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What Conflict Minerals Rules Tell Us about the Legal Transplantation of Corporate Social Responsibility Standards without the State: From the United Nations to the United States to Taiwan

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Abstract: To resolve global political and scholarly concerns over conflict minerals ("CM") produced in the Democratic Republic of the Congo and neighboring regions, two kinds of CM-related disclosure rules (or "CM rules") come into play in regulating their use: government-mandated laws such as Section 1502 of the Dodd-Frank Act in the United States (hereinafter "Sec. 1502") and transnational voluntary codes such as the Electronic Industry Citizenship Coalition ("EICC") Code of Conduct. The creation of both of these CM rules could be attributed to the promotion of such concerns by the United Nations. This article is the first attempt to unpack and closely consider the process of two distinct types of CM rules that are probably transplanted into Taiwan through global supply chains.

This article joins a growing body of literature that deepens our understanding of the channels and objects of legal transplants. The findings of the Taiwanese case study are important for two reasons. First, in terms of the transplant process or channels, some Taiwanese companies have started to follow CM rules due to their supply contracts, demonstrating that applicable CM rules might have been transplanted into Taiwan through private channels such as supply contracts, rather than through the formal public channels of legal transplanta-

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tion initiated by the government. Second, but just as importantly, with regard to transplanted objects, what further distinguishes this article from prior studies is that the Taiwanese case study could indicate that Taiwanese suppliers comply with CM rules established by the EICC more prevalently than those promulgated under the Dodd-Frank Act. If so, this would imply that when it comes to adopting or implementing transnational corporate social responsibility ("CSR") standards in suppliers' countries or jurisdictions, private CSR standards written by non-governmental organizations ("NGOs") or industries themselves in a bottom-up approach are more effective or more easily accepted than public standards such as state laws enacted by a foreign/national government in a top-down approach.

I. INTRODUCTION

The domestic armed conflicts in the Democratic Republic of the Congo and its adjacent countries have caused severe humanitarian crises and have, for a long time, been a critical issue internationally. According to the final report provided by the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (the "Panel of Experts") sent by the United Nations ("UN"), it is concerning that some business transactions involving natural resources may have financed armed conflicts within the Democratic Republic of the Congo and its neighboring regions.[1] Specifically, tin, tungsten, tantalum, and gold (known collectively as "3TG")[2] are minerals often used in high-technology manufacturing; they are called conflict minerals ("CM") because in many cases their production in the Democratic Republic of the Congo and neighboring regions are probably controlled by armed groups.[3] However, as foreign buyers may not be aware of this damaging situation, the Panel of Experts has cooperated with the Organization for Economic Co-operation and Development ("OECD") to illuminate this issue for the business sector in the western world.[4] The UN Security Council has clearly indicated that international society should cooperate to prevent financial profits made from exploiting natural resources being funneled into the funds supporting domestic armed conflicts, and that Member States should ensure that domestic industries are aware of the origin of the minerals they use.[5]

In addition to national governments and local non-governmental organizations ("NGOs") concerned about the CM issue, foreign NGOs and businesses, especially those that utilize certain minerals in their manufacturing, also started to care about this issue.[6] One representative example is the Electronic Industry Citizenship Coalition ("EICC"), which founded the Conflict-Free Sourcing Initiative ("CFSI") in 2008, a general survey on conflict-free smelters and refiners, together with the Global e-Sustainability

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[1] Letter from the U.N Secretary-General, to the President of the Security Council, ¶¶ 4, 10-11, U.N. Doc. S/2003/1027 (Oct. 23, 2003) [hereinafter *Illegal Exploitation*] (Rep. of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (2003)).

[2] *See* GLOBAL WITNESS, *Conflict Minerals,* https://www.globalwitness.org/campaigns/conflict-minerals/ (last visited Feb. 1, 2018); Nadine Hawa, *Conflict Minerals in Supply Chains, FSC Rules Breached in Asia and WWF and Coke Expand Cooperation*, ETHICAL CORPORATION (Sep. 3, 2013), http://www.ethicalcorp.com/supply-chains/ngowatch-september-2013 [hereinafter *Nintendo under Fire*].

[3] *Illegal Exploitation*, *supra* note 1, ¶¶ 9-10.

[4] *Id.* ¶¶ 10-12, 20-21.

[5] S.C. Res. 1857, ¶¶ 6-7, 13, 15 (Dec. 22, 2008).

[6] *See*, *e.g.*, GLOBAL WITNESS, *supra* note 2; Enough Project, *RAISE HOPE FOR CONGO*, (last visited Feb. 1, 2018), http://www.raisehopeforcongo.org/content/conflict-minerals.

Initiative ("GeSI").[7] The "private" CM rule-making by the EICC further required its members to avoid using CMs as part of their code of conduct.[8]

Later, national legislators also embarked on "public" CM rule-making, with the United States setting the trend of introducing CM-related laws.[9] Specifically, whereas the Trump administration has launched a potential rethink of the current CM rules adopted by the Securities Exchange Commission (the "SEC"),[10] Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"),[11] by amending the Securities and Exchange Act of 1934, required U.S. public companies to carry out CM due diligence investigations ("CM investigations") and disclose the possible use of CM in their manufacturing process sourced from the war-ravaged Congo and adjoining countries in Africa.[12] Subsequent to the passage of the Dodd-Frank Act, it was not only U.S. businesses that worried about difficulties in implementing CM disclosures; businesses overseas, e.g., parts and materials manufacturers in Japan, were also concerned about the effect created by the new CM rule, even though it was laid down by a foreign government.[13] In addition, Taiwanese electronics manu-

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[7] *See* Responsible Minerals Initiative, http://www.conflictfreesourcing.org/about/ (last visited Feb. 1, 2018) 錯誤! 超連結參照不正確。(formerly known as Conflict-Free Sourcing Initiative (CFSI)). The EICC, the alliance of US-based electronics industries for corporate social responsibility, has been cooperating with GeSI (the Europe-based organization promoting sustainability in the ICT industry) to develop "the Conflict-Free Smelter (CFS) program, which starts with the audit of smelters/refiners and is expected to be used as a means to validate trading from there through the downstream supply chain by inspecting whether conflict minerals that fund armed groups have entered the supply chain." *JEITA Responds to Conflict Minerals Provision of the U.S. Dodd Frank Wall Street Reform and Consumer Protection Act*, JAPAN ELECTRONICS AND INFORMATION TECHNOLOGY INDUSTRIES ASSOCIATION, (Aug. 23, 2012), http://www.jeita.or.jp/english/topics/2012/0823/20120823_en.pdf.

[8] *See infra* Part II.B (discussing CM rules made by the EICC).

[9] David Zaring, *Financial Reform's Internationalism*, 65 EMORY L.J. 1255, 1279-81 (2016).

[10] *See infra* Part II.C (discussing the current CM rules adopted by the SEC).

[11] Dodd-Frank Wall Street Reform and Consumer Protection Act, 15 U.S.C. § 78 (2012).

[12] *See infra* Part II.C (discussing the US CM rule-making). The EU CM rule is at the final draft stage and the current proposed rule would apply to all "conflict zones" around the world, while its US counterpart only applies to the Democratic Republic of Congo and the neighboring region. *See* ROPES & GRAY LLP, *The EU Conflict Minerals Regulation – Frequently Asked Questions and Take-Aways for Downstream Companies (or Why Should I Care About Yet Another New Supply Chain Regulation?)*, https://www.ropesgray.com/newsroom/alerts/2017/09/The-EU-Conflict-Minerals-Regulation-Frequently-Asked-Questions-and-Take-Aways-for-Downstream.aspx (last visited Feb. 1, 2018); Marcia Narine Weldon, *Did the EU Learn from Dodd-Frank When Enacting its Conflict Minerals Rules?*, BUSINESS LAW PROF BLOG (June 17, 2016), http://lawprofessors.typepad.com/business_law/2016/06/did-the-eu-learn-from-dodd-frank-when-enacting-its-conflict-minerals-rules.html.

[13] *See, e.g., Nintendo under Fire*, *supra* note 2; Tetsuji Santazono*, US Conflict-Mineral Rules Rattle Global Supply Chain*, NIKKEI ASIA REVIEW (May 15, 2014),

facturers were also impacted by the U.S. CM rule, either because they listed shares in the U.S. stock market, or because they served directly or indirectly as a supplier to U.S. buyers.[14]

The aforementioned phenomena reflect that many industries have already outsourced their functions to suppliers overseas or applied a "fragmented" manufacturing structure, where components of a single product may be manufactured by contract suppliers in various countries.[15] Therefore, a U.S. buyer will need cooperation from its foreign suppliers—possibly in the form of supply contracts—to satisfy the requirements of relevant rules, which are either hard public/regulatory laws or soft voluntary rules.[16] This article thus explores the practices of Taiwanese suppliers' compliance with CM rules, illustrating legal transplantation through private contracting in a globalized world in the case of CM rules, and tests whether the U.S. legislators' expected and desired extraterritorial goal of Section 1502 of the Dodd-Frank Act (hereinafter "Sec. 1502") to indirectly regulate an entire global supply chain can be met.[17] The Taiwanese case study could reveal that some Taiwanese companies have made supply-chain transparency efforts due to their supply contracts, thus suggesting that relevant corporate social responsibility ("CSR") standards, whether of a non-domestic public or a voluntary private nature, have been transplanted into Taiwan.

This article will join a growing body of literature that deepens our understanding of the channels and objects of legal transplants. The findings are important for two reasons. First, in terms of the channels of legal transplants, from the supplier's point of view, when they try to meet requirements laid down by their buyers, they are also "complying" with the buyers' domestic laws, or with transnational voluntary codes of conduct indirectly included in supply contracts. It is especially intriguing that this extraterritorial effect of domestic laws in a buyer's home country may take place with CM rules being transposed to a supplier's host country via private contracting channels. This phenomenon, resulting from the globalization of business outsourcing, might illustrate a legal transplant in the mod-

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http://asia.nikkei.com/magazine/20140515-The-bitter-divide/Politics-Economy/US-conflict-mineral-rules-rattle-global-supply-chain.

[14] Yihua Li & Jingwei Wang, *Mei Guo "Chong Tu Kuang Chan" Jie Lou Yao Qiu Dui Tai Wan Qi Ye De Chong Ji* [*The Impact of U.S. "Conflict Minerals" Disclosure Requirements on Taiwanese Businesses*], 327 KUAI JI YAN JIU YUE KAN [ACCT. RES. MONTHLY] 28, 31 (2013) (Taiwan).

[15] Kishanthi Parella, *Outsourcing Corporate Accountability*, 89 WASH. L. REV. 747, 749–50 (2014). Previous studies on car manufacturers also found this kind of fragmented manufacturing structure. *See, e.g.,* Gene M. Grossman & Elhanan Helpman, *Outsourcing in a Global Economy*, 72 REV. OF ECON. STUDIES 135, 135 (2005).

[16] *See* Li-Wen Lin, *Legal Transplants through Private Contracting: Codes of Vendor Conduct in Global Supply Chains as an Example*, 57 AM. J. COMP. L. 711, 722 (2009)*; see also infra* Part II for further discussion.

[17] *See infra* Part III.

ern sense in comparative law studies. Specifically, a rule (be it a government-mandated law or a voluntary code of conduct) could be transplanted into a host country and might be obeyed by foreign suppliers to an extent. In this case, such a rule is indirectly transferred through private contracting across borders. This would exemplify the private implementation or enforcement of CM rules under global supply chains in particular, or transnational private governance of CSR standards in general. As opposed to legal transplantation through public channels initiated by a sovereign government organ, the Taiwanese case study could be interpreted as another type of legal transplant via private channels in a globalized world.[18]

Second, but just as important, when it comes to legal transplants, this article can be further distinguished from prior studies in that the Taiwanese case study could indicate that Taiwanese suppliers comply with the CM rules established by the EICC more prevalently than those promulgated under the Dodd-Frank Act. This could indicate that when it comes to adopting or implementing transnational CSR standards in suppliers' countries or jurisdictions, private CSR standards written by NGOs or industries themselves in a bottom-up approach would be more effective, or widely acceptable, than public standards such as state laws enacted by a foreign national government in a top-down approach.

The article is structured as follows. Part I covers the literature on legal transplants and private governance in general as well as private governance through global supply chains in particular, and provides a conceptual framework for the legal transplantation of CSR standards. Part II outlines the CM rules involved in the Taiwanese case study and Part III makes a case for legal transplants through private contracting in a globalized world by analyzing Taiwanese suppliers' compliance with applicable CM rules. Finally, the conclusion summarizes and draws policy implications from our major findings.

II. LEGAL TRANSPLANTS THROUGH PRIVATE CONTRACTING IN A GLOBALIZED WORLD

A Legal Transplant Primer

The term "legal transplant," from a comparative law perspective, usually indicates the phenomenon of a domestic law being transferred across borders into another country or jurisdiction.[19] Alan Watson coined the term in the 1970s, although it was not commonly used until later.[20] The practice

[18] *See infra* Part I (illustrating the matrix for legal transplantation of CSR standards).

[19] JOHN GILLESPIE, TRANSPLANTING COMMERCIAL LAW REFORM: DEVELOPING A 'RULE OF LAW' IN VIETNAM 3 (2006).

[20] John W. Cairns, *Watson, Walton, and the History of Legal Transplants*, 41 GA. J.

of legal transplantation, however, has a long history, and is a familiar phenomenon in the history of law.[21]

Historically, there were no fixed patterns of legal transplants, which depend on the transplant background and the transplant society. The scale of legal transplants may vary from transferring legal systems wholesale during the age of colonization,[22] to accepting a whole set of laws and values during times of war,[23] to voluntarily importing "superior" legal systems through a formal legislative process in the transplant country.[24] Legal transplantation may also take place owing to other political interactions between states, such as compliance with WTO-related agreements,[25] or harmonization with western-business laws backed by legal harmonization projects, which began in the 1990s.[26]

The legal transplants mentioned above were initiated by legislators or regulators in a home government with the following exemplified incentives of receiving a transplant and corresponding patterns of legal transplants.[27] For instance, it might be a "best choice" made by legislators after carefully comparing different solutions in different legal systems.[28] In addition, directly borrowing an existing law may be cost-effective for legislators, whereas the costs for society of adopting new laws cannot be ignored.[29] Moreover, even if intending to borrow existing foreign laws, legislators in the transplant country might not have actually thoroughly examined all existing foreign laws, but could easily import legal systems from another country that seemed to be far superior; although this transplant may seem practical, importing laws without thoughtfully considering how they fit into another domestic legal order may raise adaptation concerns.[30]

INTL'L & COMP. L. 637, 640 (2013).

[21] *See* Mathias M. Siems, *The Curious Case of Overfitting Legal Transplant*, *in* THE METHOD AND CULTURE OF COMPARATIVE LAW: ESSAYS IN HONOUR OF MARK VAN HOECKE 133, 133 (Maurice Adams & Dirk Heirbaut eds., 2014); Gillespie, *supra* note 19, at 3-4.

[22] *Id*. at 4.

[23] *Id*. at 4-5.

[24] *Id*. at 11.

[25] *Id*. at 9.

[26] *Id*. at 5, 8-9.

[27] For a complete description of the incentives and motivations behind legal transplants, *see, e.g.,* Jonathan M. Miller, *A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process*, 51 AM. J. COMP. L. 839, 843–67 (2003) (presenting four types of legal transplants based on the motives of tranplant countries: (i) The Cost-Saving Transplant; (ii) The Externally-Dictated Transplant; (iii) The Entrepreneurial Transplant; and (iv) The Legitimacy-Generating Transplant).

[28] MATHIAS SIEMS, COMPARATIVE LAW 192 (2014).

[29] *Id*.

[30] *See id*. at 193; Chang-hsien Tsai, *The Failure of Corporate Internal Controls and Internal Information Sharing: A Conceptual Framework for Taiwan*, 45 HONG KONG L.J. 469, 497 (2015) (illustrating that "merely transplanting foreign 'advanced' corporate law

Although commentators question whether imported laws will take root in the new land and function just as they did in their country of origin,[31] legal literature has also indicated that transplanted laws are mostly considered to remain functional to some extent, while the focus should be placed on "choos[ing] and design[ing] legal transplants as well as possible."[32] Take Taiwan for example: legislators often take a "direct transplantation" approach, which is to borrow supposedly better solutions sourced from laws of such advanced economies as the United States; Taiwan's government required public companies to establish independent directors and audit committees, in order to follow internationally common practices of corporate governance, although those specific regulatory tools may not be completely compatible with the existing Taiwanese business law environment.[33]

In general, common practice in legal transplant studies is to examine the transfer of statutory or regulatory laws across boundaries through government branches such as public legislative or regulatory channels as well as the effects they would generate in legal cultures of importing countries, or how the laws would evolve in a new culture. Nonetheless, as statutes or regulations in an exporting country are sometimes transferred through non-state actors, non-governmental channels (such as multi-national corporations and other private entities, such as NGOs) may also play an important role. Specifically, in a globalized world where nations are inevitably linked by cross-border transactions and transnational manufacturing chains, how the global market and global supply chains can affect the transfer of statutes and regulations has actually become a popular topic.[34] This article provides another example of legal transplants via private contracting: the transplantation of such CSR standards as CM rules (be they foreign government-mandated laws or voluntary codes of conduct established by NGOs) through private procurement contracts underlying global supply chains. Although some ink may have been spilled in attempts to discuss legal transplantation through private contracting, what distinguishes this article from others is that the Taiwanese case study suggests that Taiwanese suppliers comply with CM rules developed by the EICC more prevalently than those enacted under the U.S. Dodd-Frank Act, indicating that private standards in a bottom-up approach might be more effective and widely acceptable than public ones in a top-down approach, when it comes to adopting and

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provisions into local regulatory infrastructure may not prove a success-guaranteed solution to existing corporate governance problems.").

[31] SIEMS, *supra* note 28, at 196.

[32] *Id*. at 197-98.

[33] *See* Tsai, *supra* note 30, at 470-72, 497; In-Jaw Lai, *Fa Zhi De Yi Zhi: Cong Gong Si Lu Dao Du Li Dong Shi* [*Legal Transplants—From the Kung-ssu-lü (Company Law) to the Independent Director*], 84 TAIPEI UNIV. L. REV. 1, 29-30, 37-40 (2012).

[34] Lin, *supra* note 16, at 713-15.

implementing transnational CSR standards.[35]

Legal Transplants and Transnational Private Governance

In the era of globalization, more and more non-state actors appear to be able to act as regulators. For example, the term "global administrative law" refers to the phenomenon that cross-national organizations are gradually performing legislative and regulatory roles that, in the past, belonged solely to national governments. Along this line, there are five types of global administration: (1) regulation by international organizations composed of national governments, such as the UN Security Council and its committees; (2) cross-national cooperation among domestic governmental regulatory agencies, such as the operation of the Basel Committee; (3) regulation by national regulatory agencies according to international treaties or other similar agreements; (4) hybrid structures where governments cooperate with private organizations; and (5) regulation solely by private bodies (private NGOs) that have substantive regulatory functions, mainly exemplified by the International Standardization Organization ("ISO").[36]

Among the aforementioned global administrative schemes, some scholars have turned their interest to the final type: private regulatory bodies. Some commentators have suggested the idea of "non-state market-driven (NSMD) governance" to explain the source of these private regulatory bodies' power: the pressure from markets (including consumers or other concerned parties) has driven the heads of regulated organizations (e.g., enterprises) to take necessary actions, and the "governance" goal is attained via this channel.[37] In this case, the regulated organizations comply with "voluntary codes" (for example, international standards, certification schemes, codes of conduct, and the like); those voluntary codes are "not legislatively required," and hence lack the power of traditional laws.[38]

Therefore, when studying private regulatory schemes on a global scale, the regulatory schemes operated by NGOs are also referred to as "transnational private regulation" (TPR) regimes.[39] TPR regimes are important because it is more difficult for national government organs to regulate private

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[35] *See infra* Part III.

[36] *See* Benedict Kingsbury et al., *The Emergence of Global Administrative Law*, 68 LAW & CONTEMP. PROBS. 15, 20-23 (2005); *see generally* Benedict Kingsbury et al., *Foreword: Global Governance as Administration–National and Transnational Approaches to Global Administrative Law*, 68 LAW & CONTEMP. PROBS. 1 (2005).

[37] *See, e.g.*, Kernaghan Webb, *Corporate Citizenship and Private Regulatory Regimes: Understanding New Governance Roles and Functions*, *in* CORPORATE CITIZENSHIP AND NEW GOVERNANCE 39, 41 (Ingo Pies & Peter Koslowski eds., 2011).

[38] *Id.*

[39] Colin Scott et al., *The Conceptual and Constitutional Challenge of Transnational Private Regulation*, 38 J. L. & SOC'Y 1, 1 (2011).

cross-border activities, so a transnational regulatory scheme is necessary.[40]

For transnational enterprises operating under these regulatory schemes, pressure (usually from outside) for adoption, implementation, or enforcement would force them to consider complying with voluntary codes. For example, in the area of human rights, many international standards were set up by NGOs, which also serve as active monitors by keeping an eye on those enterprises.[41] Apart from pressure from NGOs, some investors may also use their votes to influence managerial decisions (i.e., a *voice* response to dissatisfaction with organizational behavior under Albert Hirschman's conceptual framework), or even select investment targets or sell their shares in a public market based on one company's CSR performance (i.e., an *exit* response under Hirschman's framework), which is called socially responsible investment ("SRI").[42] The pressure from transnational markets has become more significant in this era of globalization because globalization makes it harder for national governments to regulate activities overseas, or for concerned stakeholders in a host country to request the company headquarters in their home country to take the responsibility for injuries caused by local foreign subsidiaries or affiliated legal entities.[43] Therefore, a cross-border regulatory regime is required in order to hold multinational enterprises ("MNEs") responsible for negative effects resulting from their overseas activities, such as outsourcing for manufacturing.[44] Nevertheless, as mentioned above, the rules laid down and promoted by private organizations are voluntary per se; even if those who adopt the rules violate any of them, there might not be any direct way to impose a punishment.[45] Sometimes domestic laws such as contract laws are still necessary when market pressure is insufficient.[46]

When it comes to who plays a rule-making role in private regulatory regimes, private organizations without governmental regulatory power are in the central position of being able to set up rules that should be followed by their members, and the rules are "enforced" via market pressure. Several types of private regulators include standards development organizations, as explained below, writing private standards for users to voluntarily obey in

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[40] *Id.* at 2.

[41] *Id.* at 7-8.

[42] Lloyd Kurtz, *Socially Responsible Investment and Shareholder Activism*, *in* THE OXFORD HANDBOOK OF CORPORATE SOCIAL RESPONSIBILITY 249, 257-58 (Andrew Crane et al. eds., 2008).

[43] Gregory R. Day, *Private Solution to Global Crisis*, 89 ST. JOHN'S L. REV. 1079, 1090-91 (2015).

[44] *See id.* at 1092-96.

[45] Deirdre Curtin & Linda Seden, *Public Accountability of Transnational Private Regulation: Chimera or Reality?*, 38 J. L. & SOC'Y 163, 169 (2011).

[46] *See* Day, *supra* note 43, at 1082-83, 1095-97.

conducting business.[47] Although in the past, international standards mostly concerned technical standards "that address network externalities," recently more environmentally oriented private regulatory standards, such as those on greenhouse gas emissions that "address social and environmental externalities," have been promulgated.[48] A type of a standards development organization is a hybrid organization consisting of industrial associations and NGOs: for instance, the Forest Stewardship Council ("FSC") tackles forest management via cooperation between NGOs such as the World Wildlife Fund and companies such as retailers or manufacturers in wood-related industries.[49] Another common type of the voluntary code is codes of conduct or regulatory standards developed by private firms to apply to themselves only; most large MNEs also have their own supplier codes of conduct that they require their suppliers to comply with.[50] One issue of concern is how to enforce those voluntary rules, as sanctions are to some extent necessary. Examples of enforcement mechanisms of these voluntary rules include expelling members from voluntary programs in the case of a severe violation of the rules, and refusing to procure materials from code-violating suppliers.[51] Occasionally "naming and shaming" is considered a fairly powerful tool, e.g., via tagging offending suppliers with rule-breaking signs, or refusing to assign recognition or certification to them, in order to generate signals for buyers or consumers expressing concerns; these entities also "contribute to the sanction by denying a company's 'social license to operate.'"[52]

In a variety of fields, these voluntary rules already play important roles in guiding business behavior, as a category of regulatory measures with actual effects. Therefore, we might tend to recognize the importance of private regulation in the context of regulatory competition, or the market for law.[53] If we think that law itself possesses the functions of social norms or social institutions, voluntary codes established by private organizations, as one of the social norms or social institutions possibly compete with public

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[47] Lesley K. McAllister, *Harnessing Private Regulation*, 3 MICH. J. ENVTL. & ADMIN. L. 291, 301 (2014) (Generally speaking, "private regulators of different types carry out the three elements of regulation: setting, implementing, and enforcing standards.").

[48] *Id.* at 304-05.

[49] Errol Meidinger, *The Administrative Law of Global Private-Public Regulation: the Case of Forestry*, 17 EUR. J. INT'L L. 47, 51-53 (2006).

[50] McAllister, *supra* note 47, at 307.

[51] *Id.* at 314.

[52] *Id.* at 314-16.

[53] For a further explanation of how demand and supply dynamics shaping regulatory competition (or the market for law) constrains regulating jurisdictions from disregarding business demands and from imposing excessive regulation, *see generally* Chang-hsien Tsai, *Demand and Supply Forces in the Market for Law Interplaying through Jurisdictional Competition: Basic Theories and Cases*, 1 EAST ASIAN L. J. 1 (2010).

or regulatory laws.[54] In terms of rulemaking by MNEs and NGOs, the rules they choose and how they choose the rules may generate additional important effects.[55] These common private regimes established by private actors sometimes fill the gap with their quasi-regulatory effects where statutory laws are nonexistent or inflexible.[56] Private regimes might ultimately affect statutory laws or even be merged into public laws; there have already been some examples of this.[57] For instance, governmental agencies could directly endorse private regulatory regimes; the Hazards Analysis and Critical Control Points ("HACCP") regulation established by the United States Department of Agriculture ("USDA") illustrates endorsed self-regulation.[58]

However, when cooperative production or outsourcing is required through a transnational supply chain across multiple countries, how to maintain control of overall production in a global marketplace is an imminent problem, for example, in that there is an absence of effective legal and regulatory infrastructure.[59] Large global buyer firms may seek suitable voluntary codes of conduct for supply chain management; third-party assurance thus has been regarded as the measure for ensuring the realization of the goals these voluntary codes would achieve.[60] This may, to an extent, account for the rise of the third-party assurance industry with the ISO as a representative contributor.[61]

In recent years, the third-party assurance industry has gradually been performing an important role in "a private sector compliance and enforcement infrastructure," even "providing a substitute for public legal and regulatory infrastructure in global commerce." This industry has provided a novel institutional structure "through which private commercial exchange

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[54] Dan Wielsch, *Global Law's Toolbox: Private Regulation by Standards*, 60 AM. J. COMP. L. 1075, 1076-77 (2012); Peer C. Zumbansen, *Neither 'Public' nor 'Private', 'National' nor 'International': Transnational Corporate Governance from a Legal Pluralist Perspective*, 38 J. L. & SOC'Y 50, 51-52 (2011).

[55] Standard contract terms were used as an example. If one such term is adopted by multiple companies, then it may evolve into a standard within this group of companies; furthermore, the influence of this standard will become even larger if being used by industry associations or similar organizations. It might also become an international standard once it is used globally. However, this kind of generally applicable "standard" has not gone through a formal legislative process, and therefore different legitimacy concerns embedded in similar standards should be taken into consideration. Wielsch, *supra* note 54, at 1078-79.

[56] *Id.* at 1080.

[57] *Id.* at 1081.

[58] McAllister, *supra* note 47, at 322-23.

[59] Margaret M. Blair et al., *The New Role for Assurance Services in Global Commerce*, 33 J. CORP. L. 325, 327-28 (2008).

[60] *Id.* at 336-37.

[61] *Id.* at 331. For an in-depth treatment of the ISO, *see generally* CRAIG N. MURPHY & JOANNE YATES, THE INTERNATIONAL ORGANIZATION FOR STANDARDIZATION (ISO): GLOBAL GOVERNANCE THROUGH VOLUNTARY CONSENSUS (2009).

may be regulated for essentially public purposes" while engaging in activities whose purpose "in the past would be considered 'public' and 'regulatory' in nature, and left to the authority of government."[62]

When parts of the production process are assigned to suppliers in other countries, in order to ensure that their quality of production meets the purchasing company's internal standards, global buyers from time to time rely on monitoring services provided by the third-party assurance industry.[63] Furthermore, as more weight has been laid on the concept of CSR in recent years, many SRI institutional investors (including public pension funds) are looking at the environmental and social performance of their portfolio companies. Therefore, MNEs need to monitor whether their suppliers meet certain CSR standards in order to lower the risks resulting from any negative effect of not meeting CSR standards within global supply chains.[64] Common CSR-related standards directly established by NGOs include Social Accountability 8000 ("SA 8000") set up by Social Accountability International, providing standards for international labor and human rights protection,[65] and voluntary CSR codes developed within industries such as forestry.[66] Facing various CSR standards, some businesses voluntarily adopt voluntary CSR standards and hire their own third-party certifiers to certify that CSR norms are implemented and enforced throughout their supply chains.[67] These certifications and third-party assurance may thus lower the cost for players in global supply chains to acquire information about how others comply with required standards, and it may be cost-effective for businesses to engage professionals in specific fields to monitor compliance practices of their contracting counterparty, or to act as reputation intermediaries.[68]

As a result of serving as monitors as well as entities to issue certifications, these third-party assurance firms have gradually been acquiring the ability to ensure that monitored subjects comply with corresponding voluntary codes of conduct. Along this line, they have also come to play a truly regulatory role not merely in the substantive sense that they facilitate "the

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[62] Blair et al., *supra* note 59, at 329.

[63] *Id.* at 336-37.

[64] *Id.* at 337-39.

[65] SA 8000 is a standard based on international humanitarian conventions, and on the topic of protecting labor rights within corporations through internal control schemes. *See* Social Accountability International,*See SA8000® Standard and Documents*, SA8000® STANDARD, http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=937 (last visited Jul. 3, 2016).

[66] Meidinger, *supra* note 49, at 74 (citing the FSC, an international body accrediting organizations to certify that timber and forest products meet the FSC standards for sustainable forest management).

[67] Blair et al., *supra* note 59, at 342-44.

[68] *Id.* at 355-56.

transmission of global 'rule of law' norms of acceptable business behavior to new parts of the world,"[69] but also in the procedural sense: in performing certain contract-facilitating and contract-enforcing functions, "the assurance service can perhaps be understood as importing 'rule of law' procedural norms into countries where legal institutions are weak."[70]

Supply Contracts as a Tool for Transnational Private Governance

As mentioned above, voluntary standards and third-party certifications have played large roles in the implementation and enforcement of CSR norms, both between businesses and their customers and between businesses.[71]

Across the current global marketplace, the importance of subcontracting suppliers is indeed high, in consideration of the fact that many global brands have actually outsourced most of their manufacturing to their foreign suppliers; this kind of transactional structure also implies that global corporations must build relationships with their foreign suppliers in an ever-expanding set of manufacturing activities.[72] Monitored by the media, NGOs, SRI analysts, and even global buyers' own CSR auditors or verifiers, the issues that receive particular attention are human rights, employment, and ethical or environmental performance in the manufacturing process some way down global supply chains.[73]

To lower the reputational risk incurred from higher-risk suppliers, some enterprises have started to devote more efforts to supply chain CSR management, and some have tried to integrate CSR codes into their risk-management policies or the strategies they use to select suppliers.[74] This developing situation may indicate a type of private governance where subcontracting suppliers are regulated by their buyers in implementing and enforcing CSR codes.[75]

Previous studies focusing on supply relationships found that recently,

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[69] *Id.* at 329. *See also id*. at 338 (furnishing an explanation of how supply chain pressures lead to the externally dictated legal transplant by saying that "developed country business standards and norms are being propagated worldwide").

[70] *Id.* at 356-57.

[71] *See supra* Part I.

[72] Grossman & Helpman, *supra* note 15, at 135.

[73] Doreen McBarnet & Marina Kurkchiyan, *Corporate Social Responsibility through Contractual Control? Global Supply Chains and 'Other-Regulation', in* THE NEW CORPORATE ACCOUNTABILITY: CORPORATE SOCIAL RESPONSIBILITY AND THE LAW 59, 62-63 (Doreen McBarnet et al. eds., 2009).

[74] *Id*. at 63-64.

[75] *Id*. at 67 ("Some [MNE] manager reported the unwelcome realization that by taking on CSR responsibilities they have acquired a greatly expanded role. In effect they are stepping into the shoes of the government in the supplier countries, by policing and enforcing the non-commercial law of the land") (alteration in original).

supply contracts no longer comprise solely traditional contract terms such as prices, but also CSR criteria, with protection of labor rights as a main example.[76] Buyers[77] have incentives to require their suppliers to obey the aforementioned CSR norms or standards, especially in suppliers' countries that lack sufficient proper substantive law or enforcement mechanisms, thus filling the regulatory gap between buyers' and suppliers' countries.[78] Similar results were also found in a famous study on disclosed U.S. supply contracts; supply contracts have already been used as a tool to regulate foreign suppliers on CSR issues such as environmental protections.[79]

Among Taiwanese corporations, there are also examples of being "regulated by supply chains". For instance, when Apple Inc. was criticized by the media due to undesirable working conditions in their supplier factories that did not meet related standards, not only was the buyer, Apple, under pressure, but their main supplier, Foxconn (an Apple contractor headquartered in Taiwan but with major factories located in China), was also required by Apple to improve the working environment in their Chinese factories.[80]

In terms of transnational private governance (or TPR), global purchasing companies have actually been regulating their foreign suppliers to meet the CSR standards required or expected by the marketplace in supply chains. The buyers may hence be viewed as performing a regulatory role traditionally played by governments alone. Supply contracts of this kind may then function as a private governance regime.[81]

A New Taxonomy of Legal Transplants of Corporate Social Responsibility Standards

While feeling the pressure applied from supply contracts, suppliers tend to satisfy buyers' requirements on CSR issues in most situations to keep supply contracts.[82] In such relationships, regulatory networks woven

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[76] *Id*. at 65.

[77] For the purposes of this article, "buyers" generally refer to the enterprises acting as buyers in a supply contract, although they may be the firms directly selling products to end consumers or the suppliers in another contract at another stage of the same supply chain.

[78] McBarnet & Kurkchiyan, *supra* note 73, at 66. Therefore, the control exerted through supply contracts could be regarded as a possible mechanism for implementing international codes of conduct, with MNEs' "private law" potentially making up for failures in "state law" in suppliers' countries. *Id*.

[79] Michael P. Vandenbergh, *The New Wal-Mart Effect: The Role of Private Contracting in Global Governance*, 54 UCLA L. REV. 913, 916-17 (2007).

[80] *See* Barbara J. Fick, *Corporate Social Responsibility for Enforcement of Labor Rights: Are There More Effective Alternatives?*, 4 GLOBAL BUS. L. REV. 1, 5-6 (2014); Parella, *supra* note 15, at 779-80.

[81] Vandenbergh, *supra* note 79, at 943.

[82] Parella, *supra* note 15, at 784. *See also* Lin, *supra* note 16, at 731 ("Since global buy-

by contracts might turn buyers into private regulators through CSR standards, norms, or codes that are implemented or enforced through supply contracts.[83] If those rules that are incorporated into supply contracts are public or state laws in buyers' countries, they may result in the domestic laws of buyers' home countries being applied and transferred across borders.[84]

Therefore, the implementation and enforcement of non-domestic rules through private channels such as supply contracts may be viewed as a form of legal transplantation through private actors in the eyes of suppliers' host countries, even though the objects to be transmitted are not limited to government-mandated laws in a foreign legal system but include private codes of conduct in global commerce with regulatory features as well.[85] On top of that, the transposition across borders by MNEs of the aforementioned transnational voluntary codes with regulatory functions as well as their home-country laws are carried out through transnational channels of private contracting, rather than through typical state legislative, regulatory, or judicial processes at a national level.[86]

Hence, we could develop a matrix to outline four types of legal transplants for CSR standards, with transplant channels and transplanted objects of CSR norms as criteria for differentiating cells for each distinct type. The legal transplantation of CSR standards can be categorized as in Table 1 below.

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ers with strong bargaining power condition business on implementation of vendor codes [such as SA8000 and other similar standards], in order to obtain business, suppliers accept the condition") (alteration in original).

[83] *See supra* Part I.

[84] Fabrizio Cafaggi, *The Regulatory Functions of Transnational Commercial Contracts: New Architectures*, 36 FORDHAM INT'L L. J. 1557, 1567 (2013). *See infra* Part III (discussing how Taiwanese suppliers have made supply-chain transparency efforts to help their US buyers comply with CM rules under the Dodd-Frank Act).

[85] Lin, *supra* note 16, at 730-34.

[86] *Id*. at 713-15, 741.

Table 1: Matrix for the Legal Transplantation of CSR Standards

		Transplant channels	
		Public channels (governmental organs including legislatures, regulatory agencies or courts)	**Private (contracting) channels (global supply chains)**
Transplanted objects of CSR norms	**Public standards**	Traditional legal transplantation (Category 1)	E.g., CM rules under the Dodd-Frank Act (Category 2)
	Private Standards	E.g., ISO 14001, as a private standard, was transferred into the Chinese legal system. (Category 3)	E.g., CM rules established by the EICC (Category 4)

Category 1 in Table 1 refers to the typical transplantation of foreign codified laws, regulations, or other public standards through public channels initiated by governmental organs in receiving countries, which is the traditional form of legal transplants in comparative law studies.[87] Category 3 indicates the transmission of voluntary private standards through public state channels. For example, the Chinese government systemically promoted ISO 14001 by creating concrete measures and formally constructing the implementation platform for ISO 14001 in China.[88]

By studying how Taiwanese suppliers complied with CM rules in order to demonstrate legal transplantation through private contracting channels in a globalized world, this article is focused on transplanting state laws or transnational voluntary codes of conduct through supply contracts, as

[87] For instance, Taiwan has traditionally relied on the binary or dual board model (also known as the "two-tier system") where both directors and supervisors (or company/statutory auditors) are elected by shareholders. However, from the first decade of the twenty-first century until now, Taiwan's legislative and executive branches have been collectively transplanting a unitary Anglo-American style of board of directors and independent directors (also known as the "one-tier system") into corporate governance structures, with audit committees replacing supervisors. Tsai, *supra* note 30, at 470-71.

[88] *See* Lin, *supra* note 16, at 737.

shown in Categories 2 and 4 in Table 1.[89] Specifically, recognizing the notion that the transplant process can also embrace private channels (e.g. through supply contracts) in addition to traditional public state channels, Category 2 illustrates that state laws such as CM rules under the Dodd-Frank Act were included in supply contracts and thus transmitted to other countries.[90] Furthermore, if the transplanted objects could be voluntary codes of conduct with regulatory features, albeit not adopted as government-mandated laws, then Category 4 denotes that the transnational voluntary codes exemplified by CM rules established by the EICC[91] would be conveyed, through private contracting channels, into a land where such CSR norms have not yet been codified. In both Categories 2 and 4, global purchasing companies, as private regulators, would play an important role in not merely transposing CM rules but also in implementing or even enforcing them. Our case study on how Taiwanese suppliers comply with CM rules in Part III illustrates the aforementioned two types of legal transplants via private channels.

III. CONFLICT MINERAL RULES

To resolve concerns over CMs, two kinds of CM rules come into play in regulating their use: transnational voluntary codes (e.g. EICC Code of Conduct) and government-mandated laws (e.g. Sec. 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act).[92] The creation of both of these CM rules could be attributed to the promotion of such concerns by the UN and the OECD.[93] Therefore, before carrying out the Taiwanese case study in Part III to look into the compliance practices of these two CM rules or the process of how these two distinct types of CM rules have already been transplanted into Taiwan, in Part II we will first discuss and summarize why and how they were created.

The UN Resolutions

The long-lasting armed conflicts in the Democratic Republic of the Congo and the Great Lakes region subjected people living there to serious

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[89] As suppliers in receiving countries have to follow CSR rules inserted into supply contracts by global buyers, this could also be interpreted as a form of legal transplantation. *See id*. at 720-22.

[90] As discussed in Parts II.C and III, CM rules under the Dodd-Frank Act are U.S. buyers' home-country laws, which serve as an important reference for voluntary codes of conduct to incorporate into supply contracts. *See id.* at 721-22.

[91] As discussed in Parts II.B and III, CM rules established by the EICC resemble the ISO 14001 Environmental Management System as procedural rules, rather than substantive requirements. *See id.*

[92] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1502, 124 Stat. 1376, 2213 (codified at 15 U.S.C. § 78m(p) (2012)).

[93] *See infra* Part II.

humanitarian and economic hardship, thus drawing attention away from global society. The UN Security Council decided in 2003 to ensure that any financial and military assistance being given to armed groups were stopped.[94] The Panel of Experts assigned by the UN Security Council to investigate the Democratic Republic of the Congo and the nearby conflict regions indicated in their 2003 report that some foreign manufacturers had directly or indirectly funded domestic armed groups via the procurement of minerals. As those foreign manufacturers were possibly unaware of the negative effects of their procurement, the Panel of Experts also tried to bring this issue to the attention of foreign buyers through cooperation with other international organizations such as the OECD as those foreign manufacturers were possibly unaware of the negative effects of their procurement.[95]

These investigations heightened the awareness of the international business community of their responsibilities on protecting human rights that were indirectly threatened by transactions in their supply chains for CMs.[96] The UN repeatedly sought to raise awareness on this issue via Resolutions, particularly Resolutions 1533 and 1698.[97] The UN, in its Resolution 1857, called for international collaboration to prevent illicit transactions of raw materials from becoming sources of funding for local armed groups to step up their civil wars. [98] As a result, all Member States in the UN must now verify that their domestic importers, manufacturers, and consumers are aware of the origin of those minerals.[99] The UN further required Member States to urge manufacturers, importers, and consumers of Congolese mineral products to conduct due diligence regarding the origin of CMs and their suppliers under Resolution 1896.[100]

EICC Code of Conduct

In addition to the public or governmental initiatives urged by the UN, private actors such as NGOs and international trade associations have also encouraged their members to take necessary measures to address CM problems. One representative example is the CFSI, co-established by the EICC (the U.S. trade association) and GeSI (the European NGO), in order to provide relevant certifications, build up a database of certified smelters and re-

[94] S.C. Res. 1493, at ¶18, U.N. Doc. S/RES/1493 (Jul. 28, 2003).

[95] *Illegal Exploitation*, *supra* note 1, at 9-12.

[96] *Id.* at 11.

[97] *See generally* S.C. Res. 1533, U.N. Doc. S/RES/1533 (Mar. 12, 2004); S.C. Res. 1698, U.N. Doc. S/RES/1698 (Jul. 31, 2006).

[98] *Supra* note 5, at 6-7, 13, 15.

[99] *Id*. *Supra* note 5, at 6-7, 13, 15. *Id*.

[100] S.C. Res. 1896, at 14-16, U.N. Doc. S/RES/1896 (Nov. 30, 2009).

fineries, and help their members procure conflict-free minerals.[101] The EICC has further incorporated "Responsible Sourcing of Minerals" into the Electronic Industry Citizenship Coalition® (EICC®) Code of Conduct ("EICC Code of Conduct").[102] At present, more than 100 EICC members, many of which are large MNEs, voluntarily comply with the EICC Code of Conduct.[103] These organizations also require their first-tier suppliers to comply with this voluntary code in order to satisfy the EICC Code of Conduct's requirements.[104] Those EICC member businesses usually have transnational supply chains;[105] therefore their foreign suppliers, especially the

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[101] *See* the CFSI, *supra* note 7. *See also* Jeff Schwartz & Alexandrea Nelson, *Cost-Benefit Analysis and the Conflict Minerals Rule*, 68 ADMIN. L. REV. 287, 328 (2016) ("The Conflict Free Sourcing Initiative ('CFSI'), a non-governmental organization formed by affected industries, put together a survey that companies could use to ask their suppliers about where they obtained their conflict minerals").

[102] EICC, *The Electronic Industry Citizenship Coalition® (EICC®) Code of Conduct*, http://www.eiccoalition.org/media/docs/EICCCodeofConduct5_English.pdf (last visited Jul. 6, 2016)(on file with the authors). Under "Responsible Sourcing of Minerals," the EICC Code of Conduct (Version 5.0, 2014) indicates:

> Participants shall have a policy to reasonably assure that the tantalum, tin, tungsten and gold in the products they manufacture does not directly or indirectly finance or benefit armed groups that are perpetrators of serious human rights abuses in the Democratic Republic of the Congo or an adjoining country. Participants shall exercise due diligence on the source and chain of custody of these minerals and make their due diligence measures available to customers upon customer request.

Id. at 9. Since the EICC just rebranded itself as the Responsible Business Alliance (RBA) in October 2017 to mark its next phase, we can also find new versions of the EICC Code of Conduct (EICC Code of Conduct (Version 5.1, 2016) and RBA Code of Conduct (Version 6.0, 2018)), which all include the same "Responsible Sourcing of Minerals". RBA, *The RBA Code of Conduct Is a Set of Standards on Social, Environmental and Ethical Issues in the Electronics Industry Supply Chain*, http://www.responsiblebusiness.org/standards/code-of-conduct/ (last visited Nov. 26, 2017).

[103] *See* EICC/RBA, *Members*, http://www.responsiblebusiness.org/about/members/ (last visited Nov. 26, 2017).

[104] *Id.* ("In addition to [EICC/]RBA members, thousands of companies that are Tier 1 suppliers to those members are required to implement the [EICC/]RBA Code of Conduct") (alteration in original). However, the EICC Code of Conduct does not specify any sanctions and thus has to rely on market monitoring power; for example, "Microsoft, whose Xbox game system is assembled by Foxconn, said it has a code of conduct that suppliers are required to meet, including factory inspections, or they risk losing contracts." Adam Satariano & Peter Burrows, *No Company Follows Apple's Expanded China Factory Audits*, BLOOMBERG BUSINESSWEEK (Feb. 26, 2012), https://www.bloomberg.com/news/articles/2012-02-26/no-company-follows-apples-expanded-china-factory-audits.

[105] *See, e.g.,* Jason Dedrick et al., *Who Profits from Innovation in Global Value Chains?: A Study of the Ipod and Notebook PCs*, 19 INDUS. & CORP. CHANGE 81, 91-93 (2009); Yuqing Xing & Neal Detert, *How iPhone Widens the US Trade Deficits with PRC*, 10-21 GRIPS POLICY RESEARCH CENTER DISCUSSION PAPER 2-3 (Nov. 2010).

first-tier suppliers, may also face pressure from EICC buyers to abide by the rule of "Responsible Sourcing of Minerals" under the EICC Code of Conduct even if the suppliers themselves are not EICC members.

Section 1502 of the Dodd-Frank Act in the United States

Sec. 1502 of the Dodd-Frank Act is another example of CM rules that are public or government-mandated standards under U.S. law. Under Dodd-Frank, however, several articles are designed especially for other public interests. For example, Sec. 1502 was enacted "to bring transparency to supply chains in so-called 'conflict minerals.'"[106]

Before the Dodd-Frank Act, the U.S. Congress made several legislative attempts to require public companies to disclose their use of CMs, including the two respective proposals of the Conflict Minerals Trade Act[107] and the Congo Conflict Minerals Act of 2009, both of which were proposed in 2009.[108] The Congo Conflict Minerals Act of 2009 clearly referred to the measures taken by the UN, the EICC, and GeSI as important reasons for proposing the bill.[109] Although neither proposal was actually passed by Congress, these legislative efforts directly led to the creation of Sec. 1502, a humanitarian and CSR clause less relevant to the Dodd-Frank Act focused on financial reform.[110]

Sec. 1502 contains five primary paragraphs including paragraph (b) to amend Sec. 13 of the Securities Exchange Act of 1934 (the "Securities Exchange Act"), which adds a new disclosure requirement of paragraph (p) under the Securities Exchange Act.[111] This new disclosure provision authorizes and requires the SEC to draft a detailed rule to regulate CM disclosures, requiring annual disclosures of CM use from U.S. public companies (under paragraph (p)(1)(A)). U.S. companies must disclose whether CMs are potentially used in their manufacturing, and the efforts they make in order to clarify the source of those materials (under paragraph (p)(1)(A)(ii)). Sec. 1502 also defined "conflict minerals" in paragraph (e) as basically consisting of coltan, gold, cassiterite, and wolframite, if their production funds armed groups in the Democratic Republic of the Congo or its adjacent countries. Therefore, under Sec. 1502, enterprises that are issuers under the Securities Exchanges Act are obliged to investigate and monitor their production chains. The SEC later published Rule 13p-1 in 2012 in accordance with Sec. 1502 to further clarify the requirements for industries to follow

[106] Schwartz & Nelson, *supra* note 101, at 289.

[107] Conflict Minerals Trade Act, H.R. 4128. 111th Cong. (2009).

[108] Celia R. Taylor, *Conflict Minerals and SEC Disclosure Regulation*, HARVARD BUS. L. REV. ONLINE 105, 108 (2012).

[109] Congo Conflict Minerals Act of 2009, S. 891, 111th Cong. § 2 (2009).

[110] Taylor, *supra* note 108, at 108.

[111] *See* Sec. 1502, *supra* note 92.

(the "SEC Final Rule").[112] The nuances of the SEC Final Rule are not directly relevant to this article but the disclosure procedure covered that issuers have to abide by can be summarized as follows:

> Just as the legislation instructs, under the SEC rules the first step is for companies to determine whether conflict minerals are necessary to their products. If not, companies need not file anything. If a company does make use of conflict minerals, however, it is required to conduct a so-called "reasonable country of origin inquiry" (an "RCOI") with respect thereto. If the RCOI does not reveal the presence of conflict minerals from the Congo region, the company need only file a Form SD, which must "briefly" describe the company's RCOI process and its conclusion. The company also needs to post this information on its website. If the RCOI reveals that the company is sourcing conflict minerals from the Congo region or gives the company reason to believe that this is the case, then the company is required to conduct due diligence "on the source and chain of custody" of such minerals. If, based on its due diligence, the company determines that its minerals are *not* actually from the Congo region, then it must briefly describe its due-diligence efforts, its RCOI, and its conclusion both on a Form SD and its website.[113]

This legislation subsequently provoked several controversies: an important issue is whether it is appropriate to have a legal provision that seems to be a pure CSR mandate under securities laws, requiring companies "to audit their supply chains as vigorously as they are required to audit their financials."[114] This may indicate that the SEC now bears more responsibility for and power to meet the provision's humanitarian and public policy

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[112] Securities and Exchange Commission, Press Release, *SEC Adopts Rule for Disclosing Use of Conflict Minerals* (Aug. 22, 2012), http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171484002. For a flowchart summary and detailed explanation of the SEC Final Rule, *see* Conflict Minerals, 77 Fed. Reg. 56,274, 56,283, 56,285-333 (Sept. 12, 2012) (codified at 17 C.F.R. pts. 204.13p-1 & 249b.400).

[113] Jeff Schwartz, *The Conflict Minerals Experiment*, 6 HARV. BUS. L. REV. 129, 136 (2016) (footnote omitted). The SEC instructed public companies to make their due diligence efforts by conforming to such "a nationally or internationally recognized due-diligence framework" as the OECD's *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas* ("OECD Guidance"). Conflict Minerals, 77 Fed. Reg. at 56,281 n.55; OECD, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (2nd ed. 2013), *available at* http://www.oecd.org/corporate/mne/GuidanceEdition2.pdf. As such due diligence efforts must be audited, the auditor's role is to "assess whether the auditee is complying with the OECD Guidance and accurately describing its efforts in its [Conflict Minerals Report]." Schwartz & Nelson, *supra* note 101, at 295 (alteration in original).

[114] David M. Lynn, *The Dodd-Frank Act's Specialized Corporate Disclosure: Using the Securities Laws to Address Public Policy Issues*, 6 J. BUS. & TECH. L. 327, 330 (2011).

aims.[115] In a pragmatic sense, whether the goal of the CM rules could be accomplished as designed remains a question, but costs for disclosure and compliance are thought to be higher than the SEC estimated.[116] Moreover, soon after the passage of the Dodd-Frank Act, even the EICC and GeSI, both industry trade groups, expressed concern that the transparency of supply chains is not as highly prioritized as CM rules envisioned in the rule making.[117] The uncertainty of difficulty in disclosures lead to further concerns over threat of Rule 10b-5 liability under security laws.[118]

Another intriguing issue is that both the violence in the Democratic Republic of the Congo that Sec. 1502 was designed to curb and the foreign suppliers who would be pressured to comply with the CM rules are respectively taking place and located outside the United States.[119] In other words, Congress envisions that if U.S. businesses are to satisfy the disclosure requirements, an extraterritorial goal will be met indirectly to regulate an entire global supply chain.[120] Apparently, according to the purpose of Sec. 1502, this extraterritorial effect is desirable to legislators; as demonstrated in the Taiwanese case study, it may be an indirect cause of legal transplantation of CM rules into Taiwan through private supply chain channels.[121]

The filing results from the first-year disclosure effort may respond to the above query in part. After the first disclosure deadline, a study demonstrated statistics from the filings that around 1,319 companies have filed Form SDs, fewer than the SEC expected.[122] The industries falling within the

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[115] *Id*.

[116] Karen E. Woody, *Conflict Minerals Legislation: The SEC's New Role as Diplomatic and Humanitarian Watchdog*, 81 FORDHAM L. REV. 1315, 1315, 1334 (2012).

[117] *Id.* at 1335.

[118] *Id.* at 1338.

[119] Woody, *supra* note 116, at 1342; Cafaggi, *supra* note 84 at 1568–70.

[120] Woody, *supra* note 116, at 1342. Under *"Conflict Minerals Legislation: The SEC's New Role as Diplomatic and Humanitarian Watchdog,"* Congress adopted an indirect approach to assert its extraterritorial jurisdiction. Specifically,

> [e]xtraterritorial jurisdiction of section 1502 is indirect in that foreign firms not registered on an American exchange, and therefore not subject to the jurisdiction of the SEC, may be forced to comply with the provision because they are part of a supply chain in which the final product is manufactured by an issuing company. Although outside the reach of any SEC disclosure requirement or liability scheme, a foreign company may feel the pressure from an issuing company to have an entire supply chain in compliance with section 1502, which may result in foreign companies rising to meet the standard required by the provision despite not facing any similar requirements in their home jurisdiction.

Woody, *supra* note 116, at 1342.

[121] *See infra* Part III.

[122] Schwartz, *supra* note 113, at 144.

CM rules' scope mainly include: (1) Semiconductors and Related Devices; (2) Electro-medical and Electro-therapeutic Apparatuses; (3) Motor Vehicle Parts and Accessories; (4) Radio and TV Broadcasting and Communications Equipment; (5) Surgical and Medical Instruments and Apparatuses; (6) Services-Prepackaged Software; (7) Pharmaceutical Preparations; (8) Computer Communications Equipment; and (9) Miscellaneous Electrical Machinery, Equipment, and Supplies.[123] Among these businesses, almost seventy-five percent of those who further filed Conflict Minerals Reports in addition to their Form SDs mentioned that they had to request information from their suppliers; however, this was not highly satisfactory.[124] A handful of the reports disclosed the number of CM suppliers, which ranged between two to more than 40,000, with a median of 510; these figures show the extent to which the supply chains are fragmented, and global buyers rely on their suppliers to offer information to the SEC.[125] Another interesting phenomenon mentioned in the study is how the CFSI audit program has significantly lowered the cost of meeting the disclosure requirements for U.S. issuers by building up a database for certified smelters and refineries.[126] Nonetheless, the cost of CFSI audits is quite high for smelters and refineries, highlighting another problem that should not be omitted in the future.[127] At any rate, the aforementioned observation may reflect that the third-party certification or audit process does play a role in promoting compliance with the state or government-mandated laws for CM disclosure.[128]

Summary

This article is intended to illustrate the TPR or transnational private governance of CSR norms through global supply chains in general and to test whether the U.S. legislators' expected and desired extraterritorial goal of Sec. 1502 to indirectly regulate an entire global supply chain can be met in particular. Using the Taiwanese case study presented in Part III, we will explore the process of how the following two distinct types of CM rules might have been transplanted into Taiwan through the private channel of supply chains: public government-mandated CSR standards under the Dodd-Frank Act, and private voluntary CSR standards written by the EICC.

Although Taiwanese industries do not directly face any similar domestic rules or requirements on CM disclosures, because Taiwan's high-tech industries have been very much involved in transnational transactions and outsourcing, they may perform a crucial role in the legal transplantation of

[123] *Id.* at 145.
[124] *Id.* at 150.
[125] *Id.* at 150-51.
[126] *Id.* at 173-74.
[127] *Id.* at 169.
[128] *See supra* Part I.

CM rules through global supply chains. In addition to those Taiwanese firms that are already EICC members[129] or are listed on the U.S. stock market so as to become public issuers (and are thus subject to the jurisdiction of the SEC as well as Sec. 1502),[130] other companies may also need to comply with related CM rules in that they are part of a supply chain where final products are manufactured by a U.S. issuer subject to Sec. 1502 under securities laws, or that they may feel pressure from such voluntary rules as the EICC Code of Conduct owing to their buyers (who might be EICC members and thus form an entire supply chain, in compliance with this private standard). Obviously, there are a certain number of Taiwanese suppliers in the electronics industry who have already voluntarily declared that they do not use CMs within their supply chains or have made such disclosures on their websites.[131]

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[129] *See* EICC, *supra* note 103. For example, Hon Hai Precision Industry Company Limited ("Hon Hai," also as known as Foxconn) is a renowned high-tech company incorporated in Taiwan. In 2005, Foxconn "[b]ecame a member of Electronic Industry Code of Conduct (EICC), dedicated to promoting corporate social and environmental responsibilities (hereinafter referred to as SER)." *See* Hon Hai/*Company Milestones*, FOXCONN Technology Group, *Company Milestones*, TECH. GRP., http://www.foxconn.com/GroupProfile_En/CompanyMilestones.html (last visited Jul. 8, 2016). As discussed in Part I.C, Foxconn is Apple Inc.'s main supplier; although it is headquartered in Taiwan, its major factories are located in China.

[130] Taiwan Semiconductor Manufacturing Company, Ltd. (TSMC) is also an EICC member. *See* EICC, *supra* note 103. TSMC securities are registered with the SEC and listed on the New York Stock Exchange as well. *Corporate Governance*, TAIWAN SEMICONDUCTOR Manufacturing Company Limited, *Corporate Governance*,MFG. CO. LTD., http://www.tsmc.com/english/investorRelations/corporate_governance.htm (last visited Jul. 8, 2016).

[131] For example, Sunrex Technology Co., Ltd. (Sunrex) is a laptop computer keyboard manufacturer listed in the Taiwan Stock Exchange. *Company Overview*, SUNREX TechnologyTECH. CO., LTD., *Company Overview*, http://www.sunrex.com.tw/en/about-detail.php?id=5 (last visited Jul. 15, 2016). Sunrex has published a "Statement of Prohibition Regarding Usage of Metals from Congo's Illegal Mines" on its website, emphasizing that:

> The social and environmental problems caused by Congo's illegal mining areas have attracted the attention of Sunrex's customers. In response to customer demands and to fulfill our corporate social and environmental responsibilities, Sunrex has requested that its suppliers from the metals supply chain bear the following responsibilities: 01. Do not use metals from illegal mines or mines where mining operations are performed under poor working conditions. 02. Request upstream suppliers to not use metals from illegal mines in the Democratic Republic of Congo. 03. Look back on all products that contain "blood mineral" metals, such as gold (Au), palladium (Pd), tantalum (Ta), tin (Sn), and tungsten (W), to identify the mining areas where these metals came from. 04. Work with Sunrex and Sunrex's customers to investigate the source of metals to ensure that metals originating from illegal mining areas are not used.

Sunrex Technology*Conflict Minerals*, SUNREX TECH. CO., LTD., http://www.sunrex.com.tw/en/csr-detail.php?id=4 (last visited Jul. 15, 2016).

IV. CONFLICT MINERALS DISCLOSURES IN GLOBAL SUPPLY CHAINS: THE CASE OF TAIWAN

According to the TPR theory,[132] some Taiwanese industries may be examples of private actors under its conceptual framework. Also, if we take into account the role played by Taiwanese manufacturers, transnational supply contracts may become a channel for voluntary codes of conduct or foreign government-mandated laws to transfer into Taiwan, exerting influences on Taiwanese manufacturers even without formal legal transplantation of CSR standards such as CM rules initiated by the government. Therefore, the aforementioned CM rules, whether voluntary or foreign-government-mandated, may also generate a kind of "legal transplant" effect through supply chains as a medium of TPR. In Part III.B below, this article takes Taiwanese industries as an example: Through surveying a portion of Taiwanese suppliers, we can understand whether they are currently engaging in CM investigations or disclosures, their incentives to abide by the CM rules, and the approaches they take. The Taiwanese case study would thus provide another example for legal transplantation through global supply chains in a globalized world.

Study Design

The main questions we seek to resolve through this empirical study are: 1. In terms of transplanted objects, although there are currently no government-mandated laws related to CMs in Taiwan, is any firm in Taiwan actually required to comply with any type of CM rules? 2. In terms of transplant processes or channels, have any legal transplants of CM rules through supply chains in Taiwan already occurred?

In order to answer these questions, we conducted a survey on a group of Taiwanese businesses using a pre-designed questionnaire. The questionnaires were filled out anonymously. Because there is a lack of similar studies on this specific topic (focusing on legal transplants through supply contracts with CM rules as an example), this study was designed as a pilot study. Due to limited resources, we did not take a census of the entirety of Taiwanese industries. We sent out the questionnaires with the help from the Supply Management Institute, Taiwan ("SMIT"), an NGO with members from many Taiwanese industries; SMIT helped us send the questionnaires to their trainee members.[133] Most of the individual respondents worked

[132] *See supra* Part I.

[133] The SMIT is an NGO whose main business is to provide professional training courses and supply management information for company procurement as well as to host related seminars or conferences. Since its creation in November 1992, "SMIT has trained more than 5,000 purchasing and supply management professionals." *About SMIT*, SUPPLY MANAGEMENT MGMT. INST., TAIWAN, http://www.smit.org.tw/EN/ugC_AboutUs.asp (last visited Jul. 17, 2016).

within the procurement department. In this approach, we also contacted respondents from a wide range of industries as well as in different positions within supply chains (e.g., upstream, midstream, or downstream). Before the formal survey, we did a pilot test on a group of targeted respondents in order to polish our questions.

Here is the main structure of the questionnaires. Including the core question "whether the business for which the respondents work is involved in conflict minerals investigations or disclosures and why," we designed several groups of questions as follows:

1. The position where the respondent's business was within the supply chain. We asked about the basic company information (industry, position in the supply chain, whether their shares are publicly listed in Taiwan or in the United States), in order to group respondents into categories and to gain a basic understanding of their positons located in the supply chains.
2. Whether the respondent took any actions related to CM disclosures, including merely conducting CM investigations or making follow-up disclosures in addition to the investigations, and, if so, the reason why the business in question did so. We also asked those businesses already taking relevant actions and the businesses that did not do so in order to understand the incentives/motivations for taking action (or deciding not to).
    A. For businesses conducting CM investigations: There are two groups of questions (although the grouping was not revealed in the questionnaires):
        i. The "incentive" group, including questions relevant to incentives to conduct CM investigations (e.g., whether they were required to by their buyers), and which applicable non-domestic rules were applied.
        ii. The "investigative approach" group, including questions relevant to how the respondent actually conducted CM investigations: whether there was any standard or methodology they applied, the personnel inside companies in charge of conducting CM investigations, etc.
    B. For businesses not yet conducting CM investigations: We asked why they did not do so and whether they might take action in the future.

The questions in the questionnaires were multiple choice, except for the final question, which was open for further opinions. Some questions had an "other" option, which was designed to identify any other applicable standards or investigative methodologies. The questionnaire is outlined in Table 2, while its complete content is presented in Appendix A.

Table 2: Outline of the Questionnaire

Section	**Questions in this section**
Background information (respondent—their companies)	Business scale, industries, core products, position in the supply chain (in respective industries), whether their shares are listed in the Taiwanese or U.S. stock markets
Background information (respondent—personally)	Position and duration of employment in the company
For businesses conducting CM investigations or taking other relevant actions	The "incentive" group: The time and the incentive for the business to conduct CM investigations, and any applicable government-mandated laws or transnational voluntary codes of conduct
	The "investigative approach" group: Company department in charge of CM investigations, the adopted investigative approach, personnel involved, methodologies applied, the main buyer's nationality, the time consumed during the first investigation, and any obstacles encountered
For businesses not yet conducting CM investigations	Main reason for not conducting a CM investigation, the reason for disclosure (albeit without CM investigation, if applicable), and the future possibility of conducting a CM investigation
Other opinions	Respondents may give any opinion on actions not included in the questionnaire

For the background information section, we referred to the classification of respective industries formulated by the Taiwan Stock Exchange and Taipei Exchange[134] to make a list to define the respective industries and illustrate businesses within the respective streams of supply chains, as shown in Table 3, from which the respondents could select. We grouped together those industries that were more likely to be associated with CMs. As to the "others" group, we were still able to see the distribution within industries according to respondents' answers of core products. As for the business size, we used the standard set by Taiwan's Ministry of Economic Affairs ("MOEA") to classify respondents into small- and medium-sized enterpris-

[134] *The Information Platform on Industrial Value Chains*, TAIWAN STOCK EXCH. & TAIPEI EXCH., http://ic.gretai.org.tw/ (last visited Nov. 7, 2015).

es ("SMEs") and non-SMEs.[135]

Table 3: Industry Classification

	Examples of businesses in respective industrial groups		
Industries	**Upstream**	**Midstream**	**Downstream**
A. Semi-conductors	IP or IC design	IC/wafer manufacturing, manufacturing process, testing facilities, and chemicals	Assembly and testing
B. PCBs	Materials, base materials, manufacturing process, and testing facilities	Base-plate manufacturing or assembly	N/A
C. Communication	Components manufacturing	N/A	Consumer products manufacturing
D. Computers	Manufacturing of Hardware (e.g., motherboards or/and disk drives),	N/A	Consumer products manufacturing

[135] *Zhong Xiao Qi Ye Ren Ding Biao Zhun (2009 Xiu Gai)* [*Standards for Identifying Small and Medium-sized Enterprises (2009 Revisions) (Taiwan)*], art. 2 (2009) [hereinafter *SME Standards*]. As we did the survey before the March 2015 amendment of *SME Standards*, we primarily applied the old pre-amendment version of *SME Standards* as follows:

> The term "SME" as used in the Standards shall mean an enterprise which has completed company registration or business registration in accordance with the requirements of the laws, and which conforms to the following standards: (1) The enterprise is an enterprise in the manufacturing, construction, mining or quarrying industry with either paid-in capital of NT$80 million or less, or fewer than 200 regular employees. (2) The enterprise is an enterprise in the industry other than any of those mentioned in the Sub-paragraph immediately above with either its sales revenue of NT$100 million or less in the previous year, or fewer than 100 regular employees.

Id.

	including electrical components such as passive components		
E. Flat panel display	Chemicals or components such as LEDs and touch-panels	Modules of touch panels, suppliers for manufacturing process and testing facilities	Consumer products manufacturing
F. Electric machinery	Components (e.g., hydraulic components)	N/A	Metal processing and machine manufacturing
G. Solar energy	Materials or silicon-wafer manufacturing	Solar batteries and modules manufacturing	Solar plant/ power-generating equipment
H. Others	To be answered by the respondent		

Before formally sending the questionnaires out, we did a pilot test on a small group of respondents from SMIT's members in order to see if the design and wording of the questionnaires fit our purpose. We modified the questions and information provided in the questionnaires according to the results of the pilot test, including the industry classification as shown in Table 3, which is the final version. We mainly modified descriptions for respondents to more easily locate their groups.

Analysis of Survey Results

In this part we attempted an analysis of narrative statistics based on the survey data we collected from the respondents.[136] We sent out online questionnaires to 1,200 respondents, set the collection period as one month, and received a final response rate of approximately 15.4 percent (i.e., 185 respondents replied to our questions). What follows are the survey results from the respondents.

[136]Because we were only concerned about those companies that were represented in each response, although we did ask some questions with respect to the personal information of the individuals who filled out the questionnaires, in the current analysis the term "respondent" generally denotes the company represented in each response.

Responses on the Current Status of CM Actions

The first group of questions to be answered was whether any of the respondents are currently taking any actions related to the issue of CMs. The responses are shown in Table 4.

Table 4: The Responses Regarding Taking CM-Related Actions.

	Taking any action (including conducting CM investigations without follow-up disclosure and making relevant disclosures in addition to *ex ante* investigations)	**Not conducting CM investigations (including making disclosures without *ex ante* investigations and not taking any actions at all)**
U.S. listed	12 (21%)	9 (7%)
Others (i.e., non-U.S.-listed)	46 (79%)	118 (93%)
All	58 (100%)	127 (100%)

Among all the responses, 58 respondents (31.4 percent) answered that their companies have carried out CM investigations to some extent; this group can be further divided into those that conducted investigations and then publicly disclosed CM related information and those that only conducted CM investigations without follow-up disclosure. The remaining two-thirds of the respondents have not conducted any CM investigations at all, which will be discussed later in this part.[137]

For the purposes of the study, we mainly focused on the responses from Taiwanese businesses that neither listed their shares nor were public issuers on the U.S. stock market; this group of 46 out of the 58 respondents answered that the companies have been taking actions, including CM investigations or disclosures. As discussed throughout this article, this group is referred to as the "action group." The reason for focusing on this group of 46 respondents was that theoretically they were not directly subject to any state law requiring them to carry out CM due diligence or disclosure, so their incentives to obey relevant CM rules turned out to be more intriguing. The incentives and practices of actions related to CMs taken by the action

[137] *See infra* Part III.

group of 46 respondents (i.e., the cell highlighted in grey in Table 4) were then analyzed from the perspective of legal transplantation through private contracting; they may account for two of the four categories under the legal transplant matrix of CSR standards as introduced in Table 1 (viz. Categories 2 and 4).[138]

General Characteristics of the Respondents

Despite the limitations of the study approach,[139] we tried to compare the characteristics of the groups that conducted CM investigations (the action group) with those of the group that did not (the no-action group). Numbers and proportions of industries within each group are shown in Table 5. For the action group, the single largest group was the computer industry, comprising about 29.3 percent; electric machinery was the second, comprising about 19 percent; the third and fourth were semiconductors and PCBs, comprising 13.8 and 12.1 percent, respectively. Although the numbers of these "top" industries were not necessarily larger than their counterparts in the no-action group, these proportions in the action group still showed that these industries were more likely to take action, compared to the other industries from which the respondents came. Eleven respondents were in the "others" group, distributed across different industries; according to the core products they said that they marketed or produced, they came from industries such as tourist/amusement enterprises, other manufacturing industries, retail, education, aviation, transportation, medicine, and medical equipment.

When it came to business size, Table 6 shows that in the action group, 32.8 percent of the respondents were SMEs, while 67.2 percent were larger companies. In contrast, in the no-action group, there was less difference in size between larger companies and SMEs, which were 48 percent and 52 percent, respectively. This suggests that, among the respondents, larger companies are more likely to take CM-related actions, regardless of the reason.

[138] *See supra* Part I.
[139] *See infra* Part III.

Table 5: Numbers and Proportions of Industries within the Same Group

	Action group		**No-action group**	
Industry	**Responses**	**Proportion**	**Responses**	**Proportion**
A. Semi-conductors	8	13.8%	10	7.9%
B. PCBs	7	12.1%	4	3.1%
C. Communica-tion	1	1.7%	1	0.8%
D. Computers	17	29.3%	15	11.8%
E. Flat panel displays	2	3.4%	3	2.4%
F. Electric ma-chinery	11	19.0%	16	12.6%
G. Solar energy	1	1.7%	9	7.1%
H. Others	11	19.0%	69	54.3%
Sum	58	100.0%	127	100.0%

Table 6: The Business Sizes of the Respondents

	Action group		**No-action group**	
Scale	**Responses**	**Proportion**	**Responses**	**Proportion**
SMEs	19	32.8%	66	52.0%
Others (i.e., Larger entities)	39	67.2%	61	48.0%
Sum	58	100.0%	127	100.0%

After this preliminary analysis, we turned our focus to the action group to further explore their incentives for and approaches to conducting CM investigations or taking further actions. This revealed any traits illustrating the legal transplantation through global supply chains.

Incentives for Conducting CM Investigations

The "incentive" group of questions included Question 3 under Section II of the questionnaire, "The General Approach to 'Conflict Minerals Disclosure' in Your Company" (the incentive for conducting CM investigations for the first time) and the subordinate questions following Question 3,

"What were the laws or rules to follow, if any?" (Question 3a), "Which country was the major buyer from?" (Question 3b), "If the investigations were required by the buyer, did the buyer offer any assistance?" (Question 3c), and "Were these requirements written into supply contracts?" (Question 3d). The main goal of the aforementioned questions in this group was to understand the incentive for the action group to take such CM-related actions and whether and how the legal transplantation of CM rules such as government-mandated laws (e.g., the U.S. laws, standing for Category 2 in Table 1) or transnational voluntary codes of conduct (e.g., the EICC Code of Conduct, representing Category 4 in Table 1) occurred.[140]

As shown in Table 7 below, we focused on the incentives and practices of CM-related actions taken by the action group of 46 respondents who were not U.S.-listed (i.e., the cell highlighted in grey in Table 4).[141] Within this non-U.S.-listed action group, the most common incentive to take action to comply with CM rules was "being directly required to by their buyers," as reported by about 65.2 percent of the respondents (30 responses). Other respondents reported that they conducted CM investigations to comply with standards they had adopted themselves long before (6.5 percent); to follow the market trend of their buyers in advance (21.8 percent); or to take the initiative without being required to or following a trend (6.5 percent). As for the standards with which they complied, almost all respondents answered either the EICC rules or U.S. laws (i.e., Sec. 1502). Specifically, for the respondents whose incentive was "to comply with standards they had adopted themselves long before," two respondents complied with EICC rules and one with U.S. law (to which they were not legally subject). For those whose incentive was to "follow the market trend of their buyers in advance," eight respondents complied with EICC rules and two with U.S. laws. Furthermore, for those whose incentive was "being directly required to by their buyers," 19 respondents complied with EICC rules and 11 with U.S. laws.

[140] *See supra* Part I.
[141] *See supra* Part III.

Table 7: The Incentives for the Non-U.S.-Listed Action Group

Incentive	Number of responses			
	EICC	**U.S. laws**	**Others**	**Sum**
Investigating to comply with standards long adopted by themselves	2 (6.9%)	1 (7.1%)	0 (0%)	3 (6.5%)
Investigating to follow market trend of buyers in advance	8 (27.6%)	2 (14.3%)	0 (0%)	10 (21.8%)
Being directly required to by their buyers	19 (65.5%)	11 (78.6%)	0 (0%)	30 (65.2%)
Taking initiatives in investigations without being required to or following the trend	N/A	N/A	3 (100.0%)	3 (6.5%)
Sum	29 (100.0%)	14 (100.0%)	3 (100.0%)	46 (100.0%)

According to the responses shown in Table 7, the most common motivation for the respondents to conduct CM investigations was "being directly required to by their buyers"; the EICC rules were also more commonly followed than Sec. 1502. This result might be due to the fact that the main industries influenced by CM rules (such as electronics and relevant industries) are possibly EICC members themselves, or suppliers of EICC members, thus making it easier for those buyers to continue applying the EICC Code of Conduct when requiring Taiwanese suppliers to conduct CM investigations. Obviously, EICC rules have already become the more prevalent standard for the respondents, even though they are only a set of transnational voluntary codes.

In terms of the nationalities of their buyers for the respondents' core products, the results for the non-U.S.-listed action group are shown in Table 8.

Table 8: Nationalities of the Buyers of the Non-U.S.-Listed Action Group

	Nationalities of the buyers for the respondents' core products		
Incentives	**Foreign**	**Taiwanese**	**Sum**
Investigating to follow the market trend of their buyers in advance	2 (6.9%)	0	2 (6.2%)
Being required to by their buyers	27 (93.1%)	3 (100%)	30 (93.8%)
Sum	29 (100.0%)	3 (100%)	32 (100%)

Table 8 shows that for those directly required by their buyers to conduct CM investigations, or those actively doing so to follow the market trend of their buyers in advance, most of their buyers were foreign businesses.

Overall, according to the responses from the non-U.S.-listed action group, a large proportion of them took CM-related actions to meet their buyers' requests; also, most of their buyers were foreign businesses. These responses imply that the respondents from the non-U.S.-listed action group conducted CM investigations under pressure passed on through supply chains, resulting in Taiwanese companies actually complying with CM rules despite not actually having to do so initially. Under the legal transplant matrix of CSR standards (as shown in Table 1),[142] if these Taiwanese companies complied with Sec. 1502, then this could be an example of Category 2 (such public standards as government-mandated laws transposing through supply contracts). For those complying with the EICC Code of Conduct, this could illustrate Category 4 (private, voluntary standards transferring through supply contracts).

With regard to how those respondents as suppliers interacted with their buyers, in the questionnaires we added further questions for those whose incentives were "directly required to by their buyers" (the 30 respondents out of the non-U.S.-listed action group). These questions were designed to give us a basic understanding of the interactions between suppliers and buyers, in order to make comparisons with prior studies.[143]

The answers from the 30 respondents from the non-U.S.-listed action group that were required by their buyers to conduct CM investigations are

[142] *See supra* Part I.
[143] *See supra* Part I.

listed in Table 9 below. We found that the most common method of requiring compliance was to put the requirements into supply contracts; this result is a little bit different from that of a past study that suggested that requirements expressed in "soft" form or informal arrangements were common.[144] However, it is also true that not all suppliers were strictly and expressly required to conduct CM investigations.

Table 9: Whether Requirements on CM Investigations Were Written into Supply Contracts

Form of requirements	**Respondents**
No, only orally required	4 (1.3%)
Especially written into relevant contracts	16 (53.3%)
Not clear	8 (26.7%)
Not able to answer	2 (6.7%)
Sum	30 (100.0%)

As shown in Table 10, for those 30 respondents from the non-U.S.-listed action group that were required by their buyers to conduct CM investigations, as to the question of whether they received any help from their buyers, most of the responses (23 responses) indicated that the buyers provided technical documents for reference; one of them said their buyer provided useful training; two of them said the buyers provided a great deal of practical assistance during investigations; and seven respondents stated that they did not receive any form of help at all.

Table 10: Whether the Buyers Offered Any Support in CM Investigations[145]

The extent of support	**Respondents**
Not at all	7
The buyers provided technical documents for reference	23
The buyers provided useful training	1
The buyers provided much practical assistance during investigations	2

Overall, some buyers provided support in CM investigations to some extent, but it was more common for them to offer technical documents for

[144] McBarnet & Kurkchiyan, *supra* note 73, at 68-70.

[145] With regard to this question, the respondents were permitted to choose plural answers, and so we have not provided percentages for each response.

reference only. For those respondents surveyed in Table 10, it was not common for their buyers to cooperate with suppliers in conducting CM investigations intensively. This result could be a supplement to actual practices of CM investigations.

Investigative Approaches

The questions dealing with the investigative approaches taken by the action group start with Question 4. This set of questions provided additional information about actual investigative practices.

Investigative Tools

Question 4 in the questionnaire (please see the Appendix) asked what tools were to be adopted, and Question 4a asked why the respondents had adopted these tools in CM investigations. The reason for these questions is that we supposed the methodologies underlying more frequently used tools would probably form a set of CM-related standards to follow in the future.[146] The results are shown in Table 11. The most popular tool for CM investigations seems to be the toolkit devised by the EICC. However, some suppliers also developed their own tools rather than relying on general measures.

As for the reasons to adopt the tools shown in Table 12, the most common answer was "being designated by the buyers"; next was "starting to adopt tools themselves after being required to conduct CM investigations" and then "complying by using currently adopted tools." This result shows that it might be common for buyers to directly designate the tools to be used. This seems to be understandable if we take into account that the most common incentive for those respondents to take CM-related actions was "being directly required to by their buyers," as shown in Table 7.[147] Therefore, it can be inferred that the investigative tools directly designated by the buyers are also passed on through supply chains. In addition, Table 11 might suggest that the EICC-devised toolkit was adopted more prevalently than the OECD Guidance, which the SEC recommended to U.S. publicly traded companies under Sec. 1502.[148] This phenomenon is similar to the case demonstrated in Table 7, where respondents were more likely to follow EICC rules than Sec. 1502. Overall, this further indicates that private CM standards written by industries themselves (such as the EICC Code of Conduct and its investigative toolkit) in a bottom-up approach may prove

[146] As discussed above in Part II, even though CM rules require disclosure by regulated companies about the use of 3TG minerals in their manufacturing processes, there is still room for the regulated to choose actual tools or methodologies in conducting CM investigations.

[147] *See supra* Part III.

[148] *See supra* Part II.

more popular than public standards such as state laws enacted by a foreign government (such as Sec. 1502 and the OECD Guidance suggested by the SEC) in a top-down approach.

Table 11: Tools Adopted

Tools or methodologies	**Respondents**
EICC-related investigative tools	30 (65.2%)
OECD Due Diligence Guidance[149]	4 (8.7%)
Self-devised tools	9 (19.6%)
Others	3 (6.5%)
Sum	46 (100%)

Table 12: Reasons for Adoption

Reasons	**Respondents**
Complying by using currently adopted tools	10 (21.7%)
Starting to adopt tools themselves after being required to conduct CM investigations	13 (28.3%)
Being designated by the buyers	23 (50.0%)
Sum	46 (100%)

Investigative Practices

This group of questions included Questions 5 and 7–10. The questions in this group were designed to give us a better understanding of CM investigative practices and some knowledge of the costs of complying with CM rules.

We first asked those 46 respondents from the non-U.S.-listed action group[150] whether they did so annually; their answers are shown in Table 13 below. Most respondents in our survey have conducted CM investigations, but few did it annually. This is probably due to the few changes in their manufacturing processes.

[149] As discussed in Part II.C, the SEC suggested that U.S. issuing companies concentrate their due diligence efforts by conforming to the OECD Guidance. Therefore, one of the options enumerated in Table 11 is the OECD Guidance.

[150] *See supra* Part III.

Table 13: Were CM Investigations Repeated Annually?

Repeated annually?	**Respondents**
Yes	9 (20%)
CM investigations are repeated but not conducted annually	23 (51.1%)
No, the same set of data previously collected was used again	13 (28.9%)
Sum[151]	45 (100%)

When it comes to how they carried out CM investigations, the most common answer, as shown in Table 14 below, was to conduct CM investigations by employees within the company themselves, instead of seeking professional support from outside the company. However, as shown in Table 15 below, the most common way to satisfy the requirement to carry out CM investigations was to require their suppliers to report according to the required format of investigative tools.

The aforementioned phenomena suggest that most of the suppliers in the action group were not at the final end of the supply chains. Hence it could be less costly for them to pass on investigative tasks to their suppliers. However, this approach also implies that the requirements regarding CM investigations have been passed on through supply chains, meaning that CM rules could further influence respondents' suppliers even if they only supplied production materials to the respondents.

Table 14: The CM Investigative Approach (I)

Who conducted CM investigations?	**Respondents**
All conducted by employees within the company	39 (84.8%)
Working with third-party professionals, e.g. accounting firms	4 (8.7%)
Carried out by third-party professionals	3 (6.5%)
Sum	46 (100%)

[151] There should have been 46 responses, but because one respondent did not answer this question, we have counted only 45 responses here.

Table 15: The CM Investigative Approach (II)

Actual implementation	**Respondents**
Tracking all the information by the department in charge of conducting CM investigations	2 (4.3%)
Only requesting the information from the suppliers	39 (84.8%)
Both	4 (8.7%)
Others	1 (2.2%)
Sum	46 (100)

Tables 16 and 17 (as asked in Questions 8 and 8a, respectively) report which department within a company is responsible for conducting CM investigations and how they do so. The data collected from the respondents indicated that most would not continually assign personnel exclusively for CM investigations and that the investigations were mostly carried out by the departments of procurement and supply chain management. Possibly because these two departments are on the frontline in terms of communicating with their own suppliers, they are assigned the responsibility of addressing CM issues.

Table 16: Whether There Are Personnel Exclusively Assigned for CM Investigations

Personnel Exclusively Assigned	**Respondents**
Yes, and CM investigations are continually conducted by the same personnel	17 (37.0%)
Yes, but on an ad hoc basis	14 (30.4%)
No	15 (32.6%)
Sum	46 (100%)

Table 17: The Department in Charge of Conducting CM Investigations

Department	**Respondents**
Procurement	19 (41.3%)
Supply chain management	9 (19.6%)
Legal	4 (8.7%)
CSR	5 (10.9%)
Others	9 (19.6%)
Sum	46 (100%)

Table 18: Time Spent on CM Investigations

Time spent	**Respondents**
1-2 weeks	6 (13%)
2-4 weeks	18 (39.1%)
4-8 weeks	14 (30.4%)
8 weeks or more	8 (17.4%)
Sum	46 (100%)

According to Table 18 (as asked in Question 9), in terms of the time spent if the assigned personnel were carrying out CM investigations for the first time, most respondents replied that it took more than two weeks to conduct CM investigations, or even more than four weeks. This might be because the information required is not ordinary information managed by most companies, and therefore more time is spent tracking down these details.

In Questions 10 and 6, respectively, we also asked about difficulties in conducting CM investigations (Table 19) and whether the investigations caused the respondents to institute any changes (Table 20). Their answers showed that the more common problems were the difficulties in tracking the origins of supplied materials and in obtaining cooperation from suppliers, and the lack of resources to complete the investigations. Compared with the survey results presented in Table 15 above—that the most common way to satisfy the requirements for carrying out CM investigations is to rely on suppliers to offer information—it is evident that the difficulty in obtaining cooperation from suppliers was a key issue affecting whether respondents completed the investigations. This result seems to be consistent with the US study that a deficiency in suppliers' cooperation in providing information is a common issue for US publicly traded companies that are subject to Sec. 1502.[152]

[152] Schwartz, *supra* note 113, at 150.

Table 19: Any Difficulties in Conducting CM Investigations[153]

Form of difficulties	**Responses**
Difficulty in obtaining cooperation from the suppliers	22
Lack of resources to complete the investigations	16
Difficulty in tracking the origins of supplied materials or the high cost of doing so	26
No special difficulties	12
Others	1

Table 20 presents the responses to the question of whether there would be any changes to the respondents' internal operation after CM investigations (as asked in Question 6 in the questionnaire). Although most respondents did not change their suppliers, they still required their suppliers to help them comply with CM rules in the future or indicated that they would modify their systems for supply chain management. These results suggest that the respondents' upstream suppliers still need to change their practices to meet their buyers' requests to help comply with CM rules, or work with their buyers to carry out CM investigations and disclosures. This could indicate that the regulatory effects of CM rules may continue being passed on through supply chains in the upstream direction.

Table 20: Any Changes to Internal Operation after CM Investigations[154]

Changes	**Responses**
Suppliers are unchanged, but will further be required to provide CM-free materials	29
Adjusting systems for supply chain management within the company	7
Providing more training on the CM issues	6
Suppliers changed	3
No changes	10
Others	0

[153] The respondents were permitted to choose plural answers for this question.
[154] The respondents were permitted to choose plural answers for this question.

The No Action Group

With regard to the group not conducting CM investigations, we asked why they did not take action and the possibility of future action. As shown in Table 4,[155] 127 respondents answered that they did not conduct any CM investigations at all. In the no-action group, however, three respondents answered that they just made disclosures without ex ante investigations (as asked in Question 11a). As we are more interested in why the respondents did not carry out any CM investigations at all, we excluded these three respondents from the statistics in Table 21, leaving 124 respondents' replies (as asked in Question 11).

Nevertheless, these three respondents who made disclosures without ex ante CM investigations replied that their products did not use any materials that involved CMs, and that this was why they did not carry out such investigations. This raised the question of why they still made the related disclosure (as asked in Question 11a). One replied that they did so because they were asked by the buyers to make nominal disclosures, while another stated that they did so merely to follow a previously adopted standard. These answers, albeit few in number, imply that even though businesses believe that their products do not involve CMs, they may still need to comply with CM rules to an extent.

Table 21 below summarizes the reasons why other respondents did not carry out CM investigations. The most common reason offered (no matter which industries the respondent was involved in) was never being required to do so. The second most common reason was that their products cannot contain CMs. However, five respondents said they would like to conduct the investigations but had no resources with which to do so. Among the respondents who cited "other reasons," one revealed that their suppliers were all large international buyers who had already made CM disclosures themselves. In other words, even though there were respondents that had not yet conducted any investigation, some of them actually felt pressure to, but this pressure was not as strong as that placed on the action group.

[155] *See supra* Part III.

Table 21: Reasons for No Action

Reasons	**Respondents**
Never being required to conduct CM investigations	75 (60.5%)
The products cannot contain CMs	35 (28.2%)
Products could be CM-related but possessing no resources to conduct CM investigations	5 (4.0%)
Others	9 (7.3%)
Sum	124 (100%)

Research Limitations on Interpreting the Results

Although we tried our best to strike a balance between research resources and meaningful results, due to the limitation of the research design, we have to acknowledge that there may be more work to do if the results are to be generalizable to all Taiwanese industries. As we did not take a census of all Taiwanese industries, some of the results, e.g., the ratios of industries involved or the common reasons for taking CM-related actions, cannot be taken as representative of whole industries. The second limitation was that because we did not have a fully detailed analysis of the general characteristics of the respondents (e.g., the actual numbers of businesses in each industry for the 185 respondents), we were not able to directly compare the numbers and ratios we collected for whole industries in Taiwan. Neither were we able to determine if there was any difference between the respondents that replied to the questionnaires and those who did not; for example, there was no way to know if, had the former been more familiar with CM issues, they would have been more willing to answer the questionnaires than the latter.

Nonetheless, because the main goal of this article was to conduct a pilot or pioneering study to provide rudimentary evidence of the legal transplantation of CM rules of the two public and private types through private supply chain channels, the research limitations mentioned above might not constitute serious hindrances with regard to the main goal of this article.

Summary

Under the theoretical framework built with the role played by private governance in the context of the cross-border legal transplantation of CSR standards, Part III uses a Taiwanese case study to discuss the legal transplantation of CM rules (including government-mandated laws and transnational voluntary codes) through private contracting in a globalized world. This case study suggests a couple of noteworthy phenomena.

First, to address the concerns regarding CMs, there are two kinds of CM rules in play in regulating CM use: transnational voluntary codes, such

as the EICC Code of Conduct, and government-mandated laws, such as Sec. 1502 under the U.S. Dodd-Frank Act. The creation of both CM rules could be attributed to the promotion of such concerns by the UN and the OECD.[156]

Second, when it comes to regulatory influence on suppliers in global supply chains, Sec. 1502 and the SEC Final Rule are government-mandated laws, which can be really binding on U.S. issuing companies. As for U.S. buyers' suppliers in other jurisdictions or countries around the world, it is more common for them to act under compliance pressure from the EICC Code of Conduct or other voluntary soft rules. In other words, in the international market for CM rules, the EICC might perform a more active role than Sec. 1502, which was reflected in the Taiwanese case study, a majority of the respondents complied with the EICC, whether directly or indirectly.

Therefore, what distinguishes this article from previous work is that the Taiwanese case study could imply that Taiwanese suppliers complied with the CM rules developed by the EICC to a greater extent than those enacted under the Dodd-Frank Act (including the SEC Final Rule and the OECD Guidance, suggested by the SEC as a toolkit for carrying out due diligence). When it comes to adopting or implementing transnational CSR standards in suppliers' countries through private contracting in global supply chains, this study could suggest that private standards developed by the industries themselves or NGOs in a bottom-up approach might be more effective or widely acceptable than public or state laws enacted by a foreign government in a top-down approach. This might be proof that private standards can sometimes be more effective or widely acceptable in regulating MNEs when voluntary codes established by private organizations compete with public or regulatory laws.[157] It is also an illustration of transnational private governance of CSR standards in general, or private implementation and enforcement of CM rules under global supply chains in particular.

Furthermore, more than half of the respondents from the non-U.S.-listed action group answered that they adopted the investigative tools assigned by their buyers, and those tools might therefore constitute a quasi-standard followed widely within supply chains. This might suggest that the buyers, by designating investigative tools for their suppliers to use, could have the ability to decide the actual approach or methodology used to comply with CM rules in supply chains collectively.

Finally, most respondents from the non-U.S.-listed action group further required their own upstream suppliers to provide information to help meet their buyers' requirements in conducting CM investigations. In other words, these respondents might further pass on CM rules to other upstream

[156] *See supra* Part II.

[157] *See* Wielsch, *supra* note 54, at 1076-77.

Taiwanese or foreign suppliers, thus extending the regulatory reach of applicable CM rules along supply chains.

V. CONCLUSION

There are two significant findings in terms of the transplant process/channels and transplanted objects. First, as demonstrated in Table 1 (the matrix for the legal transplantation of CSR standards), the legal transplant literature typically focuses on legal transplants through public or governmental channels (i.e., Categories 1 and 3).[158] This article, however, deals with an emerging phenomenon: legal transplants through private contracting in global supply chains.[159] Private actors have transplanted a variety of private and public laws or standards across jurisdictions through private contracting over the last few decades. By looking into how Taiwanese suppliers have made transparency efforts to help their buyers comply with CM rules established by the transnational electronics industry themselves and by the U.S. government respectively, in this article we argue that CSR codes of conduct vividly exemplify this type of legal transplantation through private channels, such as contractual control in global supply chains (please see Categories 2 and 4 in Table 1). Specifically, by examining legal transplants through private contracting in a globalized world, this article assesses Taiwanese industries' compliance with these two types of CM rules. By exploring the compliance practices of Taiwanese suppliers through the use of questionnaires, we found that some Taiwanese companies have started to follow CM rules because of their supply contracts, which demonstrates that applicable CM rules have been transplanted into Taiwan through supply contracts even without formal legal transplantation initiated by the government.

Second, as for transplanted objects, the Taiwanese case study indicates that Taiwanese suppliers more often comply with CM rules developed by the EICC than those enacted under the Dodd-Frank Act. This finding indicates that private standards developed by industries themselves or NGOs in a bottom-up approach (please see Category 4 in Table 1) may be more effective or widely acceptable than public standards or state laws enacted by a foreign government in a top-down approach (please see Category 2 in Table 1) when it comes to adopting or implementing transnational CSR standards in suppliers' countries. This article proffers a theoretical analysis of how Taiwanese suppliers helped their buyers comply with the two kinds of CM rules, suggesting that private, soft rules might be accepted more easily or play a more viable regulatory role than public or state laws from buyers' countries in the context of transnational private governance or global gov-

[158] *See supra* Part I.

[159] This theme was also illustrated in Professor Li-wen Lin's article in 2009. *See generally* Lin, *supra* note 16.

ernance.

APPENDIX A: THE QUESTIONNAIRE

The electronic version of the questionnaire used in this study has been converted into the set of questions listed below, which are English translations of the original Chinese version.

I. Background Information	
1. Company information: Please provide us with information about your company	
(1) The industry and its main products (please refer to the Annex for industry classification on the final page)[160]	A. Semiconductors; B. Printed circuit boards ("PCBs"); C. Communications; D. Computers; E. Flat panel displays; F. Electric machinery; G. Solar energy; H. Others
	Main products [_____]
	It is in the [upstream], [midstream], or [downstream] of the industry
(2) Scale*	A. Small and medium-sized enterprises ("SMEs") B. Other larger companies
(3) Listed on Taiwanese stock market?	A. Listed in Taiwan Stock Exchange B. Listed in General Stock Board run by Taipei Exchange C. Neither
(4) Listed on the US stock market?	A. Yes B. No
2. Personal Information:	
(1) Which department in your company do you work for?	A. Procurement B. Supply chain management C. Legal D. CSR E. Other (please specify_____)
(2) Which of the following rules or laws are the **most** familiar to you?**	A. Conflict minerals ("CM") rules (Sec. 1502) under the Dodd-Frank Wall Street Reform and Consumer Protection Act B. The EICC Code of Conduct C. Neither D. Both are familiar
II. The General Approach to "Conflict Minerals Disclosure" in Your Company	

[160] The Annex listing industry classifications is included herein as Table 3, in Part III.

1. Has your company conducted CM investigations and disclosed the results on your website?	A. Investigated and disclosed B. Investigated but not disclosed C. Disclosed without conducting any investigations D. Neither
If your answer to Question 1 was "C" or "D", please jump to Question 11	
2. When did your company conduct its first CM investigation?	A. 2008 or before 2008 B. 2009 C. 2010 D. 2011 E. 2012 F. 2013 or after 2013
3. What was **the incentive** for your company to conduct CM investigations *for the first time*?	A. We were directly required to by our buyers B. Investigating to follow the market trend of our buyers in advance C. Investigating to comply with standards long adopted by ourselves D. To take the initiative in investigations without being required to or following the trend
3a. What were the laws or rules to follow, if any?	A. The EICC Code of Conduct B. Required to by the US SEC (that is, CM rules under the Dodd-Frank Wall Street Reform and Consumer Protection Act) C. Other international standards D. Other
3b. For your products involving CMs, in which country was the major buyer located?	A. The United States B. An EU Member State C. Japan D. Other (please specify _____)

* Definition of SMEs: according to the Standards for Identifying Small and Medium-sized Enterprises published by the Small and Medium-sized Enterprises Administration, Ministry of Economic Affairs, SMEs are defined as follows:

The enterprise is an enterprise in the manufacturing, construction, mining or quarrying industry with either paid-in capital of NT$80 million or less, or fewer than 200 regular employees.

The enterprise is an enterprise in an industry other than those men-

tioned in Subparagraph A above with either a sales revenue of NT$100 million or less in the previous year, or fewer than 100 regular employees.

** According to the definition under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, CMs referred to tantalum, tin, tungsten, and gold. The production of these minerals could originate in the Democratic Republic of the Congo and its adjacent countries. Transactions involving these minerals may potentially fund armed groups in these countries. These same minerals are defined under the EICC Code of Conduct.

Annex: Industry Classification