



Implementation and Impacts of the Conflict Minerals Provision

Designed to break the links between the lucrative minerals trade in eastern Democratic Republic of Congo and armed conflict, the conflict minerals provision of the 2010 Wall Street Reform and Consumer Protection Act, commonly known as Section 1502, is an important supply chain due diligence disclosure law that requires companies to source the minerals in their product responsibly.

REQUEST

- Support and encourage responsible corporate sourcing practices for minerals from high-risk areas.
- Ensure that the supply chain due diligence requirements of Section 1502 remain in place, are robustly implemented, and enforced.

Section 1502: the first law to address links between minerals and conflict in Congo

The trade in natural resources finances conflict and human rights abuses around the world. Recent reports exposing abuses and fighting associated with jade in Myanmar,¹ lapis lazuli in Afghanistan,² and gold in Colombia³ highlight the scale of the problem. Many of these minerals are used in a wide range of consumer and commercial products. The companies that manufacture these goods have a unique responsibility and opportunity to help address this problem. By engaging these companies in the process of identifying risks, and holding them accountable for how they do business, Section 1502 represents a major step towards making sure minerals are sourced more responsibly.

Section 1502 requires US-listed companies whose products contain tin, tantalum, tungsten or gold to conduct supply chain checks, known as due diligence, on minerals that may originate from Congo or its nine neighboring countries. Building on the UN Guiding Principles on Business and Human Rights, and the international standard developed by the Organization for Economic Cooperation and Development (OECD), it encourages companies to conduct ongoing risk assessments along their supply chains and, where needed, to deal with the risks they find. Companies covered by the law must report annually to the U.S. Securities and Exchange Commission (SEC) on their efforts.

Risk-based supply chain due diligence is becoming a global norm for responsible sourcing

Spurred by Section 1502, there are now new supply chain due diligence laws in Congo, Rwanda, and the European Union,⁴ and voluntary due diligence guidelines in China.⁵ Industry schemes have also been developed to support company efforts to carry out supply chain due diligence. These frameworks help create more transparent global supply chains in which companies can work in concert to share information, leverage suppliers, and establish best practices.

A growing number of U.S. companies have become market leaders in building new and more responsible business models, and as a result, have begun to trigger behavioral change across international mineral markets. Any efforts to undermine the conflict minerals provision compromises American leadership in this area. Several companies, including Tiffany's,⁶ Apple, Richline, and Intel,⁷ have publicly stressed the importance of supply chain due diligence. 129 Investors, representing over \$4.8 trillion dollars in assets, recently stated,⁸ in a letter to the SEC, that the due diligence disclosures required by Section 1502 provide valuable information about how companies manage supply chain risks.

U.S. companies could be subject to significant disadvantages if the rule is weakened or repealed, as companies that do not carry out supply chain due diligence to the international standard may be penalized elsewhere.

Implementation of Section 1502 shows nascent progress, but more improvement is needed

Since the law went into effect in 2013, over 1,200 companies are now reporting on their efforts to survey suppliers and identify metal processors. This is a key component mapping mineral supply chains. Some companies have also made big strides towards describing their efforts. For example, one major tech firm's most recent Conflict Minerals Report detailed 15 distinct supply chain risks identified, as well as the status of any follow up to address these risks.⁹

Many reporting companies remain, however, focused exclusively on their direct suppliers. Few engage further down their supply chains. To ensure that the law is implemented properly, robust SEC enforcement is critical. Limited implementation of the law limits its ability to change supply chain behavior and create sustainable impacts in Congo.

Section 1502 has spurred new scrutiny on minerals trade

In Congo, the momentum generated by the law has helped catalyze some important changes. Congolese civil society and some parts of the Army now actively advocate for responsible mineral trading. Some miners, though not all, are now more aware of their rights. Increased scrutiny generated by 1502 has also encouraged monitoring by local committees to evaluate supply chains and provide information on potential risks to downstream companies.

Remaining challenges demand that we do better

The implementation of the Rule has not been without its challenges. Between the passage of the law in July 2010 and the finalization of the SEC's rule in August 2012, regulatory uncertainty was one of the factors that created a crisis of confidence in certain mineral markets. Before the SEC Rule requirements were published, several companies explicitly encouraged their suppliers to withdraw from the region, rather than remaining engaged in responsible manner.¹⁰ This influenced mineral exports from North and South Kivu provinces from 2011 onwards. This irresponsible response affected the livelihoods of the thousands of artisanal miners in eastern Congo, who have been exposed to the price and demand fluctuations of international metal markets since well before Section 1502 was passed. Eastern Congo's gold sector has also received less scrutiny, relative to tin, tungsten and tantalum, which has made it more resistant to reform

The Rule, and the OECD due diligence framework it is based on, does not discourage sourcing from Congo. Rather, it encourages companies to engage responsibly and with the care appropriate to the risks found in higher risk areas. Supply chain due diligence is about *how* companies do business, not *where*. Responsible sourcing efforts must also be complemented by governance reform, development initiatives, and efforts to tackle impunity in mineral rich areas.

Certainty about responsible sourcing expectations needed to drive progress

We must build on the law's hard-fought foundations and seek to improve implementation by supporting robust enforcement of the law's supply chain due diligence requirements. Recent efforts to suspend or repeal Section 1502 threaten to undermine global responsible sourcing efforts. Uncertainty will only drive complacency and undermine our chance to learn from, and build on, what has been achieved to date. Stability is needed for markets to thrive and to spur the innovation and behavioral change needed to ensure minerals support positive economic development.

RECOMMENDATIONS

- All companies that use minerals from conflict-affected and high-risk areas, like eastern Congo, must carry out supply chain due diligence in line with the OECD framework, and publish meaningful and detailed reports on their efforts to address supply chain risks.
- The SEC must uphold its obligation to enforce the Rule, with particular emphasis on the supply chain due diligence requirements, and in line with its statutory mandate, by holding companies accountable for incomplete reporting and failing to meet basic requirements.

¹ Global Witness, "Jade and the Generals," May 2017, www.globalwitness.org/en/campaigns/myanmar/jade-and-generals/

² Global Witness, "War in the Treasury of the People: Afghanistan, Lapis Lazuli and the Battle for Mineral Wealth," June 2016, www.globalwitness.org/en/reports/war-treasury-people-afghanistan-lapis-lazuli-and-battle-mineral-wealth/

³ The Global Initiative Against Transnational Organized Crimes, "Organized Crime and Illegally Mined Gold in Latin America," April 2016, www.globalinitiative.net/wp-content/uploads/2016/03/TGIATOC-OC-and-Illegally-Mined-Gold-in-Latin-AmericaReport-1718-digital.pdf

⁴ Global Witness, Conflict Minerals in Europe, November 2016, www.globalwitness.org/en/campaigns/conflict-minerals/conflict-minerals-europe-brief/

⁵ China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters (CCCMC), "Chinese Due Diligence Guidelines for Responsible Mineral Supply Chain," May 2015, www.oecd.org/daf/inv/mne/CCCMC-Guidelines-Project%20Brief%20-%20EN.pdf

⁶ Tiffany & Co. statement supporting diligence, transparency in addressing conflict minerals, February 2017, <http://press.tiffany.com/News/NewsItem.aspx?id=302>

⁷ "Why Apple and Intel don't want to see the conflict minerals rule rolled back," Washington Post, February 23, 2017, http://wapo.st/2IJUivN?tid=ss_tw

⁸ Boston Common Asset Management et al, Comments on Reconsideration of Conflict Minerals Rule Implementation – Supplemental Submission to February 17, 2017, March 7, 2017, <https://www.sec.gov/comments/statement-013117/cil2-1618221-137060.pdf>

⁹ Apple, Conflict Minerals Report, May 2017, www.sec.gov/Archives/edgar/data/320193/000119312517159397/d383904dex101.htm

¹⁰ Responsible Sourcing Network, "Mining the Disclosures 2015: an Investor's Guide to Conflict Minerals Reporting in Year Two," January 20, 2017, p.9 and p.21, www.sourcingnetwork.org/mining-the-disclosures