



COMMENTS ON HR 4128

Scope: The focus of this document is the certification on the customs declaration for a TBD list of articles included in the TBD “Potential Conflict Goods List” as well as other / related administrative aspects of HR 4128.

General position: Our members support the primary goal of the Conflict Minerals Trade Act and the development of an effective, workable, cross-industry solution to meet the unique challenges posed by Conflict Minerals in the DRC. We do have significant concerns about the broad scope and applicability of this legislation. While the bill cites “industrial and technology products”, the certification requirement will apply to all importers of articles identified on the TBD “Potential Conflict Goods List”. We believe there is a more workable, effective and efficient, cross-sectoral approach over requiring all importers to provide a certification on their customs declaration as to whether the goods are “conflict mineral free” or “contain conflict minerals”.

Below are examples of elements, which contribute to our position:

- ***The approach taken in the McDermott legislation would continue down an already slippery slope.*** As written Customs would be required to administer and enforce the certification requirement, and requirements would also be placed on the Office of the United States Trade Representative. Industry would be tasked with yet another import certification or declaration requirement. Again, we believe that a more efficient and effect approach to address this important issue can be found.
- The proposed approach in the McDermott bill is analogous, in many ways, to the 2008 amendments to the Lacey Act, aimed primarily at combating illegal logging.¹ ***The amendments were passed without relevant stakeholder engagement. Since becoming aware of the declaration requirement, post passage, Industry has been working with Congress and the NGOs to seek necessary changes to the as written overly burdensome, unworkable, inefficient, and costly Lacey Act Declaration requirement.***
- A customs certification ***requirement for a specific list of articles, as included in the McDermott legislation, may be viewed as an impediment (i.e., barrier) to trade by many trading partners. Customs operates on a transaction by transaction basis. Changes in the language about the customs process could avoid this perception. This is the same approach taken with regard to the certification requirement on the importer’s customs declaration. Most companies, in particular multinational companies, operate in a centralized manner. Providing a transaction by transaction certification on the importer’s customs declaration would be significantly burdensome, time consuming, and susceptible to shipment delays and supply chain disruption in general.*** This could be due to many things including, a changing supplier base or distance from manufacture or sourcing.
- The certification on the importer’s customs declaration is tied to articles to be included on a “Potential Conflict Goods List” as well as the outcome of the audits contained in the bill. There is a lack of clarity around how the TBD list of articles will be developed. ***Further, a product specific certification on the customs declaration required on a transaction by transaction basis would drive***

¹ As part of the Farm Bill, in May 2008, the U.S. Congress passed amendments to the Lacey Act. Effective May 22, 2008, the amended Lacey Act makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant or plant product that was taken in violation of the laws of the United States, a U.S. State, Indian Tribal law, or any foreign laws that protects plants. In addition to the aforementioned substantive requirements that all plant (e.g., wood) and wild plant materials be legally sourced, Importers are required to file an import declaration for certain items included on the list of Harmonized Tariff Schedule (HTS) headings or subheadings requiring a Lacey Act declaration. The declaration includes, among other items the following required elements: Scientific names of plant (i.e., genus and species); Value of importation; Quantity including measure of the plant; Country of taking (harvesting).

the need for elaborate, difficult, and time consuming supply chain tracking mechanisms to determine if a given imported product and its constituent inputs have been produced with the use of conflict metals. Adding clarity around the previous point, the McDermott legislation would drive importers to track the audit findings (i.e., no government – comprehensive list of findings) issued in independent and frequent (audits are at least every 4 months) Federal Register Notices. This would increase complexity and add to tracking mechanisms.

- *The need to exercise reasonable care² prior to importation is highly important,* since the McDermott legislation provides for penalties under Section 592 of the Trade Act of 1930 with respect to any person, by fraud, gross negligence or negligence, enters, introduces, or attempts to enter any good that contains one of more conflict mineral into the territory of the US by means of inaccurate information.
- As a general matter, *the complexity of global supply chain is not considered. To exercise reasonable care in making an import declaration, an importer would need reliable assurances (e.g., affidavits) as to the conflict-mineral standing of a product across a global supply chain, a process that would include having to ascertain the status of the product's components, subassemblies or other constituents.* Often, many suppliers would be involved in providing such assurances, increasing the probability of shipment delays and overall supply chain disruption due to the complexity and burdens associated with the assurance process.
- Treatment of 3rd party products is not clarified. For example, if a manufacture is the importer of a finished article contained on the TBD Potential Conflict Goods List, manufactured by a 3rd party, they will be reliant on the 3rd party to provide relevant assurances associated with their sourcing. The bill does not address the issue of due diligence or specific reasonable care steps. As a result, this could lead to complexities, difficulties, and an increased amount of certifications/supplier affidavits/letters supporting the certification requirement. This is a lift for large companies and multinationals who have dedicated Customs compliance and operational resources, but would likely be an insurmountable task for small and medium enterprises (SMEs) or inexperienced importers, who likely do not have such resources or have limited resources in place. Consideration needs to be given the overall approach in the bill and its impact to not only multinationals, but also SMEs.

Recommendation: To date, we believe that stakeholder consultation has been limited to the tech-sector. We advocate engagement and consultation with importers, manufacturers (high-tech and beyond), brokers, associations, and the legal community, among others.

Action / Outlook: We stand ready to meet with you to discuss the customs certification requirement and other administrative aspects of the bill.

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² Reasonable Care General Standard: All parties, including importers of record (IOR) or their agents, are required to exercise reasonable care in fulfilling their responsibilities involving entry of merchandise. These responsibilities include, but are not limited to: providing a classification and value for the merchandise; furnishing information sufficient to permit Customs to determine the final classification and valuation of merchandise; taking measures that will lead to and assure the preparation of accurate documentation, and determining whether any applicable requirements of law with respect to these issues are met.