



global witness

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The Honorable Maxine Waters
United States House of Representatives
2221 Rayburn House Office Building
Washington, DC 20515

Dear Ranking Member Waters,

We are writing to share our views on the importance of the conflict minerals provision, Section 1502, of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203), which we understand is referenced in the Financial CHOICE Act (H.R. 5983).

Global Witness is an international advocacy organization that works to break the links between natural resources exploitation, human rights violations, corruption and conflict. For over a decade, Global Witness has carried out research and advocacy on a broad range of issues relating to natural resources in the Democratic Republic of Congo (DRC). Our work is directly informed by regular, in-depth field investigations in eastern DRC where research is done by experienced staff, some of whom have previously lived in the region. We consult with a range of Congolese local civil society partners, as well as mineral traders, provincial mining authorities and other government representatives.

For almost two decades, armed groups and members of the Congolese national army have used profits from the trade in tin, tantalum, tungsten and gold to finance themselves and their operations in eastern DRC. The local population in North and South Kivu provinces has borne the brunt of a war characterized by murder, rape, pillage and mass displacement. Although the region's mineral wealth is not the root cause of the conflict, competition for access to these resources has been an incentive for warring parties to continue fighting. Sporadic armed conflict continues today in eastern DRC and has led to an estimated 2.7 million internally displaced people within the country in 2014 and, in 2015, approximately 430,000 refugees from the DRC in neighboring countries, according to the United Nations.¹ While this law will not alone end the conflict, it is intended to reduce the opportunities for armed groups to keep fighting and enrich themselves.

A landmark opportunity to address the role of minerals in fueling conflict and human rights abuses, Section 1502 is a significant step forward and has promoted global action towards making mineral supply chains responsible and free of conflict. Before Section 1502 was passed in 2010, there was very little progress by governments or companies to tackle the conflict minerals trade even though the issue had been identified as a problem since 2002. The provision has catalyzed the creation of new supply chain due diligence legislation and standards in the DRC, Rwanda, Burundi and other African countries, and the development of industry schemes aimed at facilitating responsible sourcing of minerals. It has set an important precedent for the legal responsibility of companies to ensure that their supply chains do not contribute to conflicts and human rights violations. Following the leadership of the US, the European Union recently reached a political understanding on a regulation which would require European importers of tin, tungsten, tantalum and gold to undertake

supply chain due diligence. In addition, the Chinese Chamber of Commerce of Metals and Chemicals Importers and Exporters (CCCMC), recently developed voluntary guidelines which would include supply chain due diligence as well.³ Thus, the United States is in good international company in this trend towards ensuring companies conduct reasonable supply chain due diligence in their operations.

Reporting Requirements and Status of Compliance

Section 1502 is a disclosure provision that requires, among other things, companies who manufacture products containing one of the four conflict minerals to conduct supply chain due diligence if they know or have reason to believe those minerals originate in the DRC or surrounding countries. The SEC's final rule requires that this due diligence be conducted in accordance with a nationally—or internationally—recognized framework.⁴ The only such recognizable framework at present is the due diligence guidance developed by the Organization for Economic Cooperation and Development (OECD). This framework is a five-step process centered on identifying and addressing risks in a company's supply chain and publicly reporting on those efforts. In June 2014, 1,321 companies filed reports with the SEC for the first reporting year. The second round of reports—1,267 in total—were filed in 2015. In 2016, there were approximately 1,283 filers.

In April 2015, Global Witness and Amnesty International released a comprehensive analysis of 100 of the first conflict minerals reports filed in 2014.⁵ The report found that 21% of the company reports we analyzed met the minimum requirements of the U.S. conflict minerals legislation in their first year of reporting, demonstrating that responsible supply chain management can be done, and that the requirements are not unreasonably burdensome. As such, there is no excuse for companies failing to properly investigate their supply chains. Within the filings, we found a full spectrum of compliance and lack thereof: there were several reports filed by companies that included a lot of detail and demonstrated that they had undertaken their required supply checks and there were some reports that were barely a page long, with virtually no information about their due diligence efforts. Global Witness believes that the majority of companies can improve their supply chain reporting through closer adherence to the OECD due diligence guidance.

The second conflict minerals reports were released in June of this year, and we've seen some improvement in the depth of companies' due diligence and in the quality of their reporting. More companies are providing a list of the metal processors they've identified in their supply chains and more companies are providing country of origin information than in the first year. For example, Apple was able to identify an additional 39 smelters and refiners in 2015, bringing their total number to 225.⁶ In 2014, Google reported that 36% of its metal processors were certified as conflict-free, yet in 2015, the percentage of their conflict free smelters and refiners jumped to 68%.⁷ This demonstrates that even though the reports show there is still more room for improvement, companies are learning more about their supply chain as they continue to conduct due diligence on the minerals in their products, thereby reducing the risk to viability of their business operations.

We have also seen that some private and foreign companies that are not covered under the scope of the law are doing their own due diligence, showing that these supply chain checks are not as overly burdensome or costly as some industry associations have previously argued, but also that these efforts are worthwhile. For example, the computer company Acer has written and published its own version of a conflict minerals report on its website for two years in a row,⁸ despite being a foreign company outside of the scope of Section 1502. Other non-US listed or private companies including Dell and Panasonic have also put information on their website about due diligence activities they've undertaken. Many other companies, such as Nissan and Samsung have also developed a conflict minerals policy and published their policy on their website, often in response to consumer demand.

Impacts in the DRC and Great Lakes Region

The law is gradually changing the way that supply chains are understood and, ultimately, how they function. The law has set a critical precedent for the legal responsibility of companies to ensure that their supply chains

do not contribute to conflicts and human rights violations. That said, we must consider that the law is only in its fourth year of implementation. While progress is being made, it takes time to change behavior along supply chains that have previously been almost wholly without scrutiny.

In the upstream section of the supply chain (between the mine and the smelter or refiner of metals), Section 1502 has been a catalyst for some important reforms to DRC's minerals sector. On-the-ground efforts to clean up the mineral trade are expanding. These include private sector-led efforts, such as responsible sourcing programs like the Better Sourcing Program and International Tin Supply Chain Initiative (iTSCi), which now works to improve supply chain functioning in Rwanda and Burundi as well as DRC, and domestic efforts by both the Congolese and Rwandan governments to facilitate responsible trading.

Given the intertwined history of Rwanda and DRC's conflict minerals trade, cross border steps to address regional supply chains are critical—and ground-breaking. In DRC, local NGO watchdogs have begun mine-site monitoring and surveillance. The Congolese government has led a multi-stakeholder committee made up of the DRC government, civil society groups and representatives from international donors to 'validate' more than 180 mines in eastern Congo as conflict-free (there are over 2000 mining sites). Though faced with challenges, the validation missions are, at least, an indication of renewed political will in DRC to clean up the mineral sector in the east. These missions, and other efforts, have been supported by a joint Department of State and USAID strategy on conflict minerals, called for in Section 1502, as shown by the Government Accountability Office report of August 2015.⁹

There is a growing awareness among artisanal miners, regional civil society and in some sections of the Congolese army about what responsible mineral trading should look like and what the rights of miners are. There is also more scrutiny over operations at mining sites. At some tin, tantalum and tungsten sites this has meant that armed men have abandoned digging, which they engaged in before the passage of Section 1502.

While there have been some positive impacts from the law, challenges do remain that have contributed to adverse impacts on the ground in eastern DRC. There was a decline in exports after the law was passed. A combination of a six-month mining ban by the Congolese President in 2010 (which was not required by the law), an overly stringent interpretation of the law by some industry groups and a crisis of confidence in the tin, tantalum and tungsten (known as the 3Ts) markets, many companies' initial response to Section 1502 was to stop buying these minerals from the DRC and covered countries – rather than to continue sourcing from the region in a responsible way. The irresponsible response to the law by some companies led to a drop in legal 3T exports from DRC and Rwanda in particular, that had an impact on many miners' livelihoods in the DRC. However, this is not entirely attributable to the law's actual requirements, but was instead a misinterpretation of the law by some companies. Section 1502 is not a sanctions regime requiring companies to stop sourcing from the DRC; it is a disclosure provision that requires companies to disclose the results of their due diligence.

Despite an initial dip in official artisanal 3T mining exports post 2010, our initial analysis of export and production data from the region indicates that legal exports increased markedly in 2014. For example, in 2010, no tantalum was legally exported from South Kivu, but in 2014, official exports were recorded at 5 tons. In North Kivu official tantalum exports since 2007 have fluctuated over time: the province exported 74 tons of tantalum in 2007, 236 tons in 2010, 122 tons in 2012 and 195 tons in 2013. In the first six months of 2014 alone official tantalum exports were recorded as 296 tons, a substantial increase.

Tackling Cross-border Mineral Smuggling

That said, Global Witness research has revealed that cross-border mineral smuggling, particularly between Rwanda and DRC, remains a problem. This appears to be motivated by a number of issues that include new Congolese laws that stipulate that minerals may only be legally exported from validated mines where a

traceability scheme is operating, a lack of proper state oversight of mine site production in DRC and an (often) higher price per kilo of 3T minerals in Rwanda. The gold sector experiences a separate set of issues that are, in part, linked to its higher value by volume and the use of gold as money, making it much harder to regulate and credibly trace from mine to end-user. The Rwandan and Congolese authorities both have a responsibility to reduce cross-border smuggling. It is therefore critical that companies operating in or buying from Rwanda undertake robust supply chain due diligence, to look for and address the risk of minerals smuggled into Rwandan supply chains, which may have funded conflict in the DRC. Both sides have taken some steps, including increasing the number of rotations at key border patrols, but more needs to be done, by governments and companies alike.

Section 1502 is about changing international business norms with respect to the way companies source their minerals—not just from the DRC. We would like to see: supply chains that are *conflict-free* rather than *Congo-free*, that benefit and support responsible trade from artisanal miners and not armed groups. We would like companies to remain engaged in high-risk areas like DRC, with the appropriate systems and risk processes in place. Divestment in order to avoid engaging in responsible sourcing or to avoid risk is not required by the law, and is an irresponsible over-reaction to the law that can lead to the most vulnerable—the artisanal miners—losing their livelihoods. Blaming Section 1502 for this divestment not only shirks responsible sourcing, but risks returning Eastern DRC to the violent free-for-all that exemplified the minerals trade prior to the law coming into force.

Conclusion

This important law was not designed to be the one solution that would bring immediate peace to a war-torn region. Rather, it is an important tool aiming to tackle the economic drivers of conflict. It is already catalyzing important change but more must be done.

Thank you for your support on this important issue,



Stefanie Ostfeld
Acting Head of US Office

¹ UNHCR, 2015 UNHCR Country Operations Profile – Democratic Republic of the Congo, <http://www.unhcr.org/pages/49e45c366.html>

² European Commission, “Proposal For A Regulation Of The European Parliament And Of The Council: Setting Up a Union System for Supply Chain Due Diligence Self-Certification of Responsible Importers of Tin, Tantalum and Tungsten, Their Ores, and Gold Originating in Conflict-

Affected and High-Risk Areas” March 5, 2014, http://trade.ec.europa.eu/doclib/docs/2014/ march/tradoc_152227.pdf

³ CCCMC, “Guidelines for Social Responsibility in Outbound Mining Investments,” <http://www.globalwitness.org/sites/default/files/library/CCCMC%20Guidelines%20for%20Social%20Responsibility%20in%20Outbound%20Mining%20Investments%20Oct%202014%20CH-EN.pdf>. See also Global Witness, “Tackling conflict minerals – How a new Chinese initiative can address Chinese companies’ risks,” October 2014, <http://www.globalwitness.org/sites/default/files/library/GW%20Tackling%20conflict%20minerals%202014-10%20lr.pdf>

⁴ Securities and Exchange Commission, “Conflict Minerals; Disclosure of Payments by Resource Extraction Issuers; Final Rules,” 17 CFR Parts 240 and 249b (hereafter, “SEC Final Rule”), Sept 12, 2012 <http://www.gpo.gov/fdsys/pkg/FR-2012-09-12/pdf/2012-21153.pdf>, p. 56274, 56281

⁵ “Digging for Transparency,” Global Witness and Amnesty International, April 22, 2015, <https://www.globalwitness.org/campaigns/democratic-republic-congo/digging-transparency/>

⁶ Apple’s 2015 Conflict Minerals Report, page 2, https://www.apple.com/supplierresponsibility/pdf/Conflict_Minerals_Report.pdf

⁷ Google’s 2014 Conflict Minerals Report, <https://static.googleusercontent.com/media/www.google.com/en//about/company/pdfs/google-2013-conflict-minerals-report-v2.pdf>. See also Google’s 2015 Conflict Minerals Report, <https://static.googleusercontent.com/media/www.google.com/en//about/company/pdfs/google-2014-conflict-minerals-report.pdf>

⁸ Acer’s 2014 Conflict Minerals Report, http://www.acer-group.com/public/Sustainability/pdf/ConflictMineralsReport_E.pdf and Acer’s 2015 Conflict Minerals Report, <http://www.acer-group.com/public/Sustainability/pdf/Conflict-Minerals-Report-2014.pdf>

⁹ GAO, 2015, “SEC Conflict Minerals Rule”, August, <http://www.gao.gov/assets/680/672051.pdf>