

3. The Substance and Quality of Administration of the Bank Supervisory and Counter-Money Laundering Law of That Jurisdiction

In addition to the deficiencies discussed above, the Central Bank of Burma—which is responsible for the regulation and supervision of all Burmese financial institutions—has failed to include anti-money laundering provisions within its regulations for financial institutions.

4. The Relationship Between the Volume of Financial Transactions Occurring in That Jurisdiction and the Size of the Economy of the Jurisdiction

Assessment of this factor is difficult due to difficulties in estimating the overall size of the Burmese economy. Official data is unreliable, and the black market and border trade likely comprise a significant portion of the overall economy.

5. The Extent to Which That Jurisdiction Is Characterized as an Offshore Banking or Secrecy Haven by Credible International Organizations or Multilateral Expert Groups

As noted above, in June 2001, the FATF identified Burma as non-cooperative in international efforts to fight money laundering due to significant deficiencies in its anti-money laundering system. In October 2003, due to Burma's continuing failure to address these deficiencies, the FATF called upon its members to impose additional countermeasures on Burma as of November 3, 2003.

6. Whether the United States Has a Mutual Legal Assistance Treaty With That Jurisdiction, and the Experience of United States Law Enforcement Officials in Obtaining Information About Transactions Originating in or Routed Through or to Such Jurisdiction

The U.S. does not have a mutual legal assistance treaty with Burma. Additionally, U.S. law enforcement indicates that they rarely gain access to bank-related information pursuant to investigations. Moreover, as previously indicated, U.S. law enforcement has received no cooperation regarding counterfeiting investigations involving Burma.

7. The Extent to Which That Jurisdiction Is Characterized by High Levels of Official or Institutional Corruption

Transparency International—the leading international non-governmental organization devoted to curbing corruption—has ranked Burma as the fourth most corrupt jurisdiction out of 133 jurisdictions assessed worldwide.

III. Imposition of Special Measures

As a result of the designation of Burma as a jurisdiction of primary money laundering concern, and based upon consultations⁷ and the consideration of all relevant factors, the Secretary has determined that grounds exist for the imposition of the special measures authorized by section 5318A(b)(5). Thus, the proposed rulemaking would prohibit covered financial institutions from establishing, maintaining, administering, or managing in the United States any correspondent or payable-through account for, or on behalf of, a Burmese financial institution. This prohibition would extend to any correspondent or payable-through account maintained in the United States for any foreign bank if the account is used by the foreign bank to provide banking services indirectly to a Burmese financial institution. Financial institutions covered by this proposed rule that obtain knowledge that this is occurring would be required to ensure that any such account no longer is used to provide such services, including, where necessary, terminating the correspondent relationship in the manner set forth in this rulemaking. Other than with respect to Myanmar Mayflower Bank and Asia Wealth Bank, the proposed rule does, however, allow U.S. financial institutions to maintain correspondent accounts otherwise prohibited by this rule if such accounts are permitted to be maintained pursuant to Executive Order 13310 and the Burma-related activity of those accounts is solely for the purpose of conducting transactions that are exempt from, or authorized by regulation, order, directive, or license issued pursuant to, Executive Order 13310.

In imposing this special measure, the Secretary has considered the following pursuant to section 5318A(a)(4)(b):

1. Similar Actions Have Been or Will be Taken by Other Nations or Multilateral Groups Against Burma Generally

In June 2001, the FATF designated Burma as an NCCT, resulting in FATF members issuing advisories to their financial sectors recommending enhanced scrutiny of transactions involving Burma. In April 2002 FinCEN issued an advisory notifying U.S. financial institutions that they should accord enhanced scrutiny with respect to transactions and accounts involving Burma. In October 2003, FATF called upon its 33 members to take additional

countermeasures with respect to Burma as of November 3, 2003. Imposition of the fifth special measure on Burma is consistent with this call for additional countermeasures and forms part of an international effort to protect the financial system. Based on informal discussions and the past practices of the FATF membership, the majority of FATF members are expected to take countermeasures, including all of the Group of Seven countries. The countermeasures imposed by such FATF members will likely include imposition of additional reporting requirements, issuance of additional advisories, shifting the burden for reporting obligations, and/or restrictions on the licensing of Burmese financial institutions.

2. Imposition of the Fifth Special Measure Would Not Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States

U.S. financial institutions are already prohibited from providing financial services to Burma, unless such services are exempted or licensed. The imposition of the fifth special measure potentially imposes a broader prohibition than currently exists, because it would preclude maintaining correspondent accounts for foreign branches of Burmese financial institutions. However, on balance, it is unlikely that the imposition of the fifth special measure will create any significant additional costs or place U.S. financial institutions at a competitive disadvantage. In fact, Treasury's action is intended to encourage other jurisdictions and financial institutions to take similar steps to cut off Burma from the international financial system, which would further minimize any potential competitive disadvantage for U.S. financial institutions.

Moreover, the proposed rule would not itself require U.S. financial institutions to perform additional due diligence on their existing foreign bank correspondent account customers beyond what is already required under existing regulations.

3. The Proposed Action or the Timing of the Action Will Not Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities Involving the Jurisdiction

Given the preexisting sanctions on Burma, it is unlikely that these new measures or the timing of the new

⁷ For purposes of this action, the required consultation with the Federal functional regulators was performed at the staff level.