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U.S. Diamond Retailers Can Help Ensure Conflict Diamonds Are Not a Girl's Best Friend

Not all diamonds are a girl's best friend. Conflict diamonds, for instance, are considered more of a rebel's best friend. Also known as "blood diamonds," conflict diamonds are linked to rebel forces and factions opposed to legitimate governments, and are used to fund military opposition to those governments. The international diamond community, including the U.S., has expressed zero tolerance towards such diamonds and has sought to regulate the rough diamond trade to assure consumers that their purchases are not used to finance overseas wars and rebel movements. Further, U.S. diamond retailers can assist these efforts by keeping informed of the various diamond distribution laws and by effectively implementing self-regulating retail policies that will help curtail illegal trade.

Regulating "Rough" Diamonds From "Mine to Factory": KPCS & CDTA

In 2000, a joint initiative was formed among the international diamond industry, governments, and NGOs to control and monitor the rough diamond trade, and specifically, to exclude conflict diamonds. The United Nations General Assembly adopted this initiative, known as the Kimberley Process Certification System ("KPCS"), which expects participating countries ("*Participants*") to "prohibit the importation of rough diamonds from, and the exportation of rough diamonds to, non-Participants and to require that shipments of rough diamonds from or to a Participant be controlled through the KPCS."

Further, the KPCS expects each Participant to be responsible for implementing its scheme domestically. In compliance, President Bush signed the Clean Diamond Trade Act ("*CDTA*") in 2003, and the Office of Foreign Assets Control (U.S. Dept. of Treasury) promulgated regulations implementing the CDTA [Title 31 of the Code of Federal Regulations (CFR) §592.101-592.801]. These regulations seek to effectively monitor U.S. trade of rough diamonds, and to improve the system for collecting and sharing U.S. data on such diamonds. For instance, all shipments of rough diamonds imported to, or exported from, the U.S. must be accompanied by an original Kimberley Process Certificate and be sealed in a tamper-resistant container [31 CFR §592.301(a)(1)-(2)]. Next, the final recipient of the shipment is responsible for confirming the receipt of a rough diamond import shipment with the foreign exporting authority [31 CFR §592.301(a)(3)]. Additionally, the U.S. exporter must submit shipment information through an automated export system that validates the Kimberley Process certificate [31 CFR §592.301(a)(4)].

To increase efficacy, a number of U.S. agencies have had a hand in implementing the CDTA. In fact, the State Department and the Treasury Department co-chair an inter-agency group, the Kimberley Process Implementation Coordination Committee, to coordinate U.S. government regulation of rough diamonds and to oversee operational issues. Additionally, the State Department reviews the standards and practices of the USKPA (the entity that issues Kimberley Process certificates) and reports to Congress the results of its review annually. Also, to improve the collection of statistical data, an amendment was

added to the CDTA in 2008 that requires formal entry documents for importation of all rough diamonds regardless of value [Note 4 to 31 CFR §592.301]. Finally, those who are found in violation of CDTA's requirements face criminal penalties up to \$50,000 per count for corporations and individuals and/or ten years' imprisonment for individuals [31 CFR §592.601(a)(2)]. Civil penalties of up to \$10,000 per violation may also be imposed [31 CFR §592.601(a)(1)].

Regulating "Polished" Diamonds From "Factory to Finger": The System of Warranties

While impressive, international and domestic diamond trade laws do not directly affect U.S. diamond retailers because they concern rough (as opposed to cut and polished) stones. Therefore, to support the implementation of KPCS and CDTA downstream, a voluntary system of warranties has been carried out by U.S. diamond retailers who sell cut or polished diamonds, and jewelry containing such diamonds. Specifically, this self-regulating system upholds the seller of each diamond transaction to include a written guaranty on the invoice assuring the buyer that the diamonds have been purchased through authorized channels and are conflict free. Additionally, each retailer is responsible for maintaining records of warranty invoices for internal audit.

However, because there is no government oversight over this process, warranty statements are largely unsubstantiated. Subsequently, for proper implementation, retailers may want to take extra steps to ensure the legitimacy of their polished diamonds. For instance, a retailer may want to demand proof of a KPCS certificate for each order. Further, a retailer may hire an independent third-party to conduct an audit of its diamond supply. Additionally, because the warranty system is voluntary, the retail industry may find it beneficial to enact monitoring or verification mechanisms to ensure that all companies are adhering to the system.

One final safeguard ensuring the legitimacy of the diamond trade is the USA Patriot Act, where U.S. diamond dealers who buy or sell more than \$50,000 worth of goods which derive more than 50% of their value from "jewels, precious metals, or precious stones" must have anti-money laundering measures in place [31 CFR §103.140]. These measures include: assessing the company's risk to money laundering; developing and implementing an anti-money laundering program; designating a compliance officer for the program; providing education and training for program personnel; and testing and monitoring the program periodically [31 CFR §103.140 (b)-(c)]. Diamond retailers falling under this statute should therefore report suspicious activity that may potentially involve rebel financing.

Overall, the U.S. has adopted substantial measures in curtailing the trade of conflict diamonds. However, because it falls short of full oversight, success also depends on diamond retailers not directly regulated by the KPCS or CDTA. All parties – not only government entities -- must ask questions, identify partners and monitor transactions, and demand assurance that diamonds come from a legitimate source. Only through a collective effort can the U.S. guarantee that all diamonds are truly a girl's best friend.