



# Raw Material Sourcing: Lacey Act and Conflict Minerals

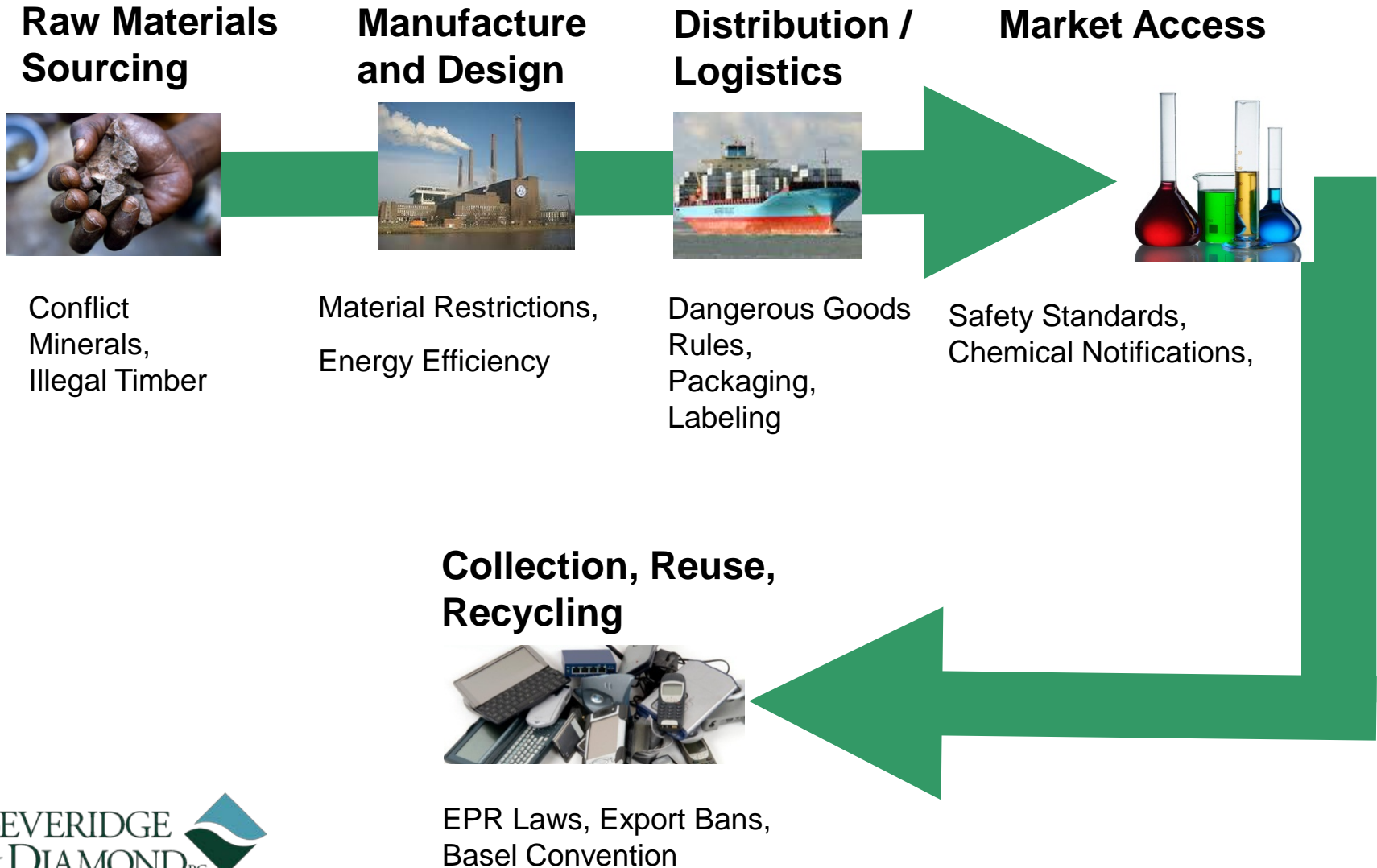
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**Latin American Region  
Environmental Roundtable**  
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# Expanding Regulation Throughout Product Life-Cycle



# Supply Chain Responsibility

## What is it?

- Responsibilities regarding *origin* of materials
- Responsibilities regarding *presence* of materials
- Responsibility regarding *process and conditions* under which products are made

## Why does it matter?

- Potential regulatory, private law and criminal liability
- Significant reputational risks for materials and supplies in supply chain
- Often complex supply chain management challenges

## Key issues?

- Confidentiality in supply chain
- Length and complexity of supply chain makes due diligence challenging

# Plant Products --Lacey Act

- Originally aimed at trafficking in “illegal” wildlife, fish and certain plants
- Illegal to import or purchase if illegally sourced according to foreign law
- 2008 amendments include plants and any *products made thereof*



# Lacey Act Requirements

## Import Declaration

- Plant genus
- Species
- Country of harvest
- Quantity
- Percent recycled

Only applies to  
certain HTS codes

## Due Diligence

- Each purchaser must exercise due care
- No matter where in supply chain

Applies to all plant  
products



# Scope

## Trees and Wild Plants

- stolen
- taken from officially protected areas (parks)
- taken without or contrary to required authorization
- taken without payment of the applicable taxes, royalties or fees
- shipped in violation of governing export or transshipment laws, such as log export bans

## Exemptions

- live plants or trees intended for replanting, unless listed on CITES, the ESA or a state endangered species list;
- scientific specimens to be used only for research
- common cultivars and food crops

# Challenges

- Gaps in knowledge of supply chain or product composition
  - Origin?
  - Accuracy of supplier data
- Level of due care will vary
  - standard based on “reasonably prudent person”



# Penalties

- Criminal and civil penalties for any persons who knew, or in the exercise of due care *should have known*, that they engaged in a commercial transaction involving illegally sourced wood products
- Strict liability forfeiture





# Enforcement Cases



## Gibson Guitar

- Alleged export of rosewood and ebony from India under incorrect tariff code to avoid Indian prohibition on export of sawnwood products
- Dawn raid spurs calls for reform

## Peruvian Hardwood

- Incorrect tariff code assigned to the shipment, avoiding the more rigorous requirements of the correct tariff code
- Evidence of stolen / forged documents

# Compliance Strategies



- Set clear specifications for suppliers
  - Contractual protections
  - Training buyers and suppliers
- Clear responsibility in company
- Prioritize high-risk products/suppliers
- Audits of highest risk suppliers
- Protocol to respond to supplier non-compliance

# Proposed Amendments



# Growing Trend



## Timber Protection Inclusion in Trade Agreements

- Peru TPA
- Trans-Pacific Partnership?

## Australia

- Pending law imposes similar due diligence requirements on importers of plant products

## EU

- Timber Due Diligence Regulation effective 2013
- For operators that first place on market, mandatory due diligence system to ensure timber harvested legally
- For internal traders, traceability and recordkeeping

# Conflict Minerals



Source: Map adapted from United Nations Department of Peacekeeping Operations Cartographic Section, Map No. 4007 Rev. 8

# Background

- Devastating conflict in eastern Democratic Republic of Congo ("DRC")
  - Deadliest since WWII
  - Extreme sexual- and gender-based violence
  - Humanitarian emergency
- Revenues from mining key driver of conflict
- NGO campaign to use consumer pressure on OEMs
- Trend to use disclosure as tool to drive corporate policy

# Dodd-Frank -- Overview

- Enacted July 2010. Rules still under review
- Will require disclosure by certain companies if
  - “conflict minerals” (or metals derived from them)
  - are “necessary” to
  - a product that they “manufacture”
- Disclosure, not restriction: transparency in will lead to reduction in demand
- Ripple effect through supply chain

# What Are “Conflict Minerals”?

Mineral	Metal Derivatives	Primary Uses and Related Products	Share of Global Production from DRC
Columbite–tantanalite (coltan)	Tantalum	Electronic devices; carbide tools; jet engine components	15-20%
Cassiterite	Tin	alloys; plating; solder in PCBs and other components; cans	6-17%
Wolframite	Tungsten	Metal wires; electrodes; circuits; LCD screens, drill bits	2-4%
Gold	Gold	Jewelry; electronics (PCBs, connectors)	1%



# Latin America Connection?

Mineral	Metal Derivatives	Primary Uses and Related Products	Share of Global Production from Latin America
Columbite–tantalite (coltan)	Tantalum	Electronic devices; carbide tools; jet engine components	25%
Cassiterite	Tin	alloys; plating; solder in PCBs and other components; cans	25%
Wolframite	Tungsten	Metal wires; electrodes; circuits; LCD screens, drill bits	3%
Gold	Gold	Jewelry; electronics (PCBs, connectors)	20%

# Am I Affected?

You are *directly* covered by the provision if:

Required to file  
reports  
with SEC

AND

Conflict minerals are  
necessary to a  
product you  
manufacture

You are *indirectly* covered if a customer in your downstream distribution channel is covered.

# Who is required to file reports?

SEC proposal would include “any issuer that files reports with the Commission under the Exchange Act” section 13(a) or 15(d)

## *Includes:*

- U.S. companies that issue stock
- Foreign private issuers that file Form-20F or 40F
- Regardless of size (no small company exclusion)

## *Excludes:*

- Foreign private issuers of unsponsored ADRs

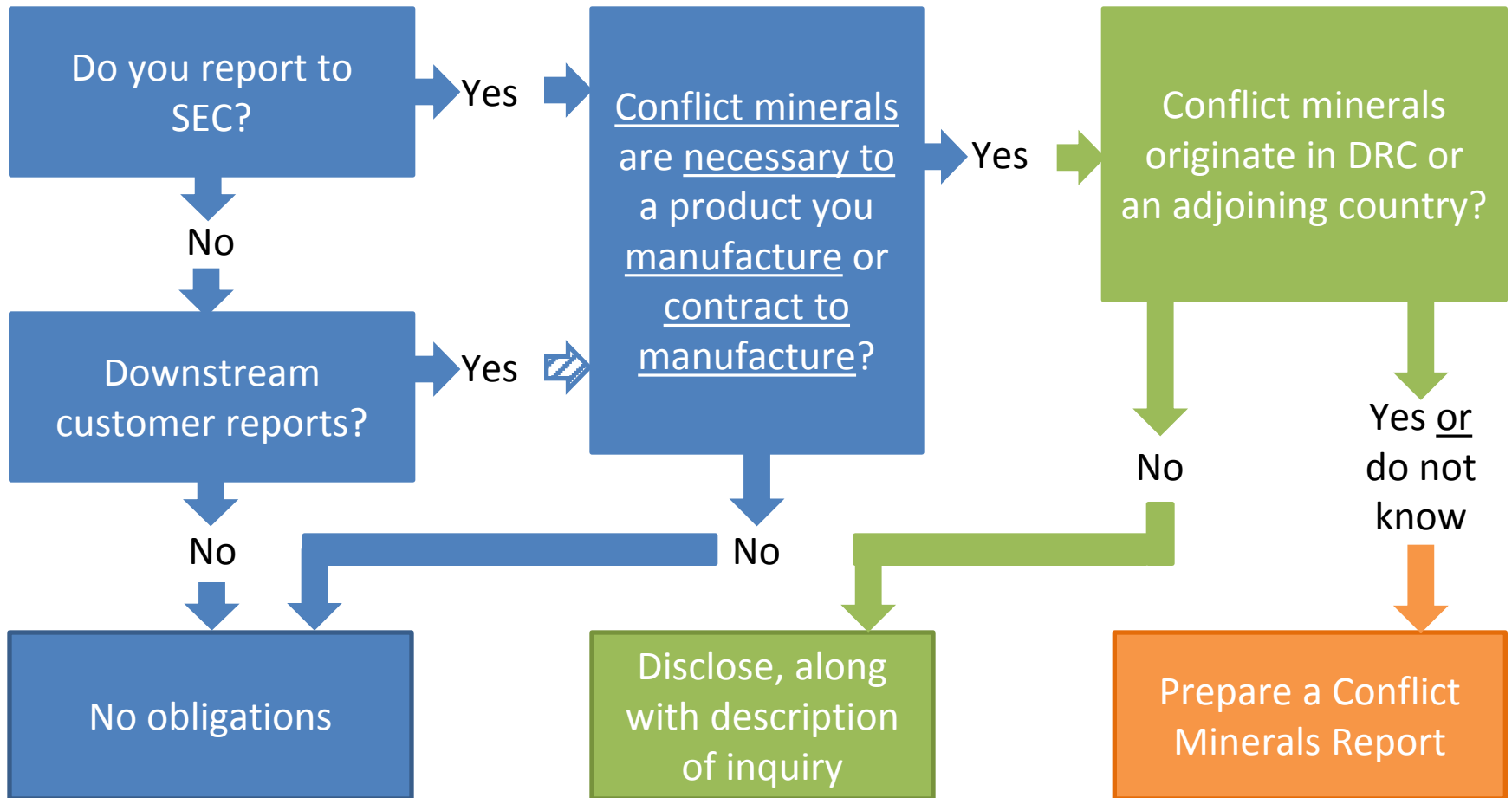
# Are Conflict Minerals in Product?

- Are there “conflict minerals” or their derivatives used in the product or its production?
  - A defined term that refers to certain types of minerals and their metal derivatives
  - Source of those minerals is not relevant at this stage – INCLUDES LATIN AMERICA

# Are They *Necessary* to a Product that I *Manufacture*?

- Are they necessary to the *production* or *functionality* of the products?
- Is the product something that you *manufacture* or *contract to manufacture*?
- Any entity that has influence over product's manufacturing or that contracts to have a product manufactured for itself

# Process Flow



# Conflict Minerals Report?

- Describe due diligence on source and chain of custody of minerals
- Describe any products that are not “DRC conflict free”
  - Identify smelters
- Identify country of origin
- Identify mine of origin

Consider whether to label products “DRC Conflict Free”

# Implications

- Minimum due diligence standards:
  - assessment of products
  - adoption of a ***conflict minerals policy***
- Traceability to “approved” smelters
- Supplier declaration standards



# Status and Open Issues?



# Tools and Solutions



- OECD Due Diligence
- Conflict Free Smelter Program
- Supply chain communication
  - IT Sector
  - Automobile sector
  - Retail sector



# Looking Ahead

- Watch for final SEC rule
- Possible litigation over final SEC rule
- Further action in the EU



**Thank you!**

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