

QUESTIONS

POLICY AREA: DEFINING CRITICAL RAW MATERIALS

Major issues:

An expert group, chaired by Enterprise and Industry DG, recently released a report⁴ that presented a methodology to measure the criticality of raw materials at EU level. A raw material is labelled “critical” when the risk of supply shortage and their impacts on the economy are higher compared with most of the other raw materials. The report provides an analysis of 41 different minerals and metals, and concluded on a list of 14 critical raw materials. It also contained two sets of recommendations: recommendations for follow-up and further support, and policy-oriented recommendations to secure access to and material efficiency of raw materials.

Questions:

1. Do you have any comments on the methodological approach, including the scope, to determine criticality at EU level? If so, please specify.

The Canada EU Mining Council (CEUMC) was established to advance and promote the interests of Canadian mining companies trading with, investing in and doing business with the EU and its Member States. The CEUMC supports the submissions made by both Euromines to this consultation and the “Position Paper of the Romanian Mining Association – Patromin” submitted on September 14, 2010. In particular, the CEUMC supports the inclusion of gold as an item to be included on the list of critical raw materials, and that specific consideration should be given to the risks facing mining companies in various countries, including the EU, when determining security of access.

2. Do you see any additional raw material that should be considered as critical? If so, please explain.

As mentioned above, gold should be included on the list because of its current and future industrial applications, and its recognition as source of wealth preservation in an uncertain global economy.

3. Do you have any comments regarding the recommendations of the report? If so, please specify.

The list of 14 critical raw materials was arguably based more on future industrial applications which may or may not come to pass, while making an incomplete assessment of current risks facing the security of supply of these same materials. As Euromines points out, the risk assessment should be based more on the impact of certain government actions on the actual mining of these raw materials, and not on a general consideration of country wide, commercial, or global market risks. In taking this approach, the Commission will have a better appreciation of how best to address such risks as part of its attempts to secure such access both within and beyond the EU's borders.

4. Are you aware of any initiatives in your country that aim to assess the criticality of raw materials? If so, please describe briefly.

I am unaware of any similar initiative by the Government of Canada.

5. The functioning of raw materials markets has not been dealt with. Do you think that further analysis of their functioning should be carried out? What actions should be proposed to increase their transparency?

Transparency of the market in critical raw materials is not as much of an issue as transparency on how those commodities get to markets. More attention should be placed on the restrictions and barriers introduced by countries within and outside the EU to the responsible and sustainable extraction of these raw materials. The simple act of declaring something critical to the EU already increases the likelihood amongst certain countries that they will impose restrictions and barriers on the development and exploitation of these deposits. These restrictions are most likely to come through the imposition of restrictions on the issuance and transfer of mine licenses; nationalism or outright expropriation of certain mining projects; an increased effort to secure greater economic rents through higher taxes, increases in royalties and forced amendments to existing concession agreements; and the introduction of export duties to secure as much domestic economic and industrial benefits as possible. In essence, the listing of what is critical to the EU without putting in place the necessary instruments to protect against abuse by certain countries, in particular the abuse of the rights of mining companies, is one of the main weaknesses of

the entire initiative. This list may in fact give rise to greater instances of resource nationalism by certain countries rather than less, thus contributing to the very supply risks identified in the report as giving rise to criticality.

6. Do you think that the EU should propose a system of stockpiling for the critical raw materials? If so, please indicate whether you consider it more appropriate to do this at Community or alternatively at Member States level.

The CEUMC has no opinion on the merits of stockpiling, except that in the absence of physical stockpiling within the EU, the need to secure long term access from domestic and global sources becomes even more important.

POLICY AREA: TRADE

Major issues:

One pillar of the Raw Materials Initiative consists in developing a European external strategy in order to guarantee the sustainable supply of raw materials from global markets at undistorted conditions. In this, trade policy plays an important role.

DG Trade has recently completed its 2009 [activity reports](#) on raw materials, which summarizes the progresses accomplished along the three axes of the trade raw materials strategy:

- Include, as appropriate, the relevant trade disciplines on sustainable supply of raw materials in bilateral and multilateral trade agreements.
- Identify illegitimate trade distortive measures taken by third countries and tackle them using all available instruments, including through bilateral consultations, the Market Access Partnership process or, if necessary, the WTO dispute settlement; while delimitating more clearly permissible exceptions for e.g. development purposes.
- Reach out to third countries to show that the question of sustainable raw materials supply is an issue relevant to all countries, developing or developed, resource-rich and resource-poor alike as the uncontrolled, unregulated multiplication of trade restrictions can lead to a generalized beggar-thy-neighbour policy detrimental to most countries; while

recognising the importance of respecting internationally agreed rules on the subject.

Questions:

7. Do you think that the importance of trade is adequately reflected in the work carried out so far in the Raw Materials Initiative?

The importance of trade in raw materials to Europe and European industry is clear. Europe needs the global market in raw materials to function properly and in an open and transparent manner. But the trade in raw materials does not exist independently from the sourcing of those raw materials. The EU has to increase its focus on how, through its own actions and the actions of multilateral bodies to which it belongs (WTO, IFC, World Bank, OECD, and G20) it can protect investment, encourage responsible exploration, and support environmentally sustainable development and operation of mining projects around the world. Without mining projects, there are no raw materials. The EU's trade policy must reflect this reality or else its efforts to achieve a functioning global market place in raw materials will fall short.

8. Do you have any comment regarding the main findings of DG Trade activity report? What activities should be prioritised? Are there, in your opinion, additional activities not mentioned in the report which should be pursued in this strategy?

As mentioned, the CEUMC believes that the EU should focus on greater investment protection of mining projects both within the EU and around the world. In the Report, DG Trade states on page 20 that it "will embed disciplines relevant to raw materials in ongoing and future EU negotiations. Work may be extended beyond the question of export restrictions to include further reaching issues, such as investment." This work should begin in earnest and be done in full partnership with the global mining community. A focus on investment protection would be a clear recognition of the fundamental role responsible global mining companies' play in the secure and sustainable supply of raw materials.

9. Please identify trade distortive measures (i.e. export restrictions) concerning raw materials that in your view should be tackled.

Restrictions on the transfer of licenses and the suspension of the function of a country's prevailing mining laws that undermine or restrict investment should be considered equal to the imposition of tariff or no-tariff-like barriers to export.

10. Are you aware of any initiatives in your country that have one of the above goals in mind such as, for example, developing a raw materials diplomacy, or supporting companies to invest in third countries in the raw materials sector? If so, please describe briefly.

Developing raw materials diplomacy is a unique initiative of the EU. Canada primarily supports the activities of its global mining companies through the negotiation of bilateral investment treaties, and ongoing diplomatic support by and between countries where there is a specific matter of interest to be addressed.

POLICY AREA: DEVELOPMENT

Major issues:

The 2008 RMI Communication highlighted that development policies play a relevant role in at three 'levels':

- Strengthening States'
- Promote a sound investment climate that helps increase sustainable supplies of raw materials
- Promote sustainable management of raw materials

In 2010, within the context of the EU-African Union partnership, the European Commission and the African Union Commission recently agreed to develop a bilateral co-operation in the field of raw materials and to work together, taking fully into account the Africa Mining Vision of February 2009 and the EU Raw Materials Initiative of December 2008, in particular on issues such as governance, infrastructure and investment and geological knowledge and skills.

Questions:

11. What specific actions would you consider most relevant needed in the following areas:

Good governance;
Infrastructure / investments;
Geological knowledge / skills.

The most pressing need is for the EU to uphold and enforce the proper functioning of the administration of justice and the rule of law in specific African countries, especially as it relates to the protection of current and future investments in the mining sector. Without this level of enforcement, and a commitment to uphold those principles in all dealings with a particular country, then secure access to raw materials cannot be guaranteed. Good governance, support for infrastructure and investment, expanding geological knowledge and skills will accelerate in countries that abide by the rule of law and respect the proper functioning of the administration of justice. Failure to uphold these principles will only contribute to the improper exploitation of a country's resources, increase likelihood of corruption by government officials, perpetuation of the so-called "resource curse", allow poor environmental practices to go unchecked, and encourage the conduct by those who are able to profit through unlawful actions. Meaningful and direct action to uphold the rule of law in a resource-rich yet developing country is the best way to ensure long term, secure access of raw materials for Europe, and the sustainable and responsible economic development of the country in question.

12. Regarding transparency, what measures do you believe the EU should take to foster revenue transparency in the mining industry in raw material resource rich countries? What are your views regarding existing initiatives currently being taken in this area, namely by the Extractive Industries Transparency Initiative (EITI6)?

EITI is a good initiative to ensure transparency of revenues, especially where it has already been adopted. It requires more countries to sign up to the EITI to be truly effective. Many global mining companies support this initiative and already comply to its principles regardless of whether they have operations within a signatory country or not. Globally responsible mining companies are compelled through their domestic legislation, financial reporting requirements, media pressure, and stakeholder actions to operate in an open and transparent manner in connection with all their financial dealings. This practice should be supported and acknowledged by the EU and others who are attempting to have the principles of the EITI adopted by a particular country.

13. Concerning the recent agreement between the European Commission and the African Union Commission, in your view, what concrete objectives, targets and deliverables should be included in such a partnership?

Concrete measures should be adopted that withhold development funding from a particular country that is either party to or facilitates the unlawful expropriation, revocation of contractual terms, suspension of the mining laws, or engages in some other form of unlawful conduct that adversely affects established mining projects owned by third-country interests. Such sanctions should also apply to any country allowing the transshipment of raw materials from such a project or the processing of the raw materials unlawfully produced. No country should be able to profit directly or indirectly from unlawful conduct, especially if it involves a failure to uphold the rule of law.

14. Do you consider that wood should be addressed in the framework of development policy? If yes, please specify what are the main issues to be analysed.

Wood and other renewable resources should be excluded from the raw materials initiative. The pre-cursor to the RMI was the non-energy extractive resource working group. This more accurately described the sector that was in need of significant policy attention. When wood and leathers and other similar renewable resources were included in the RMI, it clouded the issues and distracted from the focus on industrial minerals and metals. The issues facing the wood and leather sector are more akin to those found in the field of agriculture and fisheries. Having them included in a discussion of metals and minerals is an unnecessary distraction.

15. Are you aware of any initiatives in your country that contribute to promoting exploration and exploitation of mines in developing countries? Should such initiatives be better coordinated or promoted at the EU level?

See the preceding comment.

**POLICY AREA: IMPROVEMENT OF THE REGULATORY
FRAMEWORK CONDITIONS INSIDE THE EU**

Major issues:

The Commission has proposed in the Raw Materials Initiative adopted in 2008 to provide clarity on how to reconcile non-energy extraction activities in or near Natura 2000 areas with environmental protection. In consultation with stakeholders a guidance document has been finalised and will be available on the web site of DG Environment⁷ before summer break.

As regards ways to improve the regulatory framework within the EU by promoting the exchange of best practices in the area of land use planning and administrative conditions for exploration and extraction, a report has been delivered by the relevant ad hoc Working Groups.

This report covers the following topics:

- Minerals Policy
- Land use planning policy for minerals
- Authorisation and permitting procedures
- Achieving Technical, Environmental and Social Excellence
- Improving the EU's geological knowledge base
- Better networking between the national Geological Surveys
- Need to integrate terrestrial sub-surface information into the GMES Land Service

Questions:

16. Do you agree that these topics correspond to the major challenges in this policy area? If not, please specify.

Mining is the primary source for the raw materials Europe needs to secure jobs and growth. Without mining, Europe has no raw materials, especially base and precious metals. Mining must be seen as a full partner in any subsequent communication involving the RMI.

Mining only takes place where there is a resource. To find that resource means one has to explore for the resource not knowing where it could be located, proving its size and economic worth, and developing a feasibility plan to exploit it economically and in accordance with prevailing EU and Member State environmental and regulatory requirements. Any land use policy for minerals should recognize this at the outset. Either you are able to

explore for a particular resource or you are not. Exploration and development involves incurring considerable costs long before a deposit is proven to be economical. Allowing these activities to go forward only to have a project terminated do to land use issues is an uneconomic and inefficient way to source of raw materials. Either one is allowed to explore for a resource with a view to its legitimate exploitation or not. Questions of land use should not become a barrier to a mining project, especially after the exploration and development phase has been done in accordance with the prevailing laws of the EU and a Member State.

17. Do you think of any other avenues which should be followed by the Commission? If yes, please specify.

The Commission must look at ways to encourage the economic exploration, identification and development of domestic deposits. This could include allowing Member States to grant tax incentives and other direct financial support to private exploration companies seeking raw materials in the EU. The Commission's role could be ensuring that any State Aid provisions are amended to allow this to happen. Conferring economic benefits through research and development credits such as was proposed under the critical raw materials release in June is a cumbersome and inappropriate vehicle to encourage the exploration and development of Europe's domestic resources. Similarly, such financial support should not be conditional upon which metals and minerals are being sought. The whole purpose of exploration is discovery. While searching for one resource, one may discover another one, of equal or greater value along the way. If financial grants are incentives are too strictly defined then the planned and unplanned benefits of exploration and discovery are lost.

18. Do you agree with the recommendations made in the report on "Exchanging Best Practice on Land Use Planning, Permitting and Geological Knowledge Sharing" or do you have any specific once to be added. Please explain.

See above.

19. Do you consider it useful to establish an EU geological service based on a network of Member State geological services?

The best way to encourage additional exploration activity in Europe is to make available as much non-proprietary geographical data as possible. From this data, exploration companies can decide where to explore for the resources they consider the most valuable. Establishing an EU geological service would show the mining world that Europe is serious about the proper and efficient exploitation of its resources and that exploration is being actively encouraged.

20. Do you consider that EU regulatory framework conditions for wood and/or recovered paper need to be further analysed? If yes, please specify.

As mentioned above, wood and related renewable resources should be removed from any consideration under the Raw Materials Initiative. It clouds the consideration of essential issues unique to the extraction and use of non-renewable base and precious metals and minerals.

POLICY AREA: PROMOTING SKILLS AND RESEARCH, DEVELOPMENT AND INNOVATION

Major issues:

Promote **skills** not only in the mining sector but also in other raw materials sectors is a matter of concern. The Commission is currently supporting this challenge via programmes such as ERASMUS MUNDUS with the specific Minerals and Environment Programme (EMMEP).

Focussed **research** on innovative exploration and extraction technologies, recycling, materials substitution and resource efficiency. The Commission has recognised the European Technology Platform on Sustainable Mining (ETP-SMR) to catalyse excellent research and development collaborative projects between the industry and research organisations. In addition, via the 7th framework programme for research, development and innovation the next call for proposals in the area are expected to be public in July.

Questions:

Skills:

21. What type of actions would you propose to provide better cooperation between companies, universities and public authorities in order to promote skills and in the extractive or other raw materials sectors? Please specify.

The Commission should recognize that mining is an industry that is important to Europe's long term prosperity and growth. Both in terms of the resources that can be discovered and exploited for the benefit of European consumers and industry, and in terms of the benefits that come from the act of mining itself. Modern mining operations are sophisticated, technologically advanced, safe, and leaders in environmental stewardship and corporate social responsibility. Mining should be seen as a full partner in the Raw Materials Initiative and as the primary domestic and international source for the supply of the metals and minerals Europe needs to grow and prosper. It will be much easier to encourage the necessary partnership between government, academia and industry if the mining industry itself is considered valuable to Europe's long term interests.

Research, Development and Innovation:

22. Are you aware of any research, development and innovation programme(s) at national, regional or local level? Please specify.

No opinion.

23. Where do you see the major gap / the urgent need for the raw materials sector related research, development and innovation at EU level? Please provide details.

The Commission should global mining companies already operating in the EU as to what they are already doing on research, development and innovation and what they would like to see as a priority. However, a research focus on "recycling, materials substitution and resource efficiency" could be in direct conflict with the role mining companies play in the supply of raw materials. For example, recycling is a downstream function that should be encouraged and is supported by the mining sector. However, recycling should not be advanced as an industrial or policy alternative to actual mining activity. Doing so would only drive up the value of the resource being recycled thus leading to further restrictions on supply.

Materials substitution is also an area that is potentially in direct conflict with the interests of mining companies. Materials substitution is being put forward as one method to address the concerns associated with reliance on certain critical raw materials. Yet if those same critical raw materials were readily accessible and available in the market place the need for substitution would diminish. In the near term, the Commission should focus its efforts on encouraging the exploration and development of new secure sources of critical raw materials rather than attempt to displace the need for the material itself. The cost would be cheaper and the likelihood of success much higher.

Finally, resource efficiency is also an area that is potentially in conflict with the interest of EU and international mining companies. Resource efficiency is a laudable goal. But as with recycling, it is primarily a downstream activity that should not be considered as means of displacing the need for mining. That being said, resource efficiency does have direct applications to mining. The goal of any mining company is to get the maximum amount of a resource available from the ore it extracts. To do this, mining companies need to employ the most efficient and economically feasible techniques available. Additional research and support should be made available to European based mining companies to increase the amount of a resource that can be efficiently extracted from an available ore body.

24. What is your idea of a major research and innovation action that would have the highest positive impact on the security of raw materials supply for the EU industries? Please specify.

I would suggest that the Commission begin by canvassing the EU-based mining companies to get their formal input into what research would be of most value and assistance to them, especially when it comes to the efficient extraction from existing resources.

25. Are you aware of innovative exploration and extraction technologies, where project partners on a European level are needed to develop and implement the new technologies and which are the innovative technologies which need to be developed further? Please provide details.

No.

26. Are there any other aspects related to skills, R&D and innovation for other raw materials, such as wood, that need to be further promoted? Please, specify.

Again, wood should not be part of any consideration related to the RMI.

POLICY AREA: RESOURCE EFFICIENCY & RECYCLING

Major issues:

The 2008 RMI Communication identified that the increased use of secondary raw materials contributes to security of supply and energy efficiency. However, today many end-of-life products do not enter into sound recycling channels, resulting in an irremediable loss of valuable secondary raw materials. This mainly concerns exports of end-of-life vehicles and electronic equipment, which leave Europe as reusable products but end up being dismantled abroad. To counter these trends, the need to reinforce the Waste Shipment Regulation and related legislation was identified. Furthermore, prices of some recovered materials have reached record levels due to the high demand from third countries.

The Waste Shipment Regulation also contains requirements on exporters of waste to third countries to ensure that this waste will be treated in an environmentally-sound manner. However, compliance with this principle is not always respected. Finally, stakeholders have identified the need for an improvement in statistics on secondary raw materials. This includes actions to be taken to measure the extent of illegal trade in products containing these secondary materials.

Questions:

27. In your view, and beyond measures already being taken (e.g. the recast of the WEEE Directive), what practical measures can be taken by the EU and by Member States to prevent the illegal shipment of obsolete end-of-life vehicles and electronic equipment?

Whatever measures are put in place, the EU should avoid introducing any non-tariff export barriers affecting waste products. The lawful processing of this waste is done outside of the EU. Measures that privilege EU processors under the guise of stopping illegal shipments could be subject to challenge under international trade agreements and the WTO.

28. In what ways should statistics on trade in and recycling of, products containing secondary raw materials be improved?

No opinion.

29. Have you identified major problems with recovered paper? What are the main issues that need to be further analysed?

As with wood, recovered paper should not be part of any discussion on raw materials.