



VIRTUAL SUMMIT

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U.S. Perspectives on Responsible Sourcing for Gold in the time of COVID-19

Speakers:

Sakhila Mirza, General Counsel, LBMA/Speaker 1

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Summary:

Pamela Fierst-Walsh, Senior Advisor Conflict & Critical Minerals, from the US Department of State. Pamela provides a US perspective on responsible sourcing for gold in a world of COVID-19. The Dodd-Frank regime, international sanctions and the impact of COVID-19 on the ASM sector will also be addressed. Pamela has focused on critical foreign policy and national security issues throughout her career, including counter-terrorism, atrocities prevention, and humanitarian assistance. Pamela appears in the Top 100 Corporate Social Responsibility Influencers in 2019, according to data management company Assent Compliance. She played a key role in shaping the 2019 U.S. Federal Strategy on Critical Minerals to improve U.S. competitiveness for clean energy and technological advancement.

Speaker 1:

Good Afternoon! Welcome to the LBMA's Webinars today. I would like to introduce Pamela Fierst-Walsh, who is Senior Advisor, Conflict and Critical Minerals from the US State Department. Pamela today will be providing the US perspective, on responsible sourcing for gold generally but, also, in a world of COVID-19. She will be covering the Frank-Dodd, international sanctions and, generally, the impact of COVID on the ASM sector as well. So with that, I would like to hand over to Pamela. Pamela, thank you so much for joining us today.

Speaker 2:

Thank you Sakhila, it's lovely to be here. I think this is my first presentation with the LBMA audience and so, hopefully, there are some listeners out there who are going to learn some new things today. If you don't mind, I'll just dive in, in the interest of everyone's time and – bear with me as I work the slides. So, we're here today to talk about US perspectives on responsible sourcing for gold in the time of COVID-19. It's not exactly love in the time of cholera but, first, a quick introduction. So, this is me and this is what I work on. I'm in the office of Threat, Finance, Counter Measures in States, Bureau of Economic and Business Affairs. Essentially, for this audience, we're a small team that focuses on responsible mineral sourcing issues. So we cover the Kimberly Process; we cover Dodd-Frank; we often discuss what we call other troubling minerals, like cobalt that, perhaps, don't have

an applicable legal regime like Dodd-Frank but are, nonetheless, very important to supply chains. I'm also the coordinator for Critical Minerals at the State Department, which is a much broader initiative focused on diversifying supply chains for a much larger list of minerals. So, we work with other US agencies, on programmes covering a number of things that impact private sector companies, as well as civil society, and we also work closely with our international partners on these issues. So, I think this is pretty basic for probably many of you tuning in, but just to make sure I've covered the bases when we say, 'What is responsible sourcing?'. Well, it's how you get from here, this is gold, to here, refined products, finished goods without funding this – armed groups covering a mine, or this, actors that are perhaps not very helpful, or killing this, or contributing to this. So, it's basically about asking, 'Can you answer these?' Do you really know your suppliers? Are you constantly reviewing the risks in your supply chain? Are you checking the box or are you substantively confident about what you would find if you scratch a little deeper?

So, a quick breakdown on what is artisanal and small-scale mining vs large scale mining. I won't go over all of these bullets but suffice to say that ASM is much less mechanized, typically much more informal with much less of a regulatory oversight about it, if any. We rely heavily on the OECD due diligence guidance when we're talking about responsible sourcing. This sets out the five-step process for companies to follow. Basically, asking them to establish a regime and then establish protocols to follow it and constantly check it. It's driven also by conflict affected and high-risk areas which, as you can see here, are identified by the presence of armed conflict, widespread violence and other risks of harm to people. So, it's about due diligence – due diligence is about ensuring that you are processing things in line with a set of practices and protocols that you're confident are not doing that. This is just a quick primer on the mineral supply chain. I find oftentimes that no matter the commodity, people want to say, 'Well, I just do this with commodity acts, and so I'm not really part of this big supply chain'. But the concept of mineral supply chain really refers to every single node. And, so, it's important to bear in mind that chains really are that, right – one thing connecting to another – and so, if you're an actor in that space, you are concerned with everything above you and everything below you. Just a graphic depiction here of the OECD five step process, and Dodd-Frank 1502. So, my first talking point when I bring up Dodd-Frank 1502, is that it is still the law. If you're not familiar with 1502, it was enacted in 2010, and it calls for companies that source tin, tantalum, tungsten and gold, that may come from the DRC, to file with the US securities and exchange commission – if they are listed on the U.S. Stock Exchange – in order to ensure that they are adequately reporting on whether or not their commodity is contributing to armed conflict. The law itself – 1502 – is part of a much bigger regulatory scheme under the Wall Street Reform and Consumer Protection Act.

And so, that bigger piece of legislation, which principally deals with things like banking issues and housing regulation, has been fairly controversial in the last few years. And there were many efforts in the U.S. Congress to roll back all of it, parts of it, sometimes just 1502, sometimes the entire package. None of those legal or legislative fixes came into being. Dodd-Frank 1502 does remain law, whether or not you file with the SEC – if you are required to, it is a decision you make between you and your lawyer. That's my advice on that. The SEC has said some things that sound or feel contradictory to the supply chain. I don't work for the SEC, so I can't speak for them, but I can say that, the SEC has said that only official, pieces of guidance are what carry weight at the SEC and not informal statements by acting representatives. So, always check the origin of any statements you might be relying on to justify whether or not you file. But at the end of the day, the reality is that publicly traded companies that are worried about their reputations will always file.

A quick plug for our Public-Private Alliance for Responsible Minerals Trade. When Dodd Frank was enacted, the State Department joined with our partners at USAID, and put together a public-private alliance of private companies, NGOs and civil society, as well as the U.S. Government to work on establishing conflict free supply chains. It naturally wasn't something that folks were really used to dealing with. And, so, this organization of actors comes together and expresses support for it, works on a few smaller projects to try to underpin ways, and identify ways that might improve the establishment of conflict free supply chains. A major success story from that involves just gold, which established a concrete supply chain of gold, feeding into a jewellery company in Canada. Major members include Apple, Dell, Ford, Google – they're listed below. We're always looking for new members. So, if you're at all interested in throwing your weight behind the Public-Private Alliance for Responsible Minerals Trade, we would love to have you. The World Gold Council is also a member.

What is OFAC? Now, this is another agency I don't work for, but is of great interest to you if you're looking at responsible gold. So, OFAC is the Office of Foreign Assets Control in the U.S. Department of the Treasury. They're who administer and enforce economic and trade sanctions based on US policy. So, they are the ones that you are always trying to make sure you're on the right side of if you're concerned about violating US sanctions. 'Why would anybody working on gold be worried about violating US sanctions?', you might be wondering. Well, before we get to that, let's look at OFAC's objectives: identify, and expose, and target those who are engaged in illicit activity; deny access to the U.S. financial system for those actors; restrict transactions that involve U.S. companies, and individuals, from transactions that are considered in violation of sanctions (or of strong concern); and as a way to exercise support for U.S. national security objectives. So, this is a broad list of their sanctions programmes. So, you'll see on there that, obviously, trading diamonds sanctions or blood diamonds is listed on there, but so are transnational organized crimes, as well as foreign country regimes, as well as terrorists. Those are things that OFAC has a lot of interest in, and gold is certainly not immune from them. These are a list of foreign country regime programmes, that are on here. Some might seem like they've been there for a long time – some of them have been – but OFAC is constantly in an effort trying to organize and update regimes as necessary.

I also want to talk about Global Magnitsky, which is another tool that we have at our disposal. So, Global Magnitsky actually, in this case, pertains to an executive order that the president signs, enabling a broad authority to designate individuals for human rights abuses and corruption globally. So, you can be brought to bear under U.S. sanctions, like the kind that I just talked about – with OFAC – for behaviour where, in which if you're responsible for, or complicit in, serious human rights abuses. And this includes government officials and former government officials. So, who's this guy? This is, well, you can read from the headline *Spotlight on a Secretive Billionaire and his deals in Congo*. Well, he's a case study because his name is Dan Gertler. He's an international businessman and billionaire. He amassed his fortune through hundreds of millions of dollars of corrupt mining and oil deals in the DRC and, as a result of these activities, he's been designated under Global Magnitsky for corruption directly pertaining to DRC minerals extraction. So, suddenly Global Magnitsky has some real applicability. These are a list of companies that are related to Dan Gertler, but as an entity with a lot of resources, he's constantly kind of moving and shifting. If I were concerned about having any of these companies in my supply chain, or any companies that might be offshoots of these companies, I would have been extra vigilant about it.

But it's also not just an Africa issue. So, stepping away from the Dodd-Frank or the Global Magnitsky – the Dodd Frank construct – which is just DRC and its neighbours. Let's talk a little bit about NTR metals and its parent company Elemental, which was a major money laundering case, involving gold funds heading back to drug cartels and resulted in layoffs for U.S. workers, because U.S. companies were involved in this activity. You can read all about it in a very impressive set of our articles on *Dirty Gold, Clean Cash* through the *Miami Herald* – very impressive reporting. But this is what it looks like, right: these are kids panning for gold, probably using mercury. And it's pretty bad. Also, Venezuela gold. So, gold out of Venezuela is covered because it is one prong through which an entity can be designated. The designation for gold under this executive order is the state mining company, Minerven, and the company president, Adrian Antonio Perdomo Mata. And, so, if any individuals from that company or specifically that individual are in your supply chain, that spells real trouble. The problem with a lot of Venezuelan gold, principally all of it, is that it is artisanal. So, if it's leaking out and it's informally getting into the hands of sanctioned entities, like Minerven, before it leaves, that's a real concern. It's also, it's not the only concern in Latin America gold, right? We could talk all day about Colombia and Peru and the environmental impact, and the health impact of mercury in those supply chains. But just from a legal perspective, Venezuelan gold specifically is under threat of OFAC sanctions.

And then some countries sanctions regime that also influenced minerals. North Korea is one of them. The message here for those on the minerals market, generally, is to look for dumping of really cheap products like tin. But there have been linkages of DPRK to gold trades and so it's incredibly important to stay vigilant in that area as well. OFAC can sanction offshore persons and businesses. If you're concerned about OPEC violations – I give you a phone number a little bit later – but today we learned it's not just a U.S. thing, it's also a European Union thing. They have their own conflict minerals legislation coming into force January 2021; India is working on its own due diligence guidance; even China is working on its own standards for responsible sourcing in these ways. Now

let's talk a little bit about the scale of ASM gold mining, so that we know kind of where we are: 40 million miners in 80 countries; 60% mine gold exclusively as of 2009, 70 and 80% of that is informal; another 50% of that is women; 20% of the world's gold supply comes from ASM. So, it's exceptionally important that those working in the gold sector fully understand their supply chain, because – for all of the things that I just outlined – if you're not positive, those elements are not in your gold supply chain, then you're not doing enough due diligence because simply saying 'It's good enough', might not always be good enough.

And now COVID happens. So, that was already a very vulnerable population and now it's about to get even more vulnerable. So, the recent impact of COVID on ASM is that it is a serious, serious problem. So, even though gold prices are going up everywhere else – we know the spot price was what, I think, something like \$1,800 an ounce right now – declining gold prices in the ASM sector are the result of opportunistic actors, maybe illicit actors in the threat finance space. Maybe they're just getting a good deal, but maybe they're actually part of larger efforts to use gold as a laundering opportunity. So, the exact implications are really uncertain but we are getting a lot of reporting from sources in the field that say, 'Buyers will come along, they'll offer a much lower price than the value of the gold and the communities have to take it'. So it's having all of those onward effects. But it's not because the price of gold has suddenly gone down, it's simply because they know people are vulnerable and they're taking advantage of it. So they get to buy low, and then get it to a place where it's going to sell high later on in the market. So, trends and effects observed so far: buy low, sell high. There's a real drop in the price of mercury, which is concerning. It feels almost like a “gateway drug”. If you're an illicit actor and you drop the price of mercury, you make it possible for artisanal miners to mine even more gold, because you're giving them even more of a tool, notwithstanding all of the toxic effects of mercury on human health and the environment. But you're also establishing kind of a client base, if you will. Supply chain stagnation, because of the restrictions on travel, legitimate buyers and refineries and mines are closing. Some governments are imposing strict controls. That's true, and that's impacting costs as well. Then of course, mounting healthcare concerns due to limited capacity of the healthcare system and the risk of transmission while mining, especially given that there's so much about COVID we don't fully understand yet. This makes for a disproportionate impact on women who are often the ones doing the mining.

So, these are potential ways to support communities affected by COVID-19: triple check your due diligence. Do you know where your gold is coming from? Do you have artisanal gold in your supply chain? This is not a message to say, get artisanal gold out of your supply chain. It's a message to make sure you understand what's actually happening and what's actually being produced as a result of that presence in your work. Bring COVID-19 information to miners and raise awareness. Don't let them think that they are immune from it, or that it's not something that will impact their communities. Support legitimate artisanal gold mine schemes where possible. It's a difficult, difficult nut to crack – artisanal gold – and making sure it's done in a transparent way. But the more people are involved, the more interested that we can make sure people are to understand 20% of the supply chain, the better off we're going to be and the closer we get to some sustainable approaches. And then upper advocacy. Advocate for continued support to communities by governments, and other funders and other entities, that might have an influential role wherever their mining operations are occurring. So, today we learned responsible sourcing means: 'Do I really know my supply chain?' Not just, 'Did somebody I paid to fill out paperwork check all the boxes properly?'. Yes. Dodd-Frank 1502 is still the law. Global Magnitsky is a serious and real tool. The U.S. Government has to go after corruption and human rights abuse, and that includes in the mineral supply chain to include gold. Join the Public-Private Alliance for Responsible Minerals Trade. I'm not shy about promoting that. And this isn't just an Africa thing, or a diamond thing, or even a U.S. thing. This is a global concern in a variety of contexts and the United States Government is joined by many others in our concern for how to deal with threat finance issues lurking here. And that responsible sourcing is not going away. And that, unfortunately, COVID is impacting gold, particularly in the ASGM sector, which is full of particularly vulnerable actors.

Thanks for listening. That was pretty quick. That's my contact information. If you need to contact me, that's my email. If you would like a more general email address, there's a very long set of letters strung below that will also reach me.

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