

MEMORANDUM

To: File

From: Julie Davis
Office of Legislative and Intergovernmental Affairs
U.S. Securities and Exchange Commission

Date: March 7, 2012

Re: Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act Regarding Congolese Conflict Minerals

On February 14, 2012, Stephen DeVine of Commissioner Daniel Gallagher's office and Julie Davis of the Office of Legislative and Intergovernmental Affairs had a meeting with Toby Whitney of Congressman Jim McDermott's office. The participants discussed the statutory basis for the Commission's required rulemaking under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which relates to reporting requirements regarding conflict minerals originating in the Democratic Republic of the Congo and adjoining countries. At the meeting, Toby Whitney provided to the staff the document attached to this memorandum.

Attachment

U.S. Strategy to Address the Linkages between Human Rights Abuses, Armed Groups, Mining of Conflict Minerals, and Commercial Products

The Democratic Republic of the Congo (DRC) continues to make progress, albeit slowly, in addressing its significant political, economic, and social challenges. In eastern DRC, however, continuing conflict has resulted in atrocious human rights abuses; the collapse of traditional economic activities such as agriculture; and continued insecurity resulting from the activities of armed groups, including criminal elements of the military, as well as from inadequate security sector reform and limited state authority.

The illicit trade in minerals contributes to and is enabled by the region's insecurity and instability, and some of the revenues it generates support armed conflict and abuses. The U.S. government seeks to help disrupt the links between armed groups and the minerals trade, to strengthen the mechanisms permitting transparent trade, and to mitigate the unintended collateral damage done to civilian livelihoods currently dependent on mining. Addressing the illicit minerals trade in the Great Lakes region – including the four minerals identified as “conflict minerals” in Section 1502 of Public Law 111-203 – is a key focus of broader U.S. efforts, in partnership with the DRC and the international community, to promote a stable, democratic, and prosperous DRC.

Changes in the political-military environment in the Great Lakes region – particularly the rapprochement between the DRC and its eastern neighbors – have expanded the space for national and regional initiatives to address this issue. International actors, including industry and multilateral groups, are also taking steps to support conflict-free trade. Key constraints remain, however, including a complex supply chain; the limited regulatory capacity and resources of key governments; entrenched economic interests; the largely informal nature of the DRC mining sector; and the limited implementation to date of traceability, certification, and due diligence initiatives, which in some cases have been delayed by the DRC government's current mining suspension in eastern DRC.

This strategy identifies five strategic objectives and current, planned, or possible U.S. actions for each. The implementation of some of these activities is dependent upon adequate Congressional funding of the Administration's FY 2011 and future budget requests.

Objective 1: Promoting an Appropriate Role for Security Forces. U.S. efforts under this objective aim to end the commercial role of DRC security forces

in the minerals trade and to make the security forces more effective within their appropriate, limited role in monitoring and securing the trade.

Promote Accountability through Training and Prosecutions. Increased awareness and enforcement of international humanitarian law and Congolese laws on mining will discourage military involvement in illegal mining and abuses in eastern DRC. The U.S. government will continue to strengthen the capacity of military justice and police officials to investigate and prosecute crimes, in particular sexual violence and economic crimes, and is providing training to vetted personnel on international humanitarian law and command responsibility.

Advocate for Demilitarization of Key Mining Sites. The U.S. government will support and encourage efforts to limit the DRC military's role, including at mining sites and along trade routes, to providing security where legitimately needed. Steps to be encouraged include prosecuting officers whose engagement in the minerals trade violates DRC law and reviewing key mining and military codes to close loopholes that allow officers to engage in minerals trade.

Strengthening Payment Systems for Security Forces. The corrupt diversion of military salaries encourages the military to supplement their income by trafficking in minerals, illegally taxing traders, and by looting and raiding villages. To reduce this inducement, the U.S. government is working actively with the government of the DRC and encouraging the development of more transparent and efficient mobile payment systems that could be applied for military salaries.

Training for Police along Key Trade Routes and Points of Export. Improving the DRC government's technical capabilities is also key to improving its ability to secure its borders and monitor the trade of natural resources. The U.S. government will help enhance the capacity of the DRC national police to patrol the most-traveled corridors and trade routes, including through training, limited provision of communications equipment, and facilitation of regional coordination.

Objective 2. Enhance Civilian Regulation of the DRC Minerals Trade. U.S. efforts under this objective will aim to increase the capacity of DRC civilian authorities involved in overseeing the minerals trade, particularly in the east.

Increased Presence of Civilian Mining Authorities in Eastern DRC. The inaccessibility of key mining sites and trade routes in eastern DRC has kept civilian agencies distant from the trade they are meant to regulate. To increase civilian presence, the U.S. government will support the rehabilitation of certain roads in eastern DRC in order to link several key mining sites to the minerals

trading centers that the DRC government and the United Nations Stabilization Mission in the DRC (MONUSCO) are establishing to strengthen transparency, support the implementation of certification initiatives, and reduce illegal taxation.

Institutional Strengthening and Regulatory Reforms. The DRC's national and provincial institutions require substantial assistance to develop and implement regulatory systems and practices. The U.S. government will provide assistance to build the institutional capacity of key DRC ministries and agencies, including through support to the multi-donor PROMINES program. Efforts will include supporting the implementation of the 2002 mining code, helping harmonize the code with related legislation, supporting engagement with mining communities and civil society, and promoting accountable revenue collection. The U.S. government will advocate for the DRC and its neighbors to take steps needed to achieve validation in the Extractive Industries Transparency Initiative (EITI).

Improved Access to Data on Control of Mines. Actors in the minerals supply chain and civil society groups increasingly require regularly updated information on the control of mineral-rich zones in eastern DRC to discharge their due diligence obligations, assess implementation of initiatives, and monitor possible abuses. In coordination with actors currently engaged in developing such data, such as the DRC government, UN, and civil society groups, the U.S. government will promote more effective, accessible, and timely mapping.

Objective 3. Protect Artisanal Miners and Local Communities. U.S. efforts under this objective will aim to reduce the vulnerability of men and women in local communities directly and indirectly engaged in the mining sector. This includes strengthening small-scale mining cooperatives or associations not associated with armed groups and strengthening the capacity of communities to monitor and support a more transparent and regulated conflict-free minerals trade.

Reducing the Vulnerability of Communities near Mining Sites. Protecting communities near mining sites is critical to reducing civilian vulnerability to forced labor, exploitation, and violence, and supporting alternative livelihoods is key to the region's eventual economic diversification. The Department will help build local capacity to monitor mining-related activities and abuses, and USAID is supporting a UN HABITAT program to mediate land disputes, a key underlying cause of conflict in the region.

Strengthening and Formalizing the Artisanal Mining Sector. To improve protections for small-scale miners, the U.S. government will support strengthening

and formalizing the artisanal sector through our support to the multi-donor PROMINES program and other efforts to promote the adoption of best practices.

Objective 4: Strengthen Regional and International Efforts. U.S. efforts under this objective aim to support the implementation and coordination of national, regional, and international efforts to promote monitoring, certification, and traceability – particularly the Great Lakes regional initiative – as well as the harmonization of due diligence guidance developed in various forums.

Support Regional Efforts to Address the Illicit Trade. The 11 member states of the International Conference on the Great Lakes Region (ICGLR) recently created a multi-pronged regional certification initiative to combat illicit minerals trade. Through senior diplomatic engagement and possible technical assistance to governments and the ICGLR secretariat, we will encourage ICGLR governments to follow through on both political and technical commitments.

Harmonizing Traceability Schemes and Domestic Regulations. Donors will coordinate their initiatives and leverage limited resources through the Great Lakes Contact Group's task force on the illegal minerals trade and the DRC-based Thematic Group on Mining. Similarly, the U.S. government will encourage ICGLR governments to implement their commitment to harmonize their own domestic regulations.

Establishing Clear Guidance to Companies on Due Diligence. Companies will best be able to avoid financing conflict or abuses if the ongoing initiatives to develop due diligence guidance are harmonized. The Department strongly supported the guidance drafted by the Organization for Economic Cooperation and Development (OECD) and the UN Security Council DRC Sanctions Committee's Group of Experts (GOE), as well as the recent MOU signed between the ICGLR and the OECD on the due diligence standards, and will encourage governments and the U.S. Securities and Exchange Commission to use this guidance when developing national regulations.

Support Monitoring Efforts. The U.S. government will continue to support the GOE's efforts to monitor implementation of the DRC sanctions regime, including provisions related to the trade in natural resources. We will also help build local capacity to monitor mining-related activities and abuses in the Kivus and encourage the development of effective monitoring through tools such as the ICGLR's database and whistle-blowing mechanisms. The United States also will continue, through the Department's annual reports to Congress, to report on abuses

and identify companies that are credibly reported by others to have directly or indirectly fueled conflict.

Objective 5: Promote Due Diligence and Responsible Trade through Public Outreach. U.S. efforts will aim, through public outreach, to encourage all stakeholders to take steps at the local, regional, and international level to promote the responsible trade in minerals. The Department and our embassies will raise key messages in public remarks and outreach to host-country audiences, including through a multi-stakeholder visit to eastern DRC led by a senior Department official and with the participation of U.S. industry and civil society groups.

The U.S. government will continue to engage with relevant industries and civil society groups concerning how commercial entities are exercising due diligence on their supply chains. We will encourage companies and industries to continue developing and strengthening the effectiveness of supply-chain controls, as well as linking up with and supporting emerging pilot systems in the region that facilitate due diligence.

Consideration of Punitive Measures. The primary responsibility for taking punitive measures against commercial activities that support armed groups and human rights violations would fall to the DRC and neighboring countries, which could pursue civil penalties and criminal prosecution for violations of their mining codes or other relevant laws. The U.S. government would support such efforts, as appropriate, through diplomatic advocacy and concrete technical assistance to a government's capacity to monitor, investigate, and prosecute. As a preventive measure, the U.S. government will also continue to pursue targeted U.S. and UN Security Council sanctions, entailing a travel ban and asset freeze, against entities "supporting the illegal armed groups in the eastern part of the Democratic Republic of the Congo through illicit trade of natural resources" (UNSC Resolution 1857 (2008)).

Conclusion. Breaking the links between the illicit minerals trade and armed groups will be critical to ensuring that the mineral wealth of countries in the Great Lakes region serves as a positive tool for each country's social and economic development. Doing so will require sustained high levels of political will from the governments of the region, as well as the strong support of the United States and the international community. The people of the region – particularly those of the eastern Congo, who have endured horrific abuses for far too long – deserve finally to benefit from the vast potential of their countries.