Negative: Conflict Mineral Disclosure DF-1502 - good

By “Coach Vance” Trefethen

***Resolved: The United States Federal Government should substantially reform its banking, finance, and/or monetary policy***

Summary: Status Quo requires publicly traded companies (companies with stock sold on US stock exchanges) to disclose any usage in the products they produce of minerals coming from the Democratic Republic of Congo or any adjoining country. This is "Rule 1502" of the Dodd-Frank Act. Such minerals are often referred to as "conflict minerals" because of the various wars and conflicts going on in the area. Revenue from minerals mined there and sold abroad could be fueling these deadly conflicts. AFF doesn’t care and wants to remove the disclosure requirement because it's expensive for companies to research the origin of their raw materials (compliance costs). This NEG brief will argue that the costs are worth it and we should keep the rule.

AFF may talk about how DF1502 hurt poor people working in mining in Congo when it was enacted by motivating companies to simply stop doing business region to avoid the paperwork. That was true initially as DF1502 was being developed and before it came into effect. But since then, the issues have cleared up and things have improved.

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Negative: Conflict Mineral Disclosure DF-1502 - good

MINOR REPAIR

Minor Repair: Reduce regulatory burden, increase auditing and sanctions– would solve issues in 1502 and the "Deterrent" effect

**[Deterrent effect is where companies just give up on trading with Congo or neighboring countries to avoid having to go through all the paperwork required by 1502.]**

Rick Goss 2017 (Senior Vice President of Environment and Sustainability Information Technology Industry Council (ITI) ) Testimony Before the Senate Committee on Foreign Relations Subcommittee on Africa and Global Health Policy, Hearing On “A Progress Report on Conflict Minerals” April 5, 2017 <https://www.foreign.senate.gov/download/goss-testimony-040517>

Overall, ITI and our members urge Congress to consider ways to overcome the deterrent effects of Section 1502 and provide incentives to companies that responsibly source from Central Africa. These efforts could include lowering the regulatory burden and providing public recognition to those companies that source through approved, in-region programs. The United States and other governments can also support in-region transparency and governance initiatives, place collective pressure on foreign smelters to participate in audit programs, and increase sanctions on those groups and individuals that continue to trade in illicit resources.

Minor Repair: Offer tax credits to offset the compliance costs

Arvind Ganesan 2017 (Director, Business and Human Rights Division, Human Rights Watch) April 5, 2017 Testimony to the Senate Foreign Affairs Committee, Subcommittee on African Affairs and Global Health Policy Regarding Dodd-Frank Section 1502 <https://www.foreign.senate.gov/download/ganesan-testimony-040517>

In that context, we would encourage you to support proposals that have been made by industry associations to advantage 1502 compliant companies in government procurement and efforts by responsible investors to favor and support those companies over others. And while we are not experts on tax policy, it is worth Congress and others examining how to use tax credits or comparable incentives to help support 1502 implementation because it could help lower the costs of implementation for companies.

Minor Repair is the right policy – we should NOT repeal 1502. Instead, make it more efficient

Arvind Ganesan 2017 (Director, Business and Human Rights Division, Human Rights Watch) April 5, 2017 Testimony to the Senate Foreign Affairs Committee, Subcommittee on African Affairs and Global Health Policy Regarding Dodd-Frank Section 1502 <https://www.foreign.senate.gov/download/ganesan-testimony-040517>

We support constructive proposals to ensure Dodd-Frank 1502 is more efficient and effective. Suspending or scrapping the law will not do this and will instead disadvantage responsible companies, while likely creating more instability in parts of Congo and making it easier for abusive armed groups to pay for their activities. If industry groups or companies have specific ideas on how to make 1502 more efficient or effective, you should make sure they are sharing them.

HARMS / SIGNIFICANCE

1. A/T "Small miners harmed"

Small miners are making a comeback – thanks to 1502!

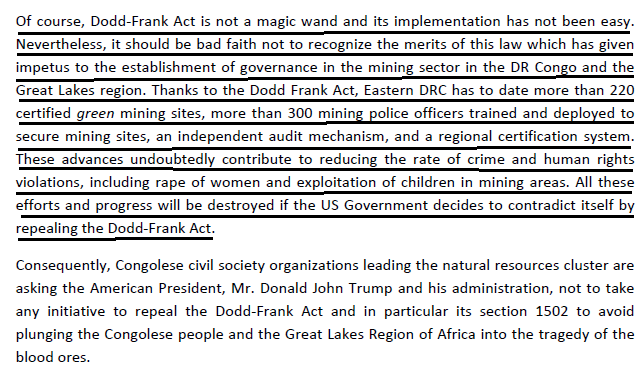
Rick Goss 2017 (Senior Vice President of Environment and Sustainability Information Technology Industry Council (ITI) ) Testimony Before the Senate Committee on Foreign Relations Subcommittee on Africa and Global Health Policy, Hearing On “A Progress Report on Conflict Minerals” April 5, 2017 <https://www.foreign.senate.gov/download/goss-testimony-040517> (brackets added)

Following a rapid decline in 2010, artisanal mining jobs have been returning to the region, and the DRC [Democratic Republic of Congo] is recording increased production and export of tin, tantalum and tungsten – the so-called “3Ts” – from validated mines. Numerous governments and credible independent observers report recent positive trends on breaking the links between armed groups and mining for 3T minerals. These officials note a significant reduction in the presence of armed groups – including Congolese armed forces – at 3T mining sites, largely due to increased transparency, monitoring, and control measures. Importantly, the DRC government has increased its involvement by imposing greater controls, taxes, legal enforcement, and oversight. According to the OECD, non-traceable exports of 3T trade at a discount of almost 30% compared to traceable materials. Increasing governance over 3T mines is partially attributable to the effects of Section 1502.

2. DF 1502 is working

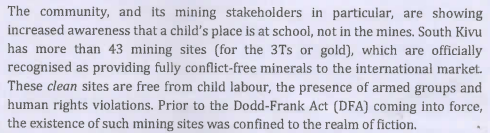
Congo human rights group beg America not to repeal 1502: It's producing great improvements in Congo

Statement signed by 41 human rights NGO's in Congo 2017. "Statement of Congolese Civil Society Organizations leading Natural Resources Cluster the American Administration’s initiative to suspend the Dodd Frank Act" 16 Feb 2017 https://www.sec.gov/comments/statement-013117/cll2-1587925-132140.pdf



Mining in Congo is becoming safer thanks to Dodd-Frank

Democratic Republic of Congo “South Kivu Civil Society” Thematic Working Group on Mining & Natural Resources 2017 (NGO social advocacy groups in Congo) <https://www.sec.gov/comments/statement-013117/cll2-1597728-132417.pdf>



1502 may not be perfect, but it is working. Producing positive effects for people in eastern Congo

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While imperfect, Dodd Frank has already had some tangible positive effects for the people of eastern Congo and those seeking greater transparency. Since 2012, mining at the Kalimbi tin mine in Nyabibwe, South Kivu, for example, has had a functional traceability scheme, which allows for the continuous production of tin that benefits the local workers, and not the abusive armed groups or corrupt army or government officials. Global Witness reported that in 2012, the Congolese government suspended the operations of two Chinese companies because they failed to carry out proper due diligence and suspected they may be sourcing from armed groups.

3. A/T "Harms US businesses"

Businesses are advocating FOR 1502 because they know it's the right thing to do. Examples: Tiffany jewelers, Richline Group

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When it became apparent that 1502 might be suspended, Tiffany issued a statement noting “we firmly believe that the continued existence of Federal regulation that addresses the sourcing of conflict minerals provides an important framework for industry, laying the foundation for protection of human rights and responsible sourcing efforts in Congo and beyond. We urge Congress to support legislation that effectively promotes due diligence and transparency for the sourcing of all conflict metals and gemstones.” Richline Group, a jeweler owned by Warren Buffet’s Berkshire Hathaway, has also come out in support of 1502 and noted that “Section 1502 has proven to be an important and effective first step in the effort to create a conflict-free mining industry in Congo that benefits legitimate business rather than extortion and violence” and said “we fully support the continued implementation of Section 1502.” From personal experience, I know that the CEO of one of these companies had strong reservations against Dodd-Frank 1502 when it first became law, but ultimately saw that it was something the company could and would implement it in part because it was far less costly and laborious than he originally expected and because it was the right thing for the company to do.

1502 has massive support in the business community, and repealing it would make them worse off

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In this sense repealing 1502 would create a perverse incentive to behave less responsibly, and would harm the efforts of responsible companies. Tiffany, Apple, Intel, and Richline have said they believe keeping conflict minerals out of their supply chain is the right thing to do and that they will continue to do it. But without regulation, they will bear a steep cost for being responsible. Dodd-Frank levels the playing field and makes sure responsible companies are not penalized for doing the right thing while requiring others to meet minimum standards. Additionally, 129 investors with assets worth approximately $5 trillion under management have also urged the US government to keep the law in place and to ensure its continued implementation and enforcement.

A/T "US businesses at competitive disadvantage" – Other countries are adopting the same rules, following US example

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This approach has also been true with 1502. US adoption of 1502 led the EU and OECD, for example, to start developing their own standards on conflict minerals that will, at least in the case of the EU, apply to a broad swath of companies beyond US jurisdiction. Just this March, the European Parliament approved new conflict minerals regulations. That approach creates a race to the top where US companies lead, versus suspending 1502 and creating a race to the bottom where US companies are hurt. Five years after the rules went into force, there is progress. There are more than 200 conflict-free smelters and major companies, as noted previously, are working towards full compliance and do not want the rule to end. And other jurisdictions are developing their own, similar, rules.

4. Compliance costs – not a problem

Compliance costs for 1502 are turning out to be far less than earlier estimates and they're declining

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There are already indications that costs of implementing 1502 are decreasing significantly as new tools are developed to make it easier to comply. ELM Sustainability Partners did an assessment of the law and found that the total industry costs are about 15-26 percent of the original costs that the SEC reported.

DISADVANTAGES

1. Reduced international pressure prolongs the conflict

**1502 is helping reduce the conflict in and of itself, but by itself it won’t completely solve it. To do that, we need concerted international effort, and 1502 is key to maintaining that effort. If we drop 1502, international momentum currently building will dissipate and the path to a solution will be harder to find.**

Link: 1502 brings desperately needed international attention to the conflict in Central Africa

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While imperfect, Section 1502 has brought concerted industry pressure on global supply chains to responsibly source these minerals, and has helped bring desperately needed international attention to the ongoing conflict in Central Africa. Our member tech companies have established a strong record of dedication and achievement in driving transparency throughout our global supply chains to meet our public commitments even in the absence of legal requirements. Ultimately, though, our sector’s commitment to sustainability and corporate social responsibility alone cannot bring peace and security to the Congo, and in the absence of concerted government and civil society engagement, the status quo will reign in Central Africa.

Link: Maintaining 1502 is key to building momentum internationally to deal with Congo conflict minerals

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Internationally, the London Bullion Market Association and the Dubai Multi-Commodities Center are putting policies into place to deal with illicit funds derived from minerals. In Congo, the International Tin Supply Chain Initiative is also working to support company due diligence. These are relatively new initiatives and their efficacy is not yet known, but they are examples of the momentum 1502 is creating and what could be lost if is eliminated.

Impact: Suffering prolonged. International pressure is key to solving humanitarian crisis in Congo

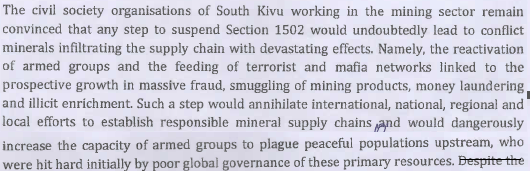
UN Security Council 2018. (minutes of Security Council meeting 8207) 19 March 2018 “Humanitarian Crisis in Democratic Republic of Congo Will Worsen Without Political Transition, End to Violence, Speakers Warn Security Council” <https://www.un.org/press/en/2018/sc13253.doc.htm> (brackets added)

Going forward, the international community must revise security, protection, socioeconomic and political strategies to favour women and girls, she [Jeanine Bandu Bahati, Coordinator of the Encadrement des Femmes Indigènes et des Ménages Vulnérables] said, and redefine indicators in a manner that led to positive change.  The United Nations and others must act quickly against impunity, ensuring that investigations took place and that criminals were punished.  Women in the Democratic Republic of the Congo must be supported at the grass‑roots level.  “Women of the DRC want to be considered,” she said, “and want you to respond to their cry of alarm and distress.” DONATIEN NSHOLE, Secretary‑General of the Episcopal National Conference of Congo, said the humanitarian situation in the Democratic Republic of the Congo was so bad that people were wondering if it resonated anymore with the international community, including the United Nations.  Today the situation was characterized by the resumption of violence in the east of the country, he said, including attacks by armed groups, the razing of villages and fields, the looting of schools and hospitals, and the risk of epidemics, especially with the return of the rainy season.  He also emphasized the thousands of displaced people, including children, wandering homeless along roads, as well as those who had fled to neighbouring countries as refugees. Given such a dramatic humanitarian situation, it was essential for the United Nations to get more involved and to put pressure on the Government to hold elections, he said.

2. Bad guys get more funding

Link: Congolese agree: Without 1502 bad guys get more funding and human rights get much worse

Democratic Republic of Congo “South Kivu Civil Society” Thematic Working Group on Mining & Natural Resources 2017 (NGO social advocacy groups in Congo) <https://www.sec.gov/comments/statement-013117/cll2-1597728-132417.pdf>



Link: Bad guys get more funding without 1502, lots of experts agree, including Congo Minister of Mines

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Suspending 1502 Will Make It Easier to Fund Armed Groups Secretly   
The fundamental purpose of Dodd-Frank 1502 is to keep money out of the hands of armed groups that trade in and profit from certain minerals. Human rights groups, responsible companies, and the US government have shared this goal for many years. It is important not to lose this aspect of the law: it is a rare instance where key institutions in and out of government agree on what the problems is, want to stop it, and have managed to put a law in place to help do it. That is something Congress and the administration should support. Without the law, it would be easier for abusive armed groups to fund themselves secretly, which could help to further destabilize parts of Congo. In mid-March, Bloomberg news reported that the Congolese Minister of Mines, Martin Kabwelulu, wrote the US Securities and Exchange Commission, warning that eliminating 1502 would lead to an “escalation in the activities of non-state armed groups.” The US has sought for decades to help de-escalate these activities; removing a tool that can help do that undercuts longstanding US foreign policy objectives.

Impact: Increased war, conflict and human rights abuses without 1502, and higher risk to US national security

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Last month, two members of the UN Group of Experts on Congo, Michael Sharp, an American, and Zaida Catalán, from Sweden, were killed while investigating large-scale human rights abuses in Congo’s central Kasai region. It remains unclear who was responsible for the murders. The Group of Experts has been instrumental over the years in exposing the links between the trade in natural resources, armed groups, sanctions-busting, and the violence in Congo. In this context, suspending or eliminating Dodd-Frank 1502 would make an already explosive situation in Congo worse. Abusive armed groups, factions of the security forces, and other opaque mafia-like networks allegedly linked to government officials could then easily return to the lucrative mines in eastern Congo to finance their activities. This could lead to new security problems throughout the volatile region—where some of Congo’s nine neighboring countries have illegally benefitted from the country’s vast mineral wealth. And it could also create direct security risks for the United States, which has a clear interest in promoting a more stable and peaceful central Africa region.

Impact: Death and destruction without 1502

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Since 2005, we have documented the pernicious effect that the trade in gold has had on civilians in eastern Congo. Numerous armed groups, foreign-backed rebels, and at times the Congolese army have killed, raped, pillaged, and forcibly conscripted child soldiers as they sought to gain or maintain control of lucrative gold mines, which in turn helped finance their abusive movements. We’ve also documented how a major mining company paid a rebel group to explore for gold in its concession area in 2005. It is for these reasons that Human Rights Watch supported and continues to support Dodd-Frank 1502.

A/T "It's already bad there" – It could get even worse without 1502

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Last month, my colleagues were in eastern Congo’s Walikale territory in North Kivu and met with several former child soldiers from NDC-R and miners. They told us how the group led by Guidon Shimiray Mwissa is systemically taxing the lucrative gold trade in dozens of mining sites. By holding a monopoly on things like alcohol and cigarettes in the mining pits and illegally taxing those who work in or near the mines, Guidon is making over $20,000 a month. According to some of his former cadres, he’s also allegedly trading gold for weapons. Suspending Dodd-Frank 1502 would make it easier for other abusive armed groups and corrupt officials to enrich themselves the way Guidon is by making the trade even more opaque and easier to do business with armed groups. This would make an already bad situation even worse.

3. "Good" companies punished

Without 1502, responsible companies would be at a competitive disadvantage against irresponsible companies

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Suspending Dodd-Frank 1502 would also harm responsible American companies that have embraced the law and the principles that underpin it, including some of this country’s most successful and well-known companies, such as Apple, Intel, and Tiffany. They and others would suddenly be placed at a competitive disadvantage against other companies that prefer to operate opaquely in a way that could fund armed groups. Eliminating the rule would punish responsible companies and reward irresponsible ones by creating a “race to the bottom,” legalizing opaque sourcing of conflict minerals while disadvantaging companies that choose to keep their supply chains clean.

4. Backlash Alternatives are worse

Link: If 1502 is repealed, political backlash can result in worse option: Trade sanctions

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In the absence of 1502, it is possible that civil society groups could end up pressing for targeted sanctions on the Congolese minerals sector if it becomes clear that abusive armed groups are profiting from this trade. Such targeted sanctions are typically the approach the international community has taken in recent years to address similar problems. While understandable, this is a much more draconian approach than the transparency and auditing procedures 1502 require. These are serious consequences for Congo, for major US companies, and for human rights.

Impact: Trade sanctions would make everything worse.

**Analysis: Remember, 1502 is not a trade sanction. It doesn’t ban anyone from doing business in the Congo, only that they have to disclose the source of their raw materials.**

Reuters new service 2009. (journalist Joe Bavier) 8 Apr 2009 “Ban on 'conflict minerals' would hurt Congo's poor <https://www.reuters.com/article/congo-democratic-minerals/ban-on-conflict-minerals-would-hurt-congos-poor-idUSL867206720090408>

Banning minerals exported from violence-ravaged eastern Congo would threaten the livelihoods of a million miners and could worsen the world’s deadliest conflict, a study said on Wednesday. Democratic Republic of Congo’s resource-fuelled 1998-2003 war and the humanitarian disaster it sparked have killed an estimated 5.4 million people in the last decade, more than any other conflict since World War II. The country’s eastern borderlands, which remain a patchwork of rebel and militia strongholds, are the source of the majority of its tin, tungsten, and coltan ore. The metals are essential components in household electronics such as mobile phones and computers. Last week the Enough Project, a U.S.-based human rights watchdog, called upon electronics manufacturers to trace the minerals they use in order to prove they are not funding the violence. However, critics of the campaign say the additional costs involved in mineral tracing would amount to a de facto ban on Congolese exports. A study funded by the British government, the London School of Economics and Belgium’s Ghent University published this week found such measures, although well-intentioned, would likely do more harm than good.