Norms of accountability for importers: 

*conflict minerals & illegal logging*

Arthur Blundell, PhD
Mandatory due diligence

- First areas in which the norm was translated into law
  - Illegal logging & conflict minerals
- Innovative: “companies can be held accountable for socially & environmentally harmful behavior [of] other actors at an earlier stage of the supply chain”
CONFLICT MINERALS

The mineral trade has funded violence and armed conflict for decades. Despite international legislation aimed at cleaning up the trade, conflict minerals can still enter global markets and end up in products, such as mobile phones, laptops and cars.
Regional approach

FROM THIS

CASSITERITE
"Tin oxide mineral with the symbol SnO₂"
- It has been the most important source of tin throughout history, and is where most of today's tin still comes from.
- It can also be used as a geode, stone, with its beautiful and unique crystals.

TO THIS

GOLD
- Often used as a replacement for lead in printed circuit boards and processors, and used to solder pieces together with devices.

TIN
- Often used as a replacement for lead in printed circuit boards and processors, and used to solder pieces together with devices.

TANTALUM
- The key ingredient in tantalum capacitors, which can be used in devices that require high performance in a small amount of space, like laptops.

TUNGSTEN
- Because of its chemical properties, it's used to conduct electricity in integrated circuits and metallic films.

3TG

2009: $200 million sales
Resolution 1857 (2008)

(g) Individuals or entities supporting the illegal armed groups in the eastern part of the Democratic Republic of the Congo through illicit trade of natural resources;

V. PENALTIES

Civil monetary penalties of up to the greater of $250,000 ($284,582 as of August 1, 2016 for violations occurring after November 2, 2015) or twice the amount of the underlying transaction may be imposed administratively against any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under IEEPA. Upon conviction, criminal penalties of up to $1,000,000, imprisonment for up to 20 years, or both, may be imposed on any person who willfully commits or attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of the any license, order, regulation, or prohibition issued under IEEPA. Criminal violations of any order, rule, or regulation issued under the UNPA may result in fines of up to $1,000,000, imprisonment for up to 20 years, or both.
Concerns that the exploitation and trade of conflict minerals by armed groups is helping finance conflict in the DRC region and is contributing to an emergency humanitarian crisis

*Conflict minerals*

- Currently 3TG

Coverage

- Wherever 3TGs are extracted
  
  if not from the DRC region → *DRC Conflict-free*

[https://www.sec.gov/opa/Ar1cle/2012-2012-163htm---related-materials.html](https://www.sec.gov/opa/Ar1cle/2012-2012-163htm---related-materials.html)
Dodd Frank requirements

- Conduct a reasonable ‘country of origin’ inquiry; provide a brief description

**IF may have originated in DRC region**
- Undertake “due diligence” (including chain of custody);
- File a *Conflict Minerals Report*
  - publicly available [online]

Measures must conform to a nationally or internationally recognized due diligence framework, such as guidance approved by OECD
**Dodd Frank**

**DRC Conflict free**
- Obtain & publish a certified, independent private-sector audit of its *Conflict Minerals Report*

**DRC Conflict Undeterminable**
- “Publish the steps taken or will take…to mitigate the risk that its…minerals benefit armed groups”

**Not Been Found to Be “DRC Conflict Free”**
- Certified audit & *Conflict Minerals Report*:
  - The facilities used to process the conflict minerals…
  - The country of origin…
The campaign to stop conflict minerals is supposed to be protecting people’s lives in one of the most fragile parts of Africa. In fact, it seems to be doing the opposite.

BY LAUREN WOLFE | FEBRUARY 2, 2015, 9:26 AM
• Misunderstands the relationship between minerals and conflict in DRC
  o Minerals help perpetuate the conflict, they are not its cause
  o Access to land and questions of citizenship and identity are just some of the more structural drivers of conflict
• Armed groups are not solely dependent on mineral revenue
• Few local stakeholders were included
• Incentivized buyers on the international market to embargo
  o Conflict-free → Congo-free
• Driven miners into smuggling rackets
• Lost their jobs
  o Subsistence agriculture
  o Militias

President Kabila banned all mining & mineral exports in North & South Kivu and Maniema provinces.

2010, UN: “in the Kivu provinces, almost every mining deposit [was] controlled by a military group.

2016, International Peace Information Service: 79% of 3T miners in eastern Congo were in mines with no reported armed groups.

<table>
<thead>
<tr>
<th>Mineral</th>
<th>TA</th>
<th>SN</th>
<th>W</th>
<th>AU</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active</td>
<td>1</td>
<td>10</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>Conformant</td>
<td>39</td>
<td>73</td>
<td>41</td>
<td>101</td>
</tr>
<tr>
<td>Eligible</td>
<td>40</td>
<td>91</td>
<td>46</td>
<td>156</td>
</tr>
</tbody>
</table>

Participation:
- Tantalum: 100%
- Tin: 91%
- Tungsten: 91%
- Gold: 69%

Trump Administration will not enforce

Regardless: 1,153 companies filed (only 30 did not)
“the majority of companies…remain committed to conflict minerals due diligence”
2017 support
DRC Ministry of Mines
111 CSOs
• Build secure, transparent & verifiable supply chains from mine to market and enable due diligence for legitimate artisanal and small-scale mining
• Help companies respect human rights and avoid contributing to conflict through their sourcing decisions, including the choice of their suppliers”

Conflict-affected
• presence of armed conflict, widespread violence or other risks of harm to people
  o insurgencies, civil wars

High-risk
• political instability, repression, insecurity, collapse of civil infrastructure, institutional weakness, &/or widespread violence
• often characterised by widespread human rights abuses and violations of national or international law

OECD guidelines

1) Overarching due diligence framework (Annex 1)
2) Model supply chain corporate policy (Annex 2)
3) Suggested measures for risk mitigation & indicators for measuring improvement (Annex 3)

Corporate policies

Regarding support to non-state armed groups:
“We will not tolerate any direct or indirect support to non-state armed groups through the extraction, transport, trade, handling or export of minerals”

Regarding risk management of serious abuses:
“We will immediately suspend or discontinue engagement with upstream suppliers where we identify a reasonable risk that they are sourcing from, or linked to, any party committing serious abuses …”
2015

• OECD risk-based DD
• Checks for risks of contributing to conflict & serious human rights abuses
• Applicable to all Chinese companies at any point in the supply chain, anywhere
• All minerals, with an initial focus on 3TG

(supervised by the Min of Commerce)

In politically unstable areas, the minerals trade can be used to finance armed groups, fuel forced labour and other human rights abuses, and support corruption and money laundering

Aim: 2021

- Ensure that EU importers of 3TG meet international responsible sourcing standards (OECD)
- Ensure that smelters and refiners of 3TG source responsibly
- Help break the link between conflict and the illegal exploitation
- Help end the exploitation & abuse of local communities, including mine workers, and support local development

Coverage

Conflict-affected or high-risk countries:
Whose natural resources include minerals in high demand, either locally, regionally or globally.

and

Either suffering from armed-conflict, such as civil war, a state of fragile post-conflict,
or witnessing weak or non-existing governance and systematic violations of international law, including human rights abuses.

EC will task a group of external experts to provide a list:

*indicative* – an indication of areas that are currently or could be affected by conflict and other related illegal activities

*non-exhaustive* – it won't necessarily include every area
COMMISSION RECOMMENDATION (EU) 2018/1149

of 10 August 2018

on non-binding guidelines for the identification of conflict-affected and high-risk areas and other supply chain risks under Regulation (EU) 2017/821 of the European Parliament and of the Council
Indirectly affect ~500 smelters & refiners

600 and 1,000 EU importers

*Risk management plan:* response to the identified supply chain risks based on Annex 3 to the OECD *Due Diligence Guidance*
Criticism

- Only capture 3T-G
- Only in their raw forms, as ores or metals
  - It excludes companies importing products containing these very same minerals—such as laptops, cars or phones
- Implementation in 2021
- Leaves out companies whose annual imports of these minerals fall below volume thresholds
  - But will cover 95% of EU imports
Emerging global consensus that multi-national corporations with global supply chains have a responsibility to understand their supply chain

- Unanimous adoption of the UN Guiding Principles on Business & Human Rights
- Money laundering/anti-corruption legislation
  - Terrorist financing
- EITI
- UK Modern Slavery Act
C. Involvement of the Congolese military in the exploitation of timber

79. During multiple missions in May, June and July 2015, the Group found that FARDC officers deployed for the Sukola I military operations against ADF were involved in the exploitation and sale of timber in Beni territory, mainly in the Kamango and Erengeti areas.

80. Two FARDC elements told the Group that soldiers in their units had been given the option of either fighting armed groups or harvesting timber in the Kamango area for their officers. A third FARDC soldier confirmed that, adding that FARDC elements were also securing and transporting the planks to Beni in vehicles belonging to FARDC officers. In May 2015, the Group witnessed a FARDC jeep transporting planks towards Beni.

5. Annual net profits to organized crime is conservatively estimated to derive from: i) gold (USD 40-120 million); ii) timber (USD 16-48 million); iii) charcoal (USD 12-35 million); iv) 3T minerals (USD 7.5 - 22.6m); v) diamonds sourced mainly from outside the conflict zone (USD 16-48 million); and vi) wildlife, including ivory and fisheries, local taxation schemes, cannabis and other resources (USD 14.3 - 28 million).