Association Connecting Electronics Industries

IPC®

June 26, 2013

Mr. Karel De Gucht
EU Trade Commissioner
Directorate-General Trade
EU Commission

Re: Public consultation on a Possible EU Initiative on Responsible Sourcing of Minerals Originating from Conflict-Affected and High-Risk Areas

IPC appreciates the European Union Commission's efforts in regards to addressing the effects of minerals sourcing in Conflict-Affected and High-Risk Areas, particularly those in the Democratic Republic of Congo (DRC). In addition to participating in the online survey, IPC — Association Connecting Electronics Industries wishes to offer the following comments to the EU Commission on the EU Public consultation on *a Possible EU Initiative on Responsible Sourcing of Minerals Originating from Conflict-Affected and High-Risk Areas*.

IPC is a global trade association, representing all facets of the electronic industry, including but not limited to companies that design, manufacture and assemble printed circuit boards. Contrary to common perception of electronics manufacturing, the majority of IPC's members are small businesses. Printed circuit boards and electronic assemblies are vital to the operation of electronics products ranging from computers, cell phones, pacemakers, to sophisticated missile defense systems. IPC has more than 3,000 member companies of which nearly 400 are located in the E.U.

IPC members collectively manufacture products that incorporate all four of the key metals refined from conflict minerals, as defined in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).[1] Both Original Equipment Manufacturers (OEMs) and electronic manufacturing service (EMS) providers use tin-based solder to attach components to printed circuit boards through soldering. Many printed circuit boards are finished with tin surface finishes. A number of printed circuit boards also contain gold plating for specific electrical connections. Electronic components include integrated circuits (chips), connectors, capacitors, batteries, etc., all of which contain one or more conflict minerals.

IPC has been engaged in the conflict minerals issue for the last several years. Along with governments and civil society, IPC and our members share a commitment to the fundamental principles of peace and security for the Congo, and we are dedicated to being responsible actors within the context of comprehensive, government-led strategies for Central Africa. We do not

[1]The Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111–203, H.R. 4173

want to conduct business, either directly or indirectly, with any supplier that supports, prolongs or perpetuates armed conflict or human rights abuses. IPC acknowledges that the human rights situation in the Democratic Republic of Congo is grave. While we believe that efforts of our members and other manufacturing sectors to source responsibly may be able to contribute to improvements in the situation, we strongly believe that supply chain solutions, in the absence of critical on the ground security improvements, cannot address the ongoing crisis in the DRC or elsewhere. While IPC supports the underlying goal of the conflict minerals measures contained in Dodd-Frank, we believe that the regulations implementing this law have placed great burdens on the private sector without having the intended positive effect on people in the DRC. In fact, there is mounting evidence of unintended negative consequences associated with companies' efforts to prepare to address the situation through supply chain measures.

IPC encourages the EU commission to carefully consider these and other comments before introducing legislation on responsible sourcing of minerals. We urge the EU Commission to avoid actions that will unduly burden E.U. manufacturing and commerce industries or cause unnecessary disruptions of the minerals trade, which is vital to the livelihood of the people of the DRC.

The Dodd-Frank Conflict Minerals Provisions

We encourage the EU Commission to carefully consider the example provided by Dodd-Frank. Although the provisions have not yet been fully implemented, we believe review of the Act, the implementing regulations, and the effects and consequences of Dodd-Frank can provide the EU with significant insight regarding the implementation and effect of responsible sourcing initiatives. IPC strongly urges that the EU take great caution in its development of any future laws or regulations related to the sourcing of minerals from conflict areas.

Dodd-Frank requires that publicly traded companies report to the Securities and Exchange Commission (SEC) any use of conflict minerals in their supply chains. It defines "conflict minerals" as "columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives" (which are commonly referred to as tantalum, tin, gold, and tungsten, respectively), and it directs companies to disclose whether those minerals originated in the Democratic Republic of the Congo (DRC) or its adjoining nations – Angola, Zambia, Tanzania, Rwanda, Burundi, Uganda, South Sudan, Central African Republic, and the Republic of the Congo. In August 2012, the SEC promulgated rules outlining how publicly traded companies should comply with the Dodd-Frank.

Many of the difficulties companies are having in complying with Dodd-Frank regulations are related to the difficulties of attempting to solve complex regional security issues through responsible sourcing regulations. The result is a hugely burdensome, largely unworkable system which fails to recognize the depth, complexity, and constantly evolving nature of modern supply chains. Obtaining detailed information, down to every mineral, regarding every piece of a product requires significant resources, both from publicly-traded firms and all subsequent levels of their supply chains. If even one small supplier, layers deep in the supply chain, is unable or unwilling to respond to inquiries from their larger customers, it is not possible to obtain the desired results. Downstream users are forced to rely almost entirely on the due diligence of their suppliers throughout the supply chain, even when they have limited or no influence on those smaller firms.

Even the U.S. government has been largely unable to identify conflict and non-conflict associated minerals sources. Dodd-Frank requires the U.S. State Department's to prepare a conflict minerals map. The footnotes to the map indicate not only the difficulty in responsible sourcing, but also renders it virtually useless to companies attempting to perform the due diligence required by Dodd-Frank. The map states, "Lack of verifiable data makes it difficult to locate many mine sites, to establish which mines are active and which are inactive at any given time, and to verify the armed groups or other entities that are either present at mines or have access to revenue streams emanating from them."[2] The map also states that, "Many of the mining sites in eastern DRC are inaccessible to outsiders due to remoteness, a lack of passable roads, and the dangers stemming from the presence of militia, undisciplined army troops, and bandits."[3] In its report, the State Department said, "Given the… limitations on the data available, this map does not provide sufficient information to serve as a substitute for information gathered by companies in order to exercise effective due diligence on their supply chains." Given these difficulties experienced despite the resources of the U.S. Government, it is unsurprising that companies are unable to verify the sourcing of the minerals in their products.

Dodd-Frank has also created obstacles for companies that want to remain responsibly engaged in Central Africa. Simply put, the mechanism contained in Dodd-Frank encourages companies to avoid the region, while layering regulatory burdens and costs on those that stay. Companies that elect to exit the region altogether can avoid these obligations.

The implementation of Dodd-Frank has led to a *de facto* embargo on minerals from the covered region, with serious consequences for local populations. Major smelters report that a majority of their direct customers are demanding metals that are Congo-free, rather than conflict-free. Likewise, most companies expend the bulk of their time and resources establishing that they are not sourcing from the region. These efforts yield few if any benefits to the people of the Congo.

Dodd-Frank, by focusing almost exclusively on the role of the private sector, has diverted critical attention away from the indispensable role of governments in addressing the endemic political, security and humanitarian crises in the region. Private sector initiatives alone cannot succeed in a region beset by rampant conflict and corruption, and destabilized by chronic interference and intrusions from neighboring countries. The U.S. Congressional Research Service (CRS) notes in their 2012 report on Dodd-Frank that, "While substantial financial and applied efforts are being invested in such efforts, conflict in eastern DRC has long posed a complex set of intractable

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[2] *Democratic Republic of the Congo Mineral Exploitation by Armed Groups & Other Entities,* U.S. Department of State, Humanitarian Information Unit, http://hiu.state.gov
[3] *Ibid*

security, governance, and human rights challenges, which such efforts alone are unlikely to overcome—and may complicate."[4]

The underlying causes of this regional war are political, not economic, and are linked to entrenched ethnic enmities and disputes over political power, land rights and citizenship. While control over natural resources is in part responsible for fueling violence in eastern Congo, it is striking to note that adjacent areas that are equally rich in resources are not plagued by conflict.

According to the United Nations group of experts report[5] the implementation of due diligence programs, specifically traceability systems in the DRC is severely lacking. For many mines and smelters the desire to implement due diligence measures is present but the necessary infrastructure to do so is non-existent. Certain non-conflict areas have been able to implement due diligence programs and as a result, these areas have seen improved governance, mineral production, and export of minerals. In addition, buyers for minerals that are not "bagged and tagged" have decreased, except for three smelters in China. The UN report states:

> "In areas where no traceability systems have been introduced, particularly the Kivus and Maniema, mineral production and exports have fallen. This has not only decreased conflict financing, but also weakened mining sector governance, with a greater proportion of trade becoming criminalized and with continued strong involvement by military and/or armed groups."

Also, because of endemic security and corruption challenges, the volume of materials processed through legitimate in-region programs to date has been modest at best. The United Nations reports that, even as security has improved at some major mining centers, exports of tin, tantalum and tungsten from the eastern DRC have all but halted. The prices for uncertified minerals have plummeted, with impoverished artisanal miners earning mere cents on the dollar, while brokers and exporters secure huge profits. The societal impacts can be measured in reduced family incomes, limited availability and rising prices for food and medicines, and in falling school enrollments. The U.N. also reported significant black market movement of covered minerals from the Congo, and a rush by armed groups and the Congolese military to gold mines where due diligence requirements have not impacted trade. Furthermore, militias and "criminal, mafia-type networks" within the Congolese Army are exploiting other sources of revenue, through products such as timber, charcoal, cannabis, ivory and basic supplies, and through practices such as human trafficking, illegal roadblocks and extortion.

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[4] Congressional Research Service, *Conflict Minerals in Central Africa: U.S. and International Response*, July 20, 2012.

[5] United Nations Security Council, Letter dated 29 November 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council. December 2, 2011. *http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/738*.

In May 2013, the U.S. House of Representatives' Subcommittee on International Monetary Policy and Trade held a hearing entitled "The Unintended Consequences of Dodd-Frank's Conflict Minerals Provision." One of the panelists testifying, Mr. Mvemba Dizolele, a Visiting Fellow at the Hoover Institution of Stanford University, and an adjunct professor at the School for Advanced International Studies at Johns Hopkins University, stated in his testimony that, "Mineral trade in eastern Congo is part of a wider war economy… As such, Section 1502 builds on a weak foundation and requires the buy-in of the very negative actors it seeks to tame…This approach perverts basic peacemaking…" Dizolele's testimony goes on to say that, "There is no evidence that Section 1502 has reduced violence in the targeted region. In fact, the emergence of the M23 militia last spring…is proof that this law has little bearing on war entrepreneurs."[6] Another panelist, David Aronson, a freelance journalist who has covered central Africa intermittently for 25 years for publications including *The New York Times* and *the Washington Post*, testified that Section 1502 "is a case study in how good intentions can go awry, particularly when a compelling activist-sponsored narrative substitutes for considered and timely analysis."[7]

The EU Commission must carefully consider the negative unintended consequences of a supply chain based solution, like Dodd-Frank, for sourcing minerals in Conflict-Affected and High-Risk Areas. While the intentions behind the Dodd-Frank legislation were genuine, the implementation of the legislation has not provided the intended benefit to the people of the DRC, whose livelihood depend on the legitimate mining trade. IPC strongly urges that the EU take great caution in its development of any future laws or regulations related to the sourcing of minerals from conflict areas.

Recommendations

IPC and our members urge the EU to proceed cautiously before implementing conflict minerals regulations. In light of the negative, unintended effects of the Dodd-Frank conflict minerals provisions, the EU should carefully analyze any proposed measures. Given the number of obstacles inhibiting positive implementation of Dodd-Frank supply chain requirements, IPC recommends that the EU focus on measures that will promote the successful implementation of existing supply chain programs and regulations. These measures could include, but need not be limited to, support of in-region transparency and governance initiatives.

While efforts focused on reducing armed groups' access to minerals revenues have the potential to reduce human rights violations, the CRS report notes that they are,

> "[U]nlikely to succeed on their own, however. Instead, their success will almost certainly depend on diverse other efforts to achieve security and demobilization of

[6] Testimony by Mvemba Dizolele before the U.S. House of Representatives, Committee on Financial Services. May 20, 2013. http://financialservices.house.gov/uploadedfiles/hhrg-113-ba19-wstate-mdizolele-20130521.pdf

[7] Testimony by David Aronson before the U.S. House of Representatives, Committee on Financial Services. May 20, 2013. http://financialservices.house.gov/uploadedfiles/hhrg-113-ba19-wstate-daronson-20130521.pdf

> armed groups; accountability for and prevention of human rights abuses; politically and administratively resolutions to diverse local grievances; and enhanced mineral sector production and regulatory capacity-building.
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> For instance, it is not clear that credible, consistent, and effective due diligence efforts to prevent the conflict minerals trade can be undertaken while widespread insecurity and periodic military clashes in eastern DRC persist. It is also not certain how durable or substantial an effect on conflict reduction the removal of armed actors' access to mineral revenues through conflict-free trading schemes might have, given the availability of alternate sources of conflict financing and the multiplicity of factors that stoke conflict. Another major challenge is the technical complexity associated with due diligence and mineral certification initiatives. Without substantial, continuing external assistance to help small-scale mining sector actors in eastern DRC with these efforts, and much greater local buy-in and participation, there is no guarantee that such efforts will be credible and sustainable."[8]

In particular, IPC encourages the EU to support the implementation of the Organization for Economic Co-operation and Development (OECD) Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.[9] The guidelines which outline a step-by-step set of measures for responsible sourcing by both upstream and downstream companies, were developed by a broad group of multinational stakeholders.

Supply chain transparency and sourcing compliance programs take substantial time and resources to develop and implement. Currently, manufacturers face significant limitations on the ability to report (i.e., the lack of information infrastructure to track and trace to the point of origin). Given that Dodd-Frank is being implemented, along with the existence of other programs that promote transparent and responsible sourcing of minerals, the EU should be extremely cautious about implementing similar and potentially conflicting or duplicative requirements. In order to fully understand the effects of conflict minerals regulations on global supply chains and international trade, the EU should allow time for the existing requirements and programs to take effect, and then assess the impact on conflicted areas to determine the effectiveness of these mechanisms in meeting their objectives.

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[8] Congressional Research Service, *Conflict Minerals in Central Africa:U.S. and International Response*, July 20, 2012.

[9] OECD, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, 2011.

Finally, given the expected considerable costs of implementing Dodd-Frank,[10,11,12,13] it is recommended that a thorough cost analysis be performed on any proposed legislation in order to avoid placing EU manufacturers at a global disadvantage.

Thank you for the opportunity to comment on this initiative. Please do not hesitate to contact me at fabrams@ipc.org or +1 (703) 522-2287 should you have any questions.

Sincerely,

Fern Abrams
Director, Government Relations and Environmental Policy

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[10] Chris Bayer, Tulane University, "A Critical Analysis of the SEC and NAM Economic Impact Models and the Proposal of a 3rd Model in view of the Implementation of Section 1502of the Dodd-Frank Wall Street Reform and Consumer Protection Act, October 17, 2011.
[11] IPC. "Results of an IPC Survey on the Impact of U.S. Conflict Minerals Reporting Requirements." February 2011.
[12] 75 Ref. Reg. 80966.
[13] National Association of Manufacturers (NAM). Comments submitted to the SEC. March 2, 2011.