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SEEING THE LIGHT

Responsible Mineral Sourcing from the DRC

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For nearly fifteen years, armed groups and members of the Congolese national army have used profits generated from control over the trade in tin, tantalum, tungsten and gold in eastern Democratic Republic of the Congo (DRC) to finance themselves and their operations.

Section 1502 of the 2010 Dodd Frank Act, known as the conflict minerals provision, is the first piece of legislation aimed at breaking the links between eastern DRC's lucrative minerals trade and abusive armed groups. The law requires US-listed companies to determine if their products contain one or more of four minerals – tin, tantalum, tungsten and gold – sourced from the DRC or one of its nine neighboring countries. If so, these companies must carry out and report on their supply chain due diligence efforts. In annual reports to the Securities and Exchange Commission (SEC), companies must disclose whether the minerals in their products have financed conflict and human rights abuses.

Section 1502 entered into force on January 31, 2013 and the filing deadline for the first round of company reports under the law is May 31, 2014. Several hundred US-listed companies are captured and required to report under Section 1502, while many more non-US listed companies – customers in the supply chains of US firms – are also indirectly affected by the law.

Company efforts to create clean supply chains

Section 1502 has prompted companies at all levels of mineral supply chains to change their sourcing practices.

Momentum generated by Section 1502 has prompted industry associations, such as the London Bullion Market Association¹ and World Gold Council,² to develop due diligence requirements for their members aiming to help them meet the international due diligence standard set by the Organization for Economic Cooperation and Development (OECD).³ The Electronics Industry Citizenship Coalition and the Global e-Sustainability Initiative have developed a Conflict Free Smelter Program (CFS), which is an auditing system for smelters and refiners that aims to support company efforts to verify the upstream section of their supply chains. As of April 25, 2014, the CFS had validated 85 smelters and refiners around the world as conflict-free while another 110 were in the process of being evaluated and audited.⁴

Individual companies have also made significant progress towards responsible sourcing efforts, for example:

- In early January 2014, Intel announced that all of their microprocessors are now conflict free during the CES conference in Las Vegas. Intel has been a leader on this issue and has repeatedly expressed their commitment to sourcing from the Great Lakes region.⁵
- In February 2014, Apple released a list of conflict-free and non conflict-free smelters in their supply chain as part of their 2014 Supplier Responsibility report.⁶
- In April 2013, Hewlett Packard (HP) published the names of the 195 tin, tantalum and tungsten smelters and gold refiners identified in its supply chain.⁷

In the Great Lakes region, companies have begun to engage in closed-pipe supply chain projects, whereby businesses all along the supply chain, from mine to final product, work together to identify and manage risks at specific mines and along trading routes with the aim of creating a clean mineral supply. Key examples of this model are:

- The **Conflict-Free Tin Initiative (CFTI)**, a closed-pipe system in eastern DRC's South Kivu province, where all companies in the supply chain are identified and directly involved in managing the mineral along the chain, was launched in October 2012. Major SEC-listed companies including Phillips, Motorola Solutions and Research in Motion are participating in the project.⁸
- In July 2011, a closed-pipe sourcing initiative, **Solutions for Hope**, was launched in DRC's Katanga province. Verified conflict-free tantalum is sold to smelters certified under the Conflict-Free Sourcing Initiative (CFSI). Through this project, over 70 metric tons⁹ of 'conflict-free' tantalum has reportedly been exported to over 9 major end users, including Nokia, Motorola Solutions, Intel and HP, according to the Solutions for Hope website.¹⁰
- **Making Africa Work**, developed by Kemet, a leading tantalum capacitor manufacturer. Kemet has committed US\$1.5m towards the construction of schools, infrastructure and health clinics around the Kisengo mine site, in Katanga province.¹¹

The International Tin Research Institute's (ITRI) Tin Supply Chain Initiative (**iTSCi**) has established a due diligence scheme operating at certain mines in Katanga, Maniema, North and South Kivu provinces of DRC, at over 400 mine sites across the border in Rwanda, and in Burundi.¹² In March 2014, the iTSCi program launched its program in North Kivu province – making iTSCi the first responsible sourcing scheme to operate in the province. Under the terms of the iTSCi Membership Program Agreement, full members of the scheme agree “to adopt the OECD Annex II Model Supply Chain Policy and fulfill all obligations recommended by the OECD Guidelines.”¹³

Legal reform in the Great Lakes Region

Momentum generated by the passage of Section 1502 has led to domestic reforms in the Great Lakes region's mineral sector.

- In October 2011, the Congolese Minister of Mines recognized Section 1502 as a 'major opportunity' to break the links between minerals and conflict.¹⁴
- In February 2012 the Congolese government introduced domestic legislation requiring companies operating in its domestic tin, tantalum, tungsten or gold mining sectors to undertake supply chain due diligence according to the OECD standard – 'to ensure that they do not contribute to human rights violations or conflicts in DRC'. The law was introduced, in part, in response to Section 1502.
- In mid-2012, the Congolese authorities took steps to enforce the legislation by suspending two Chinese mineral export companies for failing to carry out due diligence.¹⁵
- The DRC is in the process of reviewing its Mining Code and has indicated that due diligence requirements will be incorporated within the new Code.
- Companies exporting minerals from North and South Kivu have begun annual reporting on their supply chain due diligence, in line with Congolese law. In January 2014 Global Witness received copies of four due diligence reports prepared by companies exporting minerals from the Kivus and Maniema provinces.

Local level developments in monitoring and supply chain management

Section 1502 has prompted some positive developments on a local level in the DRC. Civil society groups, journalists and, in some cases, state agents, mining police, and mineral traders operating in certain mining areas have formed monitoring groups or have become whistleblowers flagging supply chain risks, including the involvement of armed groups. Although localized, these positive developments represent emerging opportunities for responsible sourcing. For example:

- A coalition of Goma-based traders and civil society representatives (Save Act Mine) has established a toll-free telephone hotline that facilitates anonymous calls to report suspicious mineral-related activity. The group actively promotes the use of OECD due diligence guidance in Congo's mining sector.¹⁶
- In Goma, North Kivu a provincial committee set up in 2012 to combat mineral fraud brings together state mining agencies, representatives of the mining police and army and members of the private sector in order to track down cases of mineral fraud, some of which may have funded armed actors. In 2013 the committee intercepted 12 cases of attempted mineral fraud.

The road to reform is not without challenges

Critics of Section 1502 claim that the law has led to a de facto embargo on DRC's minerals trade. Official Congolese government statistics show that while mineral exports have decreased, they have not stopped, however. Between March and September 2011, tin ore exports from North and South Kivu averaged at 28 percent of 2009-10 levels. In 2013, tin exports from North Kivu increased by just 15 percent on the previous year, while for the same period, coltan exports increased by 448 percent, at just over 195 tons for 2013 (compared to 87 tons in 2008). Reliable production figures are often not available and site-specific research is required to allow for comprehensive interpretation of production levels.

Section 1502 is a disclosure requirement, not a prohibition. If properly implemented, Section 1502 could contribute to a more transparent, accountable and responsible mineral trade in DRC, benefitting the population as well as offering clear advantages to companies and their investors, shareholders and consumers. Companies record of progress to source responsibly from the Great Lakes region is encouraging; however, for these benefits to be fully realized, it is critical for companies to take responsibility for conducting thorough risk assessments on their supply chains, developing a comprehensive plan to mitigate these risks and reporting on their efforts to source responsibly.

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¹ London Bullion Market Association, 'Responsible Gold Program,' accessed here: <http://www.lbma.org.uk/responsible-gold>

² World Gold Council, 'Responsible Gold Sourcing,' accessed here: <http://www.gold.org/gold-mining/responsible-gold-sourcing>

³ Section 1502 refers to the OECD standard as the highest available supply chain due diligence standard currently available for companies to use.

⁴ 'CFS Program Indicators,' April 25, 2014. Accessed here: <http://www.conflictreesourcing.org/program-indicators/>

⁵ "Where can you find the world's first conflict free processors? Look inside." Accessed here: <http://www.intel.com/content/www/us/en/corporate-responsibility/conflict-free-minerals.html>

⁶ Apple, 'Supplier Responsibility 2014 Progress Report,' accessed here: http://images.apple.com/supplier-responsibility/pdf/Apple_SR_2014_Progress_Report.pdf

⁷ Hewlett Packard, "HP Releases List of Supply Chain Smelters." April 15, 2013. Accessed here: <http://www8.hp.com/us/en/hp-news/press-release.html?id=1391397#.UZiIZFdnD2A>

⁸ At the project's outset in 2012, production levels at the mine site--which can employ up to 1200 artisanal miners--rose steadily and averaged over 100 tons of tin ore per month. According to the CFTI website, the income for these miners doubled during this period.⁸ The introduction of a new local tax, combined with practical concerns linked to arsenic in some of the mine's shafts, caused production levels to drop in 2013. For November and December 2013 and January 2014 average exports were around 22 tons per month, while exports for February 2014 rose to just over 31 tons, according to Global Witness research. A reduction in the new local tax combined with opening of new 'closed-pipe' sites around Kalimbe mine may help to increase export levels across 2014, although concerns linked to working conditions at the mine must also be addressed.

⁹ 'Solutions for Hope.' Accessed here: <http://solutions-network.org/site-solutionsforhope/results/>

¹⁰ 'Solutions for Hope.' Accessed here: <http://solutions-network.org/site-solutionsforhope/participants/>

¹¹ Kemet, 'Conflict Free and Socially Sustainable: A Practical Discussion of Conflict Minerals Compliance Rules and the KEMET Case History,' accessed here: <http://www.squiresanders.com/files/Event/ad64f8bc-bce5-43b4-88c3-905ab75874ed/Presentation/EventAttachment/0d6ed9ff-9596-4adb-b291-3393df73e8cb/Conflict-Free-and-Socially-Sustainable.pdf>

¹² See "ITSCI Project Overview", https://www.itri.co.uk/index.php?option=com_zoo&view=item&Itemid=189 accessed 20 August 2014; ITRI, "ITSCI Programme starts activities in third country, Burundi", 20 May 2014, https://www.itri.co.uk/index.php?option=com_zoo&task=item&item_id=3014&Itemid=177 accessed 7 August 2014; ITRI, "ITSCI extends into conflict-free areas of North Kivu, DRC", 3 February 2014, https://www.itri.co.uk/index.php?option=com_zoo&task=item&item_id=2958&Itemid=177 accessed 7 August 2014; ITRI, "Status Report ITSCI

Rwanda Field Operations, July-December 2013”, 2013, https://www.itri.co.uk/index.php?option=com_mtree&task=att_download&link_id=55084&cf_id=24 accessed 7 August 2014.

¹³ iTSCi, “iTSCi membership programme agreement summary, May 2011, https://www.itri.co.uk/index.php?option=com_mtree&task=att_download&link_id=49830&cf_id=24 accessed on 7 August 2014. Details of obligations under OECD Guidance can be found here: OECD, “OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition”, 2013, <http://dx.doi.org/10.1787/9789264185050-en> accessed 7 August 2014.

¹⁴ *Arrêté ministériel N.0057.CAB.MIN/MINES/01/2012 du 29 février 2012 portant mise en œuvre du mécanisme régional de certification de la Conférence Internationale sur la Région des Grands-Lacs « CIRGL » en République Démocratique du Congo*, Article 8.

¹⁵ See Global Witness press release: <http://www.globalwitness.org/library/congo-government-enforces-law-curb-conflict-mineral-trade>

¹⁶ Global Witness interviews with member of Save Act Mine DRC, Goma.