



TO: Interested Parties
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On Thursday, October 30, the UN Security Council is set to debate the final report by a Panel of Experts it convened in 2000 to examine the illegal exploitation of natural resources in the Democratic Republic of the Congo (DRC). The Panel has produced a series of controversial reports that revealed companies based in OECD countries were profiteering from exports of coltan, diamonds, gold and cobalt from the DRC.¹

The Panel's October 2002 report named 85 companies considered to have violated the OECD's "Guidelines for Multinational Enterprises" (Guidelines), including American-owned Cabot Corporation, Eagle Wings Resources International, Trinitech International Inc, Kemet Electronics Corporation, OM Group Inc, and Vishay Sprague.*

Despite the assurance of Ambassador Richard S. Williamson (U.S. Alternative Representative for Special Political Affairs to the UN) who stated to the UN Security Council on Nov. 5, 2002 that "the United States Government will look into the allegations against these companies and take appropriate measures [and] not turn a blind eye to these activities,"² Friends of the Earth-US believes that, to date, the Bush administration has placed a greater emphasis on exonerating U.S. companies than on undertaking a meaningful examination into how U.S. companies might have contributed to the conflict in the DRC via their supply chains.

According to an article today in *The Independent (London)*, the Security Council has decided to withhold a section of the most recent report that details the ongoing involvement of business and military figures in the illegal exploitation of the DRC's natural resources including gold, diamonds, and other minerals.

Friends of the Earth believes the Bush administration should immediately initiate key policy changes at the OECD to help ensure investment and trade in Africa create tangible development benefits, alleviate poverty and foster democratic institutions and societies.

This purpose of this memo is three-fold:

- Provide a concise background on the work of the Panel;
- Explain the Panel's final assertions concerning the six American companies named for having violated the OECD Guidelines and the Bush administration's response to the allegations contained in the October 2002 report; and

* A seventh company, Flashes of Color, was also listed as U.S.-owned. However, research indicates this company does not exist or is not incorporated in the United States.

- Recommend steps the Bush administration, the OECD and international finance institutions should undertake to help ensure the investment and trade activities of companies based in OECD countries do not support resource-driven conflicts in the future, including:
 - clarifying the OECD Guidelines applicability to supply chains in conflict areas,
 - launching negotiations at the OECD for a binding instrument requiring information disclosure, and
 - dedicating public financing to rebuilding and reforming the DRC's institutions and governance structures.

Background on the Panel's Work

In 2000, the UN Security Council authorized the creation of a Panel of Experts to investigate the illegal exploitation of resources in the DRC. The Panel's first report, published in April 2001, was highly critical of the situation in the DRC. Both the Rwandan and Ugandan governments condemned the report's findings, arguing that it contained factual errors and relied too much on unconfirmed information, but acknowledged that the report's portrayal of the exploitation of resources by the military and others was fundamentally correct. The report attracted widespread media attention and strengthened the international campaign against conflict or blood diamonds.

The conclusions of the second report, published in November 2001, reinforced the April 2001 report. The Panel stated that the illegal exploitation of resources continues unabated. While the UN Security Council declined to act on the report's central recommendation to ban the export of natural resources from the DRC, Burundi, Rwanda, and Uganda for as long as they continue to aid and abet illegal exploitation, the Security Council did extend the Panel's mandate once again.³

In the third report, published in October 2002, the Panel stated that "elite networks" consisting of key political and military elites and business persons continue to plunder the country's natural resources and public coffers with impunity. By employing an array of criminal activities, the elite networks continue to fuel the military conflict in order to retain their control over the country's vast natural resources. Annex I of the third report recommended placing financial restrictions on 29 companies. Annex II recommended placing a travel ban and financial restrictions on 54 individuals. Annex III of the third report named 85 companies as having violated the OECD Guidelines.

The OECD Guidelines describe clear standards of what endorsing governments believe represents good corporate behavior, and multinational companies from OECD countries are expected to adhere to their contents in their business operations worldwide. Governments that have endorsed the Guidelines have obligations to promote adherence by multinational companies, and the OECD has provided clear implementation procedures in this regard. Through National Contact Points (NCPs), endorsing governments are required to publicize the Guidelines and handle complaints brought against those who are in breach. The U.S. NCP, Mr. Wesley Scholz, is housed in the Office of Investment Affairs in the Department of State.

Companies and some governments sharply criticized the Panel's third report, because it did not describe in detail how the companies named had violated the OECD Guidelines. Of the six U.S. companies named, the third report only provides details on the activities of two – Eagle Wings Resources International and OM Group Inc.

In January 2003, the Security Council issued resolution 1457 in which it strongly condemned the illegal exploitation of natural resources in the DRC, noted its concern that this plunder fueled the conflict and

demanded that all governments act immediately to end these illegal activities.⁴ In addition, the Security Council instructed the Panel to analyze existing and new information, including material supplied by individuals and corporate actors, in order to update its findings and/or clear companies named for violating the OECD Guidelines. Individuals and companies named in the third report were also invited to submit their reactions.

Many of the reactions were published online in June 2003. Out of the six U.S. companies named, only the responses of Kemet Electronics Corporation and OM Group Inc. have been published. The other companies – Cabot Corporation, Eagle Wings Resources International, Trinitech International Inc. and Vishay Sprague – either have not replied in writing or have requested their responses to be kept confidential.

Congressional Response to the Third Report

On May 13, Congressman Donald Payne[†] authored a letter signed by 15 members of Congress to Secretary Powell urging the State Department to “undertake a thorough review and investigation of the activities of the companies found by the Expert Panel to have violated the OECD Guidelines...[and for] the results of the NCP’s investigation be made public and reported to Congress.” A copy of this letter is available upon request.

The Department of State informed Congressman Payne in a June 6 letter that the U.S. NCP is still gathering information and will consider whether further steps are warranted based on that information. No further follow-up by the Department of State has taken place with Congressman Payne’s office to date.

The Final Report and the U.S. Companies

While the Panel’s final report has asserted that the issues that led to the U.S. companies being named for violating the OECD Guidelines in the October 2002 are considered resolved and no further action is required, the U.S. NCP has not, to date, undertaken any examination of the linkages between the DRC’s resource-driven conflict and the role U.S. companies might have played in fueling it.

The U.S. NCP has tried to avoid responsibility for investigating these issues by arguing that the OECD Guidelines do not apply to supply chain cases except where there is an identifiable “investment nexus.”[‡] However, a specific provision in the OECD speaks of the responsibility of parent companies or retailers to ensure that the principles in the OECD Guidelines are observed by suppliers and sub-contractors.[§]

While the Panel’s final report does not provide specifics, it can be reasonably deduced that Cabot Corporation⁵, Kemet Electronics Corporation⁶ and Vishay Sprague⁷ appear to have had “supply chain”

[†] Congressman Donald Payne is the ranking member of the Africa Subcommittee of the International Relations Committee in the House of Representatives. Congressman Payne was also recently appointed to serve as one of two Congressional delegates to the United States Mission to the United Nations for a period of one year.

[‡] In an Oct. 6 meeting with the U.S. National Contact Point and the Interagency Working Group for the OECD Guidelines, Mr. Scholz stated that the OECD Guidelines apply to supply chain cases with an identifiable “investment nexus” where it is possible to determine the degree of influence a company has in the country where suppliers are located or where a proven relationship exists that constitutes more than a strictly trade relationship.

[§] Chapter II, Paragraph 10 of the OECD Guidelines states, “Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines.”

relationships with the DRC. Indeed, the Panel's final report states that companies listed in Annex III were "parties that, while having only indirect commercial ties to the DRC, still bore a responsibility to ensure that these links did not, albeit inadvertently, contribute to funding and perpetuating the conflict." The Panel highlights the "coltan boom" ** in 2000 to illustrate its point:

"A specific example is that of the export of mineral columbo tantalite (coltan) from which the metal tantalum is extracted. . . In 1999 and 2000 a sharp increase in the world prices of tantalum occurred, leading to a large increase in coltan production in eastern DRC. . . While the processors of coltan and other Congolese minerals in Asia, Europe and North America may not have been aware of what was happening in the DRC, the Panel's investigations uncovered such serious concerns that it was decided to raise the international business community's awareness of these issues through Annex III in the context of the OECD Guidelines for Multinational Enterprises. The purpose was to bring to the attention of the companies listed in Annex III their responsibilities vis-à-vis the source of their raw materials."

Cabot is the world's largest refiner of coltan. Kemet and Vishay both purchase processed tantalum from Cabot. Under the leadership of Samuel Bodman †† (currently the Deputy Director of the Department of Commerce) an unknown amount of the coltan Cabot Corporation was purchasing could have originated from the DRC. Cabot Corporation has stated publicly that "to the best of its knowledge none [of its coltan came] from environmentally sensitive areas in Africa, but it can't be sure."⁸ Cabot has also stated that it has undertaken measures to ensure it is not purchasing coltan from the DRC.⁹

It is possible that Cabot, Kemet and Vishay did not know their trade activities were helping to finance the war in the DRC. Since Cabot and Vishay's reactions are not publicly available and Kemet's is sufficiently vague to prevent conjecture on this point, another troubling point worth highlighting is it is possible these companies did not have the appropriate management systems and disclosure practices in place, which could have resulted in their complicity in fueling the DRC's war.

While it is beyond the capacity of Friends of the Earth to make this determination, clearly there are problems that must be addressed if major multinational companies based in OECD countries are not aware whether their trade in natural resources are fueling violent conflict in developing countries – particularly given the established links between conflict, human rights abuses and dependence on natural resources as primary exports.

Non-Supply Chain Cases

Trinitech International Inc. and Eagle Wings Resources International – In the Rwandan-controlled area, the Expert Panel states in its third report that EWRI has received privileged access to coltan sites and captive labor and has not fulfilled its responsibilities to the public treasury because of its close ties to the Rwandan military.¹⁰ An elite network, centrally located in the Rwandan Defense Department, has established quasi-legitimate commercial operations that fund the military stronghold in the eastern region. The Panel has recommended placing a travel ban and financial restrictions on three EWRI Managers, and

** Eighty-percent of the world's reserves of columbo-tantalite ore, or coltan, are found in the DRC. Refined coltan, or tantalum, is used to make capacitors – a critical component of virtually all electronic devices from cell phones and computers to defense-related applications. In 2000, the combination of optimistic economic forecasts and an apparent shortage of tantalum, the price coltan went from approximately \$40/lb in January to \$380/lb by December. (Citation: BBC News. "Congo's Coltan Rush." Aug. 1, 2001: <http://news.bbc.co.uk/1/hi/world/africa/1468772.stm>)

†† Samuel Bodman was Chairman and CEO of Cabot Corporation from 1992 until his appointment by President Bush to Deputy Secretary of the Department of Commerce in July 2001.

has recommended placing financial restrictions on EWRI. Friends of the Earth-US does not know why or how the allegations against EWRI and Trinitech International Inc. have been resolved. EWRI is a joint venture of Trinitech International Inc. and the Dutch-owned Chemie Pharmacie Holland¹¹, the latter of which is already the subject of a complaint filed by NGOs with the Dutch NCP in July 2003.

OM Group, Inc. – The Panel maintains in its third report that OM Group Inc. (OMG) has reaped considerable financial gain from its joint venture with Belgium national, George Forrest. OMG owns 55 percent of one of the most profitable mining operations in the DRC – Scories du Terril de Lumbumbashi – also known as the “Big Hill Project.” Groupe George Forrest (GGF) holds 25 percent of the operation and the remaining 20 percent is held by the state mining company, Gécamines. In collusion with Mr. Forrest, the report states that OMG has deliberately ignored technical agreements that provides for the construction of two electrical refineries and a converter for germanium processing. Instead, semi-processed ore from the mine is being shipped to OMG’s processing facility in Finland, thereby robbing the Gécamines of revenue.¹² OMG submitted a reaction to the Panel’s allegations in its third report stating that the contention over the germanium processing is a commercial matter and that the company is in full compliance with the OECD Guidelines.¹³ The Panel’s final report does not provide specific details on why or how the issues with OMG have been resolved.

Friends of the Earth-US’ Recommendations to the Bush administration, the OECD and International Finance Institutions

1. Clarify the OECD Guidelines Applicability to Supply Chains in Conflict Areas

With the termination of the Panel’s investigation into the economic causes of conflict in the DRC certain, the onus is now on all relevant governments, including the United States, to heed the many lessons learned. One important revelation is the lack of clarity on the measures companies from OECD countries should be undertaking when their supply chains are embedded in conflict areas to ensure their trade activities are consistent with the OECD Guidelines and other international standards.

There is little doubt that some OECD-based companies have played a part in fueling the conflict in the DRC. Governments that have endorsed the OECD Guidelines would be remiss in their duty to promote adherence among companies if the Guidelines are not revised to reflect their applicability to supply chains embedded in conflict areas, even in the absence of an identifiable “investment nexus.” Failure to revise would set a troubling precedent that companies from OECD countries are not expected to ensure that their trade in natural resources is not financing conflict in developing countries. This clarification could be requested by the Bush administration.

2. Launch Negotiations at the OECD for a Binding Instrument Requiring Information Disclosure

If similar patterns of resource-driven conflict are to be avoided in the future, an honest assessment of the linkages between the DRC’s resource-driven conflict and how the trade activities of companies from OECD countries must be undertaken and followed with appropriate policy changes at the OECD.

In the same way the OECD has now taken a leading role in adopting a binding agreement to prevent international bribery and corruption, the OECD should launch negotiations on a binding agreement requiring information disclosure to foster greater transparency in the extractive industries sector among all OECD-based companies. This binding agreement should include one of the central recommendations made by the Panel in its final report for the disclosure of revenues paid by

companies to governments.^{‡‡} This agreement should also make binding the voluntary information disclosure provisions contained within the OECD Guidelines.

3. Dedicate Public Financing to Rebuilding and Reforming the DRC's Institutions and Governance Structures

In March 2003, the World Bank Group's internal Operations Evaluation Department (OED) recommended that the Bank not promote increased investment in extractive industries in countries with weak governance. The OED concluded that in countries with weak governance structures, the Bank should focus its efforts on improving the country's ability to manage the costs and risks associated with its extractive industries, rather than attracting new investment. Moreover, the Bank should not support increased investment in extractive industries on the assumption that its parallel efforts to strengthen governance will mitigate current risks.^{§§}

The Panel has recommended several reforms “that have to be initiated immediately in order to allow the democratically elected central government – once in place – to ensure the legal exploitation of natural resources in the DRC.”¹⁴ If future investment and trade in the DRC (and other countries recovering from conflict) are to provide the impetus that is needed to create tangible development benefits and foster democracy, rather than fuel more conflict, the World Bank Group and other international finance institutions should dedicate grants to rebuilding and reforming the DRC's institutions and governance structures before considering any new investments in extractive industries.

^{‡‡} See Paragraph 53 of the Final Report on “Publish What You Pay.”

^{§§} See Friends of the Earth's “Summary of the OED Draft Review of the World Bank Group's Activities in Extractive Industries: Factoring in Governance” at: <http://www.foe.org/camps/intl/worldbank/eir.pdf>

Endnotes

¹ OECD WATCH Statement to the Committee on International Investment and Multinational Enterprises. OECD Watch is a new international grouping of over 100 NGOs that monitors the implementation of the OECD Guidelines by adhering governments. Its members include: Friends of the Earth (US, UK and NL), Novib (Oxfam), Germanwatch Germany), Rights and Accountability in Development (UK), SOMO (NL), DECOP (Zambia), and IBASE (Brazil), ANPED (NL), IRENE (NL).

² Ambassador Williamson's statement can be found at: http://www.un.int/usa/02_180.htm

³ Summary of the Panel's first and second reports drawn from "Companies in Conflict Situations: Mineral Extraction in the Democratic Republic of the Congo." *Oxford Analytica*, Series 2, Issue 3, April 2002: [http://www.iblf.org/csr/csrwebassist.nsf/550d4b46b29f68a6852568660081f938/80256adc002b820480256b9600515cf3/\\$FILE/April.pdf](http://www.iblf.org/csr/csrwebassist.nsf/550d4b46b29f68a6852568660081f938/80256adc002b820480256b9600515cf3/$FILE/April.pdf)

⁴ UN Security Council Resolution 1457, January 23, 2003, Paras. 2-4

⁵ Cabot Corporation (NYSE:CBT)– Headquartered in Boston, Massachusetts, Cabot Corporation "is one of just a few fully integrated producers of tantalum products with the capacity to produce over a million pounds each year at its two manufacturing facilities in the United States and Japan." (Citation: Cabot Corporation's website: <http://w1.cabot-corp.com/controller.jsp?entry=product&N=23+1001+4294967066>)

⁶ Kemet Electronics Corporation (NYSE:KEM) – Headquartered in Greenville, South Carolina, Kemet's "product line includes surface-mount capacitors in aluminum, ceramic and tantalum; and leaded capacitors in ceramic and tantalum." (Citation: Kemet Electronics Corporation's website: <http://www.kemet.com/products>) Kemet's reaction to the Panel's third report requests to be removed from Annex III after having had a "constructive dialogue with the Panel" and having "outlined its position in the tantalum supply chain and its proactive response, May 2001, to earlier reports on activities in the DRC." (Citation: Kemet Electronics Corporation, Reaction No. 21, Page 57 of S/2002/1146/Add.1)

⁷ Vishay Intertechnology (NYSE:VSH) – Headquartered in Malvern, Pennsylvania, Vishay Sprague – a brand of Vishay Intertechnology – is "well known for developing the first tantalum capacitors and introducing the first surface-mount tantalum chip capacitors...the wide Vishay Sprague product line, which includes molded and conformal-coated surface-mount tantalum capacitors, leaded tantalum capacitors, and hermetically sealed tantalum capacitors for demanding applications." (Citation: Vishay Intertechnology's website: <http://www.vishay.com/company/brands/sprague>)

⁸ Jeremy Kahn. "Congo's Civil War Rings Up Trouble on the Line." *Fortune Magazine*, February 4, 2002.

⁹ Karen Morrissey, Letter to Chemical Week entitled, "Clearing Cabot's Name." December 11, 2002.

¹⁰ Third Report of the Panel of Experts, Chp IV, Paras 74-79, Pgs 15-16.

¹¹ International Peace Information Service (IPIS). "Supporting the War Economy in the DRC: European companies and the coltan trade." January 2002: <http://www.broederlijkdelen.be/publicaties/coltan14-1.doc>

¹² Third Report of the Panel of Experts, Chp III, Para 30, Pg 8.

¹³ OM Group Inc. Reaction No. 7, Page. 8. S/2002/1146/Add.1

¹⁴ Final Report of the Panel of Experts, Paragraph 52, Page 14.