a necessary to satisfy the basic needs of persons listed in Annex VI and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
- b intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;
- c intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources;
- d necessary for extraordinary expenses, provided that the Member State concerned has notified the other Member States and the Commission of the grounds on which it considers that a specific authorisation should be granted, at least two weeks before the authorisation.

2 Member States shall inform the other Member States and the Commission of any authorisation granted under paragraph 1.

Article 14

The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person or entity implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen as result of negligence.

CHAPTER 5

Restrictions on financing of certain enterprises*Article 15*

- 1 Annex VII shall include:
 - a enterprises owned or controlled by the Government of Burma/Myanmar or the public bodies, corporations, including companies established under private law in which the public authorities have a majority stake, and agencies of that State;
 - b enterprises owned or controlled by individual members of the Government of Burma/Myanmar or natural or legal persons, entities or bodies associated with them; and
 - c legal persons, entities or bodies owned or controlled by, or acting for or on behalf of, enterprises referred to in point (a) or (b).
- 2 The following shall be prohibited:
 - a the granting of any financial loan or credit to any of the enterprises, legal persons, entities or bodies listed in Annex V or VII, or the acquisition of bonds, certificates of deposit, warrants or debentures, issued by enterprises, legal persons, entities or bodies listed in Annex VII;
 - b the acquisition or extension of a participation in the enterprises, legal persons, entities or bodies listed in Annex V or VII, including the acquisition in full of such enterprises and the acquisition of shares and securities of a participating nature;
 - c the creation of any joint venture with the enterprises, legal persons, entities or bodies listed in Annex V or VII, with subsidiary enterprises of such enterprises or with affiliated legal persons, entities or bodies under their control.
- 3 The participation, knowingly and intentionally, in activities, the object or effect of which is, directly or indirectly, to circumvent the provisions of paragraph 2 shall be prohibited.
- 4 Paragraph 2 shall be without prejudice to the execution of trade contracts for the supply of goods or services on usual commercial payment conditions and the usual supplementary agreements in connection with the execution of these contracts such as export credit insurances.
- 5 The prohibitions in paragraph 2(a) shall be without prejudice to the execution of an obligation arising from contracts or agreements concluded before the date on which the enterprise was first designated by the Council, as indicated in Annex V or VII.
- 6 The prohibitions in paragraph 2(b) shall not prevent the extension of a participation in enterprises, legal persons, entities or bodies listed in Annex V or VII, if such extension is provided for under an agreement concluded with the enterprise concerned before the date on which the enterprise was first designated by the Council, as indicated in Annex V or VII.
- 7 The person, entity or body which intends to extend a participation in an enterprise, legal persons, entities or bodies listed in Annex V or VII shall inform the competent authority in the relevant Member State, as indicated in the websites listed in Annex IV, before any transaction referred to in paragraph 6 takes place. The Member State concerned shall inform the other Member States and the Commission.
- 8 The prohibition set out in paragraph 2(a) shall not give rise to liability of any kind on the part of the natural or legal persons or entities concerned, if they did not know, and had no reasonable cause to suspect, that their actions would breach this prohibition.

CHAPTER 6

General and final provisions

Article 16

1 Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, natural and legal persons, entities and bodies shall:

- a supply immediately the competent authorities indicated in the websites listed in Annex IV for the country where they are resident or located with any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 11, and shall forward such information, directly or through these competent authorities, to the Commission; and
- b cooperate with the competent authorities indicated in the websites listed in Annex IV in any verification of this information.

2 Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.

Article 17

The Commission and Member States shall immediately inform each other of the measures taken under this Regulation and shall supply each other with any other relevant information at their disposal in connection with this Regulation, in particular information in respect of violation and enforcement problems and judgments handed down by national courts.

Article 18

1 The Commission shall be empowered to:

- a amend Annex IV on the basis of information supplied by Member States;
- b amend Annexes V, VI and VII on the basis of decisions taken in respect of the Annexes I, II and III to Common Position 2006/318/CFSP.

2 A notice shall be published regarding the modalities for submitting information in relation to Annexes V, VI and VII⁽⁶⁾.

Article 19

1 Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

2 Member States shall notify the Commission of those rules without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.

Article 20

1 Member States shall designate the competent authorities referred to in this Regulation and identify them in, or through, the websites listed in Annex IV.

2 Member States shall notify the Commission of their competent authorities without delay after the entry into force of this Regulation and shall notify it of any subsequent changes.

Article 21

This Regulation shall apply:

Status: This is the original version (as it was originally adopted).

- (a) within the territory of the Community, including its airspace;
- (b) on board any aircraft or any vessel under the jurisdiction of a Member State;
- (c) to any person inside or outside the territory of the Community who is a national of a Member State;
- (d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State;
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the Community.

Article 22

Regulation (EC) No 817/2006 is hereby repealed.

Article 23

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 February 2008.

For the Council

The President

A. VIZJAK

- (1) [OJ L 302, 19.10.1992, p. 1](#). Regulation as last amended by Regulation No 1791/2006 ([OJ L 363, 20.12.2006, p. 1](#)).
- (2) Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters ([OJ L 82, 22.3.1997, p. 1](#)). Regulation as last amended by Regulation (EC) No 807/2003 ([OJ L 122, 16.5.2003, p. 36](#)).
- (3) Regulation (EC) No 1081/2000 of 22 May 2000 prohibiting the sale, supply and export to Burma/Myanmar of equipment which might be used for internal repression or terrorism, and freezing the funds of certain persons related to important governmental functions in that country ([OJ L 122, 24.5.2000, p. 29](#)).
- (4) Regulation (EC) No 798/2004 of 26 April 2004 renewing the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No 1081/2000 ([OJ L 125, 28.4.2004, p. 4](#)).
- (5) Regulation (EC) No 817/2006 of 29 May 2006 renewing the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No 798/2004 ([OJ L 148, 2.6.2006, p. 1](#)). Regulation as last amended by Regulation (EC) No 830/2007 ([OJ L 185, 17.7.2007, p. 1](#)).
- (6) [OJ C 65, 11.3.2008](#).