global witness

Myth Buster: The conflict minerals provision

Best known as the 'conflict minerals provision,' but Section 1502 of the Dodd Frank Act is a law that requires US-listed companies that use four minerals—tantalum, tin, tungsten and gold—in their products to determine whether their mineral purchases inadvertently fund armed groups in the DRC or surrounding countries.

But misinformation around the provision prevails. On the day that the companies submit their first reports, Global Witness separates the facts from the fiction.

Myth: Section 1502 is too expensive for companies
The cost of compliance cited by some US industry representatives is often overinflated. Claigan, an independent environmental consultancy with expertise in supply chain management, estimates that the cost of initial compliance is 75 per cent lower than their original cost estimate of USD $390 million for all companies covered by the law[i] - a fraction of the Securities and Exchange Commission (SEC) estimate of between USD$3-$4 billion in the first year[ii]. Costs are expected to reduce over time as industry becomes more efficient.

Myth: Section 1502 was designed to prevent companies from sourcing minerals from Central Africa
The provision is a disclosure requirement and does not place a ban or penalty on sourcing from the countries covered by the law. Rather, it requires companies to check their supply chains and ensure they source minerals responsibly. Where a company identifies a supply chain 'red flag', such as the financing of abusive armed groups, the responsible thing to do may be to stop sourcing. Implementing the international guidance set out by the OECD, which is referenced in the provision, means companies can *continue* to source minerals from high-risk areas like eastern DRC while cutting out harmful parts of the trade[iii]. Many companies helped draft the OECD Guidance.

Myth: Section 1502 has caused a de-facto embargo on minerals from the Great Lakes region of Africa
The nature of the region's mineral trade has changed in recent years, in part as a result of a six-month suspension of mining and trading activities imposed in 2010 by the Congolese government and overly restrictive interpretation of the provision by industry associations. These changes don't represent a permanent shut-down in trade from eastern DRC, however. Major international companies have recently begun to engage in responsible sourcing programs in some areas of Congo.

Myth: Section 1502 won't bring any benefits to companies
Companies can reap a wide range of benefits by complying with Section 1502, including better risk management, improved supply chains performance and new innovation opportunities. Companies are now being ethically and legally compelled to find out what is going on along their supply chains, "literally from the phone in your hand to the mine itself [which] is very powerful,[iv]" according to one industry representative. This type of factual disclosure is critical for investors and consumers who want to know what is in their products.

Myth: Section 1502 will not end the conflict in eastern DRC
The roots and drivers of conflict and instability in eastern DRC are complex and will not be fully solved by any single measure. But transforming Congo's mineral sector from a source of conflict financing to a trade that brings benefits to the local population is crucial. Wider reforms by the

Congolese government are critical, including reform the Congolese army so that those involved in illegal mineral trading or human rights abuses are held to account.

Myth: If a company can't determine if it is 100 percent 'conflict-free', the provision is useless

Supply chain risks are a normal part of doing business. It is less important to know if a company describes their products as 'DRC conflict free' or DRC 'conflict indeterminable' than it is to know how they came to that conclusion. Companies can demonstrate that they source minerals responsibly by describing their due diligence processes and responses to what they find along the way. That means that consumers, shareholders and investors can see that companies are putting in place measures to check their supply chains and manage risks as they arise. This is how responsible business should be done.

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[i] Claigan Environmental, Press Release: Update on Industry Status of Conflict Minerals Compliance, October 17, 2013, http://www.newswire.ca/en/story/1243831/update-on-industry-status-of-conflict-minerals-compliance. *See also* Claigan's December 2011 Cost of Implementation Estimate submitted to the SEC, http://www.sec.gov/comments/s7-40-10/s74010-431.pdf

[ii] SEC Final Rule on Conflict Minerals Rule, August 22, 2012, http://www.sec.gov/rules/final/2012/34-67716.pdf

[iii] OECD Due Diligence Guidance for Responsible Sourcing of Minerals from Conflict-Affected and High-Risk Areas, http://www.oecd.org/daf/inv/mne/GuidanceEdition2.pdf

[iv] Leinaweaver, Jeff. "SEC: US Companies not required to identify products with conflict minerals," The Guardian, May 2, 2014, http://www.theguardian.com/sustainable-business/sec-conflict-minerals-disclosure-rule-free-speech-congo