

11-19-2024

The Parts That Don't Glitter: A Comparative Analysis Between Switzerland and the United States on the Regulations of the Importation of Gold and Its Effect on Human Rights in Gold Mining Countries

Amanda Gomez
University of Miami School of Law

Follow this and additional works at: <https://repository.law.miami.edu/umicl>



Part of the [Antitrust and Trade Regulation Commons](#), [Comparative and Foreign Law Commons](#), [Human Rights Law Commons](#), and the [International Humanitarian Law Commons](#)

Recommended Citation

Amanda Gomez, *The Parts That Don't Glitter: A Comparative Analysis Between Switzerland and the United States on the Regulations of the Importation of Gold and Its Effect on Human Rights in Gold Mining Countries*, 32 U. MIA Int'l & Comp. L. Rev. 84 (2024)

Available at: <https://repository.law.miami.edu/umicl/vol32/iss1/5>

This Note is brought to you for free and open access by the Journals at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami International and Comparative Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact mperez@law.miami.edu, library@law.miami.edu.

**THE PARTS THAT DON'T GLITTER: A COMPARATIVE ANALYSIS
BETWEEN SWITZERLAND AND THE UNITED STATES ON THE
REGULATIONS OF THE IMPORTATION OF GOLD AND ITS EFFECT ON
HUMAN RIGHTS IN GOLD MINING COUNTRIES**

*Amanda Gomez**

This Note considers and compares rules and regulations Switzerland and the United States have placed on the trade and importation of gold. It explores the history of the gold trade which has led to its modern use and the negative implications that gold refining in Switzerland has on countries where gold may be illegally mined. Although some rules are in place in these gold mining countries, regulations upon the acceptance of gold may have an even greater impact on the gold supply chain and the human rights issues it affects. The United States and Swiss governments currently have some restrictions on gold importation, but this Note will look at the strength of these regulations and how they can or should be improved. Along with this, the Note will analyze the impact nongovernmental organizations have on the gold supply chain and if their oversight has a strong enough impact that reaches back to the first step of gold mining or if the governments are the actors that need to intervene the most.

| | |
|--|----|
| INTRODUCTION..... | 85 |
| I. HISTORY OF GOLD..... | 87 |
| A. THE COMPLEXITY OF THE GOLD SUPPLY CHAIN..... | 87 |
| B. THE MODERN USE OF GOLD | 89 |
| II. LAWS IN GOLD MINING COUNTRIES | 90 |
| A. THE EFFECT OF GOLD MINING ON HUMAN RIGHTS..... | 90 |
| B. THE WEAKNESS OF GOVERNMENT INTERVENTION IN GOLD MINING COUNTRIES | 93 |

* J.D. Candidate, Class of 2025. University of Miami School of Law. Staff Editor, International and Comparative Law Review. I would like to thank everyone in ICLR and my professors for helping me prepare this Note. Also, a very special thank you to my family and friends that have supported me throughout the writing process and during all of law school.

| | | |
|------|---|-----|
| III. | CURRENT REGULATIONS ON GOLD IMPORTATION..... | 95 |
| | A. A BRIEF BACKGROUND ON SWITZERLAND'S GOVERNMENT..... | 95 |
| | B. THE CURRENT ROLE THE GOVERNMENTS OF SWITZERLAND AND THE US..... | 96 |
| | 1. UNITED STATES..... | 96 |
| | 2. SWITZERLAND..... | 98 |
| IV. | INTERNATIONAL STANDARDS, NGOS & THE LACK OF ENFORCEMENT..... | 102 |
| | A. LONDON BULLION MARKET ASSOCIATION..... | 102 |
| | B. ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT..... | 103 |
| V. | POTENTIAL SOLUTION FOR THE REGULATION OF GOLD IMPORTING..... | 105 |
| | A. THE NEED FOR FURTHER GOVERNMENT INTERVENTION IN BOTH THE MINING AND IMPORTATION PHASES OF THE GOLD SUPPLY CHAIN..... | 105 |
| | B. EXPANDING THE IMPLEMENTATION OF INTERNATIONAL STANDARDS..... | 106 |
| | CONCLUSION..... | 108 |

INTRODUCTION

Is all that glitters really gold? The gold that comes from Switzerland might appear glittery from the outside, but at what cost? Switzerland is renowned for its top-of-the-line gold refineries, which process an estimated 70% of the world's gold.¹ Refineries such as Valcambi, PAMP, and Metalor, just to name a few, have intricate refining processes that leave the gold with near-perfect fineness, making it fit for luxury companies across the world.² Although the end result of a nearly perfect bar of gold sounds appealing, this Note will explore what happens before these refineries get their hands on the

¹ *A History of Swiss Gold: Refining, But Not Mining*, BULLION MAX (June 20, 2021), <https://www.bullionmax.com/kb/history-swiss-gold>.

² See *Precious Metal Refineries are the Link Between the Mines and the Finished Product*, SWISS GOLD SAFE, <https://swissgolddsafe.ch/en/additional-information/fundamentals-precious-metals/precious-metal-refineries> (last visited Jan. 16, 2024).

gold and the implications of gold regulations on human rights in countries where gold is mined.

The gold supply chain has many moving parts, but the most significant points are at the mining stage and the importation stage where the gold is received. Over the years, there have been studies and changes in the gold mining sector due to human rights and environmental issues that have occurred in these gold mining countries.³ Although actions have been taken to mitigate risks in the mining process, if importation is not regulated, issues will flow back down the chain and negatively affect mining countries. The supply chain is highly reactive, and any issues can have widespread effects.

There exist some regulations on the importation of gold, created by the United States and Swiss governments. For example, the U.S. government implemented the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) in 2010 to address conflict minerals in U.S. companies’ supply chains.⁴ While the Dodd-Frank Act touches upon gold as a conflict mineral, similar to some regulations in Switzerland, the governments do not seem to be the strongest enforcers of these rules. The question from here is, who will create sufficient regulations, and how will they be enforced for there to be an actual shift in the gold supply chain?

International standard regulators, such as the Organization for Economic Cooperation and Development (“OECD”) and non-governmental organizations (“NGOs”), may be the solution for this issue.⁵ However, are their resources enough to meet the regulatory needs of the supply chain? Many of these NGOs, such as the Human Rights Watch, highlight the inadequacies in the due diligence standards of the OECD and the London Bullion Market Association

³ See generally Mary E. Footer, *Shining Brightly: Human Rights and the Responsible Sourcing of Diamond and Gold Jewellery from High Risk and Conflict-Affected Areas*, 6 HUM. RTS. & INT’L LEGAL DISCOURSE 159 (2012) (detailing different case studies and examples of human rights and environmental issues in gold mining countries and their effects on the gold mining sector).

⁴ See Victoria Stork, *Conflict Minerals, Ineffective Regulations: Comparing International Guidelines to Remedy Dodd-Frank’s Inefficiencies*, 61 N.Y. L. SCH. L. REV. 429, 430 (2016).

⁵ See GOLD, *Responsible Minerals Initiative* (last visited on Sept. 19, 2024), <https://www.responsiblemineralsinitiative.org/minerals-due-diligence/gold/>.

("LBMA"), which lack strength due to their reliance on self-certification.⁶

In Part II, this Note will go further into describing the complexity of the gold supply chain and the trickle-down effect gold importation regulations has on miners' rights. Part III will take a look at some of the laws enacted by gold mining countries and how their inefficiencies affect the gold trade market. Part IV will expand on what regulations the United States and Switzerland have on the importation of gold and consider the strengths and possible enforcement issues. Part V will discuss some international trade standards and NGO regulations for gold trade and their impact on the supply chain. Finally, Part VI will detail some potential solutions for improving the regulation of gold importation by both governments and international standards.

I. HISTORY OF GOLD

A. *The Complexity of the Gold Supply Chain*

For centuries, gold has been and will continue to be a commodity the world seeks for wealth, status, business, and use. It was one of the first minerals to be processed and continues to be among the most coveted today.⁷ The gold supply chain is intricate and extensive with numerous moving factors between the mining process to the end user. Gold is a mineral that is dug from the ground where a mining process is required.⁸ Approximately seven million people are part of the mining process across the world, which has a great impact on human rights.⁹ Gold mining is also one of the largest causes for deforestation, specifically in South America.¹⁰ Each year,

⁶ See Juliane Kippenberg, *EU's new Supply Chain laws Over-Reliant on Self-Certification*, HUM. RTS. WATCH (June 14, 2023), <https://www.hrw.org/news/2023/06/14/eus-new-supply-chain-laws-over-reliant-self-certification>.

⁷ SWISS GOLD SAFE, *supra* note 2.

⁸ Lee Williams, *Exploring the Gold Supply Chain*, MINESPIDER (Mar. 14, 2019), <https://www.minespider.com/blog/exploring-the-gold-supply-chain>.

⁹ *Id.*

¹⁰ Eduardo Porter, *Illegal Gold Mining Is Becoming the Scourge of the Amazon*, BLOOMBERG OP. (Aug. 11, 2023), <https://www.bloomberglaw.com/product/blaw/>

approximately 2,500 to 3,000 tons of gold are mined globally which has led to its wide reaching environmental and social effects.¹¹ The mining process itself is complicated because it involves heavy machinery, use of chemicals, manual labor, and the clearing of land in order to get into the ground minerals.¹²

After the extraction process, the gold is traded and transported, where it is generally sent to be refined. This long transportation process creates opportunities for illegal activities through the passing of the gold to multiple parties which can disorient its origin. Throughout this journey, illegally mined gold can be mixed in with responsibly sourced gold using fake labels to deceive the receiver.¹³ The Organization for Economic Cooperation and Development warns refinery operators to emphasize due diligence in the process of obtaining gold by doing things such as gathering information about the government of the country where the gold originated, identifying the supplier of the gold including exchanging important information, and creating a traceability scheme to avoid accepting illegally mined gold.¹⁴ In the refining process, the gold is typically melted and the source where the gold was collected from can no longer be traceable due to its newly purified state.¹⁵ Once the purification is complete, it is distributed to users across the globe.¹⁶

Although governments impose regulations on gold mining and importation, the gold industry is predominantly self-regulated.¹⁷ The London Bullion Market Association (LBMA), an international

bloombergterminalnews/bloomberg-terminal-news/RZ814CT1UM0W?criteria_id=f8dcb1c44bff2cd73a1c6ec333254e91.

¹¹ *How Much Gold Is In the World? (Special Report)*, US MONEY RSRV., <https://www.usmoneyreserve.com/news/gold/how-much-gold-is-in-the-world/#:~:text=No%2> (last visited Sept. 14, 2024).

¹² Whitney Richardson & Camila Bustos, *Implementing Nature's Rights in Colombia: The Atrato and Amazon Experiences*, 54 REV. DERECHO DEL ESTADO 227, 237 (2023).

¹³ Williams, *supra* note 8.

¹⁴ See Fabian Stär & Phillip Schütte, RESPONSIBLE GOLD SOURCING FROM ARTISANAL AND SMALL-SCALE MINING, at 2 (2016), https://www.bgr.bund.de/EN/Themen/Min_rohstoffe/Downloads/studie_Responsible_Gold_Sourcing_ASM.pdf?__blob=publicationFile&v=3.

¹⁵ See Williams, *supra* note 8.

¹⁶ See *id.*

¹⁷ Mark Pieth, *Gold Laundering*, BASEL INST. ON GOVERNANCE, 2 (2020), https://baselgovernance.org/sites/default/files/2020-08/qg16_gold_laundering.pdf.

trade association that represents the precious metals market, creates regulations to monitor the trade in efforts to ensure the use of responsible gold. However, neither the LBMA nor other independent organizations such as the Responsible Jewelry Council and World Gold Council can enforce their recommended regulations by law.¹⁸ This Note will analyze the current regulations in mining countries, the regulations for importation of gold in the U.S. and Switzerland, and recommendations of NGOs and global standards to propose potential solutions for positive change within the gold supply chain.

B. *The Modern Use of Gold*

Gold has sustained its value throughout time. Currently, in addition to its use in jewelry, gold is valuable in the industrial, medical and technological industries due to its malleability and resistance to tarnishing.¹⁹ It is also used by governments and individuals as a form of exchange or money.²⁰ This widespread use shows that gold is a significant part of the operations and objects in daily life, which affects the demand placed on refineries to meet the needs of expanding businesses.

This relates to the issue in this Note because luxury companies that primarily use gold in their products may market their products as environmentally friendly and supportive of human rights. However, a closer look at their suppliers can reveal the practices used in its mining and whether they follow due diligence standards. The issues at the bottom of the supply chain described above, flow to the top, even if it is discrete. Companies such as Audemars Piguet, TAG Heur, Rolex, Omega, Cartier, and many others have been linked to the Swiss gold market, as Switzerland is the world's leader in gold refining and processes approximately 70% of the global gold output.²¹ Although the

¹⁸ See *id.*; see generally *About Us: Independent Authority*, LBMA (2024), <https://www.lbma.org.uk/about-us/about-the-lbma>.

¹⁹ See *Top 5 Uses Of Gold – One Of The World's Most Coveted Metals*, MEC MINING (Nov. 4, 2020), <https://www.mecmining.com.au/top-5-uses-of-gold-one-of-the-worlds-most-coveted-metals/>.

²⁰ *Id.*

²¹ See Victoria Gomelsky, *Do You Know Where Your Watches Gold Came From?*, N.Y. TIMES (Nov. 19, 2020), <https://www.nytimes.com/2020/11/19/fashion/watches-supply-chain-transparency-chopard.html>.

gold is purified in these Swiss refineries, the large companies using this gold should be responsible for the due diligence of their whole supply chain, from where the gold is mined to what gold Switzerland refiners accept. Likewise, many companies similar to the abovementioned either lack knowledge of the supply chain raw materials' source or refuse to comment on the issue.²² This lack of transparency for the end users and the omission of strict due diligence directly relates to the human rights challenges posed by gold mining and refining, which this Note will discuss in detail.

II. LAWS IN GOLD MINING COUNTRIES

A. *The Effect of Gold Mining on Human Rights*

A significant portion of the world's gold is mined in Central and South America, which has led to some devastating effects in the region.²³ In South America, much of the gold comes from small-scale mining operations, which are less regulated and have been known to exploit child labor.²⁴ These small-scale mines are labor intensive and require toxic chemicals in the excavation process which are poisonous to the surrounding environment, including the adults and children working in or around the mines.²⁵ The rising global demand on gold fuels the demand for these small scale mines. This disproportionately affects poor or developing countries where vulnerable individuals may be incentivized to work in exploitative conditions in exchange for

²² *Id.*

²³ See *Global Mine Production*, WORLD GOLD COUNCIL (June 7, 2023), <https://www.gold.org/goldhub/data/gold-production-by-country>; see also *The Devastating Impact of Illegal Gold Mining in Latin America*, INTERPOL (Apr. 28, 2022), <https://www.interpol.int/en/News-and-Events/News/2022/The-devastating-impact-of-illegal-gold-mining-in-Latin-America>.

²⁴ See D. Eric Harlow et al., *Small-Scale & Artisanal Mining Impacts on Biodiversity in Latin America*, UNITED STATES AGENCY INT'L DEV. 2 (Mar. 2019), https://www.land-links.org/wp-content/uploads/2019/10/ASM_White-Paper_USAID_FINAL_21March2019Final.pdf; see also Andreia L. Bento, *All That is Gold Does Not Glitter: Mercury Exposure to Children in Artisanal and Small Scale Gold Mines and the Inadequacy of the Minamata Convention*, 16 J. INT'L BUS. & L. 283, 283 (2017).

²⁵ Bento, *supra* note 24, at 283-84.

a paycheck.²⁶ The demand for gold and for stability in these countries has led to an estimated one million children working in the mining industry.²⁷

Much of the gold is extracted from small-scale mines in illegal localities such as rainforests, indigenous territories, and protected areas.²⁸ These operations directly harm the environment and the protected communities that live on or near these locations because of the use of harsh chemicals and unregulated labor practices. These small mines are known to lack regulation on the import and use of toxic mercury and are kept in business because governments levy low royalties on the gold they mine.²⁹

One of the main issues with gold mining is the mercury used in the process. The purpose of the mercury is to separate the gold from other minerals. However, during this process, the mercury burns into the air, directly harming miners and indirectly affecting the surrounding area. Once the mercury settles into the environment, it can lead to a number of health problems. This includes possible damage in the central nervous system and immune system which can be even more severe to the children.³⁰ Severe environmental issues can also occur such as large land shifting, changes in temperatures, and deadly fires, like the one in Peru's La Esperanza mine, where twenty-seven people lost their lives.³¹

Brazil is a major exporter of gold and has been involved in public controversy throughout the years.³² A 2022 study by the

²⁶ See *id.* at 284.

²⁷ Pieth, *supra* note 17.

²⁸ See Thomas Graham, *Bolivian Gold Miners Push into National Park Despite Country's Green Rhetoric*, THE GUARDIAN (Oct. 19, 2022, 5:45 AM), <https://www.theguardian.com/world/2022/oct/19/bolivia-gold-miners-amazon-madidi>.

²⁹ *Id.*

³⁰ Bento, *supra* note 24, at 290.

³¹ Dominique Soguel & Vera Leysinger, *The Quest for Ethical Gold - a Swiss Refiner's Viewpoint*, SWISS INFO (Aug. 14, 2023, 9:00 AM), <https://www.swissinfo.ch/eng/business/the-quest-for-ethical-gold---a-swiss-refiner-s-viewpoint/48717890>.

³² Dominique Soguel et al., *Swiss Gold Refiners Pledge to Avoid Brazilian Amazon Gold*, SWISS INFO (June 30, 2022, 3:43 PM), <https://www.swissinfo.ch/eng/business/-swiss-gold-refiners-pledge-to-avoid-brazilian-amazon-gold/47715664>.

Instituto Escolhas showed that between 2015 and 2020, 229 tons of gold were illegally traded from Brazil.³³ Further, the study showed that the majority of this gold came from the Amazon, including gold from indigenous lands, prohibited areas, and regions with no titles of origin, meaning obscure traceability.³⁴ As previously discussed, mining in unregulated locations leads to humanitarian and environmental effects because of the lack of oversight and the high demand for gold, which prioritizes extraction over the harmful consequences. Inconsistencies at the bottom of the supply chain permit continued illegality, allowing the circulation of unregulated and unmarked gold into the global market and eventually into the hands of consumers as if it were legal.³⁵ Although refineries are required to perform due diligence on the origin of the gold they import, the fact that nearly half of Brazil's national production is unmarked highlights a severe imbalance in resources and enforcement.

Another issue that affects the gold mining industry is the inconsistent categorization of countries as "importing" or "high-risk" areas by governments and NGOs. For example, despite the fact that Brazil exports tons of gold and is known to have illegal mining for over decades, it is still not considered a conflict or high-risk area for imports.³⁶ This is problematic because most NGOs tend to tailor their due diligence programs to focus on "high-risk" areas, leading companies to turn a blind eye to unregulated and illegal practices with no back-lash. While efforts on high-risk areas like the United States Dodd Frank Act ceasing trade with gold from the Democratic Republic of the Congo, are effective in controlling illegal mining practices in that particular area, they leave room for companies to excuse the behavior from other high-risk locations, simply because they are not officially labeled as high-risk and will likely not be monitored as heavily.

³³ *Gold Under the Microscope: More Than 200 Tons of Brazilian Gold are Potentially Illegal*, INSTITUTO ESCHOLHAS, 2 (Feb. 2022), <https://www.escolhas.org/wp-content/uploads/Gold-under-the-microscope-more-than-200-tons-of-brazilian-gold-are-potentially-illegal.pdf>.

³⁴ *Id.* at 2-3.

³⁵ *See id.* at 4.

³⁶ *See id.* at 19.

B. *The Weakness of Government Intervention in Gold Mining Countries*

One of the main issues within the gold supply chain is the lack of regulation and oversight of the gold's origin country. Illegal gold mining can generate profits even higher than those from drug trafficking operations, creating a strong incentive for residents of developing or economically struggling countries in South America, as previously discussed.³⁷ Brazil is a good example of a country that has taken steps to control illegal mining within its borders, but media coverage shows it is still a problem.

In Brazil, the National Mining Agency (ANM) is responsible for legislating and regulating the mining industry. The ANM works alongside the police power to determine if there is illegal mining activity and ensure mining companies are following the proper procedures.³⁸ The ANM requires licenses for exploration and extraction, as the minerals beneath the ground belong to the state of Brazil.³⁹ However, due to the different structures of the mining companies, the requirements differ between large and small scale companies, and ANM's oversight of smaller operations is often insufficient.⁴⁰ Additionally, government corruption and illegal trade practices can create incentives for officials to turn a blind eye in detecting unlawful mining activities, given the significant profits they generate for the country.

Despite prior laws being implemented throughout the years, in 2023, Brazilian Supreme Court judges are still arguing for safer mining practices and more regulation on the supply chain.⁴¹ The movement is to get rid of the assumption of "good faith" on behalf of the gold suppliers, which has allowed the illegal gold to flow easily up

³⁷ Pieth, *supra* note 17.

³⁸ CÓDIGO DE MINAS [C.MIN.] [CÓDIGO CIVIL] ordinance 240, art. 1. (2020) (Braz.).

³⁹ Fabiano Deffenti, *Mining Law*, LAWS OF BRAZIL, <https://lawsofbrazil.com/mining-law/#:~:text=and%20radioactive%20minerals.,Mining%20licences,licences%20issued%20by%20the%20ANM> (last visited Aug. 29, 2024).

⁴⁰ *Id.*

⁴¹ Ricardo Brito & Lisandra Paraguassu, *Brazil Court Backs Crackdown on Illegal Gold Mining in Amazon*, REUTERS (Apr. 5, 2023, 1:20 PM), <https://www.reuters.com/world/americas/brazil-court-backs-crackdown-illegal-gold-mining-amazon-2023-04-05/>.

the supply chain.⁴² This assumption of good faith correlates directly to the main issue of this Note, where the lack of oversight and honesty from the start of the chain allows unregulated gold to pass through refineries, like those in Switzerland, under false pretenses. The acceptance of this presumed “good faith” gold allows these refineries to stay ahead of the competition and perpetuates this cycle of illicit gold trade.

In 2023, the ANM and other public entities began implementing stricter regulations to address the societal and environmental harms caused by gold mining.⁴³ A recent ANM resolution implements a policy where gold mining operators are required to place controls against money laundering. This includes actions such as identifying legal entity clients involved in the operation, creating a due diligence standard for all parties, and maintaining proper registrations and monitors on the operations.⁴⁴ The ANM is also considering a bill that would mandate a gold traceability mechanism, which can be a strong solution for supply chain issues, so that final holders can confidently verify the true origins of their gold.⁴⁵

Government intervention from the gold excavation stage is crucial, even though it may seem far removed from the Swiss refineries at the end of the supply chain. More detailed and comprehensive regulations within gold mining countries can mitigate the possible harmful effects that illegal gold mining may have on its population’s health and on the overall environment. These regulations would in turn have a positive effect on the due diligence process and allow the Swiss refineries to have more trust in the source of their gold. Part IV of this Note will provide a comparative analysis of the governmental regulations of the trading and importation of gold in both the United States and Switzerland. While these regulations affect the latter half of the gold supply chain, it is important to consider how regulations can

⁴² *Id.*

⁴³ Adriano Trindade, *Combating Illegal Mining of Precious Metals and Preventing Money Laundering in Brazil*, MATTOS FILHO (Aug. 14, 2023), <https://www.mattosfilho.com.br/en/unico/combating-illegal-mining/>.

⁴⁴ Resolução Anm N° 129 [ANM Resolution No. 129], de 23 de Fevereiro de 2023, Diário Oficial da União [D.O.U.] de 02.23.2023 (Braz.)

⁴⁵ Trindade, *supra* note 43.

ultimately affect the actions that Swiss refineries take in their gold importation practices.

III. CURRENT REGULATIONS ON GOLD IMPORTATION

A. *A Brief Background on Switzerland's Government*

Switzerland is a direct democracy that is governed by the Federal Council.⁴⁶ Although it is not part of the European Union, Switzerland is regarded as a strong international competitor in the business space and commodities trade because it has remained neutral toward global affairs and works to maintain relationships with surrounding European countries and international countries.⁴⁷ Switzerland has some of the world's largest gold refineries, including PAMP, Valcambi, and Metalor, which, over the years, have refined around 70 percent of the global yearly total.⁴⁸ This makes Switzerland a leading competitor in the purified gold market and a target for countries that mine and are looking to export.

In 2020, the Swiss Federal Audit Office reported that refineries in the country are insufficiently regulated or not following current regulations aimed at preventing the acceptance of illegal gold for their operations.⁴⁹ The Audit Office pointed out the risk of Switzerland's main import, gold, relying on a self-regulating system, especially since the industry has historically been connected to child labor, pollution, and human rights violations.⁵⁰ Without the guarantee of traceability, along with ineffective legislation and penalties, refineries have little incentive to ensure their gold is truly "good."⁵¹

⁴⁶ *Political System*, ABOUT SWITZ. (Aug. 31, 2023), <https://www.eda.admin.ch/aboutswitzerland/en/home/politik-geschichte/politisches-system.html#:~:text=Switzerland%20is%20a%20direct%20democracy,decisions%20are%20made%20by%20consensus>.

⁴⁷ *Doing Business in Switzerland*, WOLTERS KLUWER (Aug. 7, 2020), <https://www.wolterskluwer.com/en/expert-insights/doing-business-in-switzerland>.

⁴⁸ SWISS GOLD SAFE, *supra* note 2.

⁴⁹ Christophe Roulet, *Switzerland Bottom of the Class for Gold due Diligence*, FOUND. HAUTE HORLOGERIE (June 28, 2020), <https://www.watchesandculture.org/forum/en/switzerland-bottom-of-the-class-for-gold-due-diligence/>.

⁵⁰ *Id.*

⁵¹ *Id.*

B. *The Current Role the Governments of Switzerland and the US*

1. United States

This Note will first take a look at some of the United States government's attempts to control the flow of gold in and out of its borders. One of the main groups that helps implement rules regarding gold importation is U.S. Customs and Border Protection.⁵² The Office of Foreign Assets Control creates many of the regulations and prohibits certain gold imports from countries such as Cuba, Iran, and Sudan.⁵³ Gold coins, bullion, and medals must be declared upon entry into the United States.⁵⁴ These regulations have the potential to stop the flow of the gold before it enters the country and encourage gold purchasers to research their gold supplier before conducting transactions of purchasing and importing. If the government seizes gold that was improperly mined or is linked to a criminal organization, it can create a significant incentive for gold purchasers to choose wisely before running the risk of losing business through the gold taken by customs.

One of the most impactful regulations in the U.S. related to gold importation is the Dodd-Frank Act. This Act requires certain companies to publicly disclose if they trade or use conflict minerals, which includes gold that comes from the Democratic Republic of the Congo ("DRC") or an adjoining country.⁵⁵ The DRC and neighboring countries run mining operations that create large humanitarian and environmental risks.⁵⁶ To address these issues, the United States

⁵² See *Regulations for Importing Bullion, Gold coins, and Medals into the United States*, U.S. CUSTOMS & BORDER PROT. (June 10, 2024), https://help.cbp.gov/s/article/Article-1594?language=en_US.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Conflict Mineral Disclosure: A Small Entity Compliance Guide*, U.S. SEC. & EXCH. COMM'N. (Nov. 13, 2012), <https://www.sec.gov/resources-small-businesses/small-business-compliance-guides/conflict-minerals-disclosure>.

⁵⁶ Mvemba Phezo Dizolele, *Dodd-Frank 1502 and the Congo Crisis*, CTR. FOR STRATEGIC & INT'L STUDIES (Aug. 22, 2017), <https://www.csis.org/analysis/dodd-frank-1502-and-congo-crisis>.

implemented Section 1502 of the Dodd-Frank Act⁵⁷, enforced by the US Securities and Exchange Commission (“SEC”), to shed light on the issues occurring in the DRC.⁵⁸ The rule applies to companies that file reports to the SEC if the mineral is necessary for the companies’ business.⁵⁹ Accordingly, companies that fall into this category must conduct a good faith country-of-origin inquiry, including due diligence on the chain of custody of the conflict minerals.⁶⁰ The Act mandates that this due diligence should meet the international standards set by the OECD, as described in further detail below under the voluntary compliance standards.⁶¹ The Act also requires companies to have an independent private-sector auditor create the Conflict Minerals Report.⁶²

According to many sources, including law review articles, there are mixed reviews on the functionality and impact of the Dodd-Frank Act. The analysis in these articles provides important insight as to the types of regulations that can positively impact humanitarian issues without disrupting the flow of business. A commentary on the Dodd-Frank Act creates an analysis similar to a pros and cons list, explaining the merits of the law and its failures.⁶³ The commentary states that this Act raised consumer awareness about the conflict mineral supply chain and contributed to a reduction in mining issues in the DRC and neighboring countries, but it also points out the weaknesses in the law.⁶⁴ Although well-intentioned, the law has created an immense job loss from mine closures, which has led to unemployment distress and a surge of criminal activity, as well as a decline in legitimate mining businesses in the country.⁶⁵

⁵⁷ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, §1502, 124 Stat. 1376, 2213 (2010) (codified at 15 U.S.C. §§ 78a, 78m).

⁵⁸ Conflict Minerals, 77 Fed. Reg. 56274, 56274 (Sept. 12, 2012) (codified at 17 C.F.R. pts. 240, 249b).

⁵⁹ *Id.* at 56276.

⁶⁰ *Id.* at 56280.

⁶¹ *Id.* at 56281.

⁶² *Id.* at 56276.

⁶³ Dizolele, *supra* note 56 at 280.

⁶⁴ *Id.*

⁶⁵ *Id.*

A New York Law Review article critiques the Dodd-Frank Act and other regulations on conflict minerals.⁶⁶ Unlike the commentary above, this article claims that the Act does not raise enough public awareness of the DRC issues and that the regulations just waste corporate resources.⁶⁷ This article points out that a main flaw with the Dodd-Frank Act is its limited scope.⁶⁸ Unlike the OECD's due diligence guidelines that apply to all high-risk areas involving conflict minerals, the Act only focuses on the Democratic Republic of the Congo and surrounding countries.⁶⁹ The article argues that the law's strict focus on this region, although necessary, ignores other problematic areas, such as mining locations in South America. As a result, the Act does not have the worldwide impact needed to address the human rights and environmental issues tied to illegal gold mining.⁷⁰

Although one can argue that these US regulations do not achieve the desired impact, they represent an effort to interfere with illegal gold mining. These regulations are a work in progress, and if countries such as the EU states come together to create a regulated system, the opportunity for real change can come to life. For example, the EU has regulations that emulate the OECD's due diligence standards, with clear rules for companies to follow to remove conflict minerals from their supply chain including where and how to report.⁷¹ These regulations are broader and apply globally, not just to the DRC.⁷² If the U.S., EU, and Switzerland can harmonize their regulations, there is potential for stronger enforcement and elimination of illegal gold mining and its associated risks.

2. Switzerland

In Switzerland, the Federal Act on the Control of the Trade in Precious Metals regulates the trade of raw materials, including gold,

⁶⁶ See Stork, *supra* note 4.

⁶⁷ See *id.* at 437.

⁶⁸ See *id.* at 439.

⁶⁹ *Id.* at 439-40.

⁷⁰ See *id.* at 440.

⁷¹ Stork, *supra* note 4 at 442.

⁷² See *id.* at 441 nn.78, 80.

silver, and platinum.⁷³ This Act requires any company purchasing, manufacturing, or melting these precious metals to obtain a license from the state for these activities.⁷⁴ Switzerland requires that companies manufacturing and melting gold have a responsibility mark, similar to a signature, that signifies the article's composition and assures the entire process and origin of the gold.⁷⁵ The Federal Office for Customs and Border Security is responsible for carrying out controls on cross-border metals trading and checks for required symbols like standard of fineness and responsibility marks.⁷⁶

Articles 31 and Article 33 of the Federal Act on the Control of the Trade in Precious Metals, as of January 2023, go into specific details on the regulation of the importation of gold.⁷⁷ Article 31 states, "Any person who commercially purchases melt material . . . must ascertain the origin of the goods and document this."⁷⁸ The Act requires processes of due diligence, such as accounting for money laundering, possible terrorist connections, and documentation of the origin of the precious metals.⁷⁹ If these standards are not met, the Act grants the Central Office of Switzerland the power to file criminal complaints on the company for these purchases that lack proper due diligence for the importation of that metal.⁸⁰ The Office also has the power to seize the items if such proof of origin cannot be furnished or if any other offenses have been committed.⁸¹ Article 55 also states that any provisions within the Act not followed, whether negligently or

⁷³ *Precious Metal Control*, SWITZ. FED. OFF. FOR CUSTOMS & BORDER SEC., <https://www.bazg.admin.ch/bazg/en/home/topics/precious-metal-control.html> (last visited Sept. 3, 2024).

⁷⁴ SCHWEIZERISCHES ZIVILGESETZBUCH [ZGB], [CIVIL CODE] June 20, 1933, SR 941.31, art. 31 (Switz.).

⁷⁵ *See Responsibility Mark*, SWITZ. FED. OFF. FOR CUSTOMS & BORDER SEC., <https://www.bazg.admin.ch/bazg/en/home/topics/precious-metal-control/responsibility-mark.html> (last visited Sept. 3, 2024).

⁷⁶ *See generally id.* (explaining the Federal Office for Customs and Border Security's requirements for registering the responsibility mark).

⁷⁷ *See* SCHWEIZERISCHES ZIVILGESETZBUCH *supra* note 74, at art. 31, 33.

⁷⁸ *Id.*

⁷⁹ *See id.*

⁸⁰ *See id.* at art. 33.

⁸¹ *See id.*

intentionally, will result in a fine of 2,000 CHF Swiss Franc, approximately \$2,000 U.S. dollars.⁸²

In 1960, Switzerland signed the Convention that founded the Organization for Economic Co-Operation and Development, pledging full dedication to achieving the OECD's fundamental goals.⁸³ This allows member countries to access tools that analyze and monitor economic and environmental issues, connect with other countries, share best practices, and find solutions to prominent problems.⁸⁴ Further in the Note, greater details on the OECD's conflict minerals due diligence standards will be described. Although it is beneficial and positive for a country's reputation to be a member state of the OECD, the standards are voluntary and not enforced, leading many countries to implement these standards more as recommendations rather than rules.

While these regulations and conventions seem appealing, taking a closer look at how the gold refineries actually function, it can be seen that the implementation of these regulations is where the issues may lie. A Swiss Info Article noted that the government's report states that the Swiss refineries have "voluntary" standards, but no strict obligation to comply with them.⁸⁵ The article points out that while Switzerland does have strict legislation on the trade and importation of gold, the government does not have the strongest incentive to intervene due to the growing international competition.⁸⁶ While it is clear the country has made efforts to clean up the supply chain and mining issues of gold through the Swiss Better Gold Initiative in 2013, that clean up only effected 0.015% of the world's annual gold production.⁸⁷

⁸² See *id.* at art. 55.

⁸³ See *Switzerland and the OECD*, OECD, <https://www.oecd.org/en/countries/switzerland.html> (last visited Sept. 4, 2024); see also *Convention on the Organisation for Economic Co-operation and Development*, OECD, <https://www.oecd.org/en/about/legal/text-of-the-convention-on-the-organisation-for-economic-co-operation-and-development.html> (last visited Sept. 4, 2024).

⁸⁴ See *id.*

⁸⁵ Riccardo Francioli, *The Shady Origins of Gold Refined in Switzerland*, SWISS INFO (Jan. 8, 2019, 11:00), https://www.swissinfo.ch/eng/business/multinationals_the-shady-origins-of-gold-refined-in-switzerland/44621040.

⁸⁶ See *id.*

⁸⁷ See *id.*

Throughout the years, Swiss refineries have made various statements and pledges about illegal gold mining. For example, in 2022, various Swiss refiners announced they would no longer import gold from the Brazilian Amazon.⁸⁸ The problem, as discussed in Part III of this Note, is that much of the gold coming from Brazil is still unmarked and has opaque origins. Between 2020 and 2021, five tons of gold were imported from Itaituba, Brazil, to Switzerland, but this stopped after a report came out questioning whether the gold was being whitewashed in Dubai.⁸⁹ This inability to trace the gold's origin and the supply chain that requires the gold to pass from one city to the next, including a stop where illicit gold is being "washed" to be declared legal, is at the heart of the human rights and environmental issues. While some refineries' declarations not to import gold from the Brazilian Amazon are positive, they do not fully address the problem. Switzerland is the second-largest exporter for Brazil and Swiss refiners face challenges at the entry of illegal gold into the market through what are known as "good faith" sellers declaring the origin of the gold.⁹⁰ This requires the highest standard of due diligence on behalf of the gold refining companies if full trust is placed on these "good faith" sellers. These human rights, environmental, and mining origin issues, although specifically mentioned in Brazil, can occur in any gold mining country. Swiss refineries should apply this standard to all gold importation, regardless of whether the country is considered high-risk or not.

While it may seem that countries hold significant authority over companies operating within their borders, non-governmental organizations (NGOs) also create incentives for companies to act responsibly. Similar to the discussion above, this Note will dive into some of the most accepted NGOs and will take a closer look at the regulations they have in place for the gold trade, with a particular focus on recommendations they have for Swiss gold refineries. The Note will also discuss some of the downfalls of these regulations and suggest some possible alternatives that the NGOs can implement to make their regulations more effective.

⁸⁸ See Soguel & Leysinger, *supra* note 31.

⁸⁹ See *id.*

⁹⁰ See *id.*

IV. INTERNATIONAL STANDARDS, NGOS & THE LACK OF ENFORCEMENT

A. *London Bullion Market Association*

The London Bullion Market Association (“LBMA”) is an international trade association that is globally recognized as the authority on the trade and regulations of precious metals. The Responsible Gold Guidance, created by the LBMA, establishes self-regulating due diligence standards for gold refineries to follow in order to ensure that the gold they receive is not connected to conflict or human rights abuses.⁹¹ The guidance outlines a five-step framework for refiners to follow in order to avoid accepting illegally traded gold. These steps include: creating strong company management systems, identifying risks in the supply chain, designing strategies to respond to those risks, arranging independent third-party audits, and reporting on due diligence.⁹² Each of these steps has its own detailed assessments, with one of the most important being the thorough understanding of the gold’s origin. This involves looking into the country where it was mined, whether the gold was mined with a “good faith effort,” whether mercury was used in its excavation, whether the gold passed through other countries, and whether the country of origin had proper licenses, among other factors.⁹³ Currently, five of Switzerland’s refineries are on the “Good Delivery” list, meaning they set out to implement the standards created by the Responsible Gold Guidance.⁹⁴ Although these five are among the top refineries in the country and in the world, the self-regulation and limited reach to other refineries in Switzerland do not seem to create the changes to combat illegal gold trading.

⁹¹ *LBMA Responsible Sourcing Programme: Responsible Gold Guidance*, THE LONDON BULLION MARKET ASSOCIATION, (Nov. 12, 2018), <https://cdn.lbma.org.uk/downloads/responsible-sourcing/RGGV820181211.pdf>.

⁹² *See id.* at 7, 10, 15-17, 19.

⁹³ *See id.* at 10-12.

⁹⁴ *See Good Delivery Current List – Gold*, LBMA, <https://www.lbma.org.uk/good-delivery/gold-current-list/#%7B%22filters%22%3A%5B%7B%22property%22%3A%22country%22%2C%22label%22%3A%22Switzerland%22%7D%5D%7D> (last visited Aug. 29, 2024).

An issue the OECD has identified with some LBMA standards is that they allow suppliers to sign an agreement certifying the origin of the gold.⁹⁵ These LBMA-certified refineries only incur the expense of obtaining this signature and are not required to take further steps in actually determining if the supplier's statement is true through their own due diligence.⁹⁶ The Basel Institute on Governance also points out that while the LBMA has an advanced certification program for the gold refining industry and claims to suspend business relationships if companies fail to complete their due diligence or are not transparent about their gold's origin or supply chain, the weakness lies in implementation.⁹⁷ The expenses incurred in the due diligence process are minimal and therefore does not uncover money laundering along the supply chain, ultimately defeating a significant purpose of these regulations.⁹⁸

B. *Organization for Economic Co-operation and Development*

The OECD is the Organization for Economic Co-operation and Development that sets out to create international due diligence standards for a host of business practices. The OECD focuses on good practices and human rights related to the gold industry, especially with its creation of due diligence guidance for the supply chain of conflict minerals, which uses a risk-based approach to address issues in the supply chain, as described in previous sections.⁹⁹ This standard applies to any business along the supply chain, but refineries, being at the top, have significant responsibility since they are the connection between the miners and the market.¹⁰⁰ Although the due diligence standard is a strong document that can make impactful changes along

⁹⁵ See Stefan Mbiyavanga, *Applying the Swiss Anti-Money Laundering Act to Gold Refineries* 5, (Basel Inst. on Governance Working Paper 31, 2019), https://baselgovernance.org/sites/default/files/2019-12/working_paper_31_gold_en.pdf.

⁹⁶ See *id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ See *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, OECD 95 (July 17, 2022), <https://web.archive.org/2013-04-24/100572-GuidanceEdition2.pdf>.

¹⁰⁰ See *id.*

the entire supply chain, as the document itself states, “[o]bservance of this Guidance is voluntary and not legally enforceable,” leaving refineries to weigh their options in guidelines and suppliers.¹⁰¹ In turn, refineries often opt for the business practices that will generate the most profit and boost their position against competitors.¹⁰²

In 1960, Switzerland pledged to become a member state of the OECD and align its work to the policies and objectives of the organization’s goals of achieving sustainable economic growth while promoting the efficient use of economic resources.¹⁰³ Similar to the LBMA, the OECD also has a five-step due diligence practice that it encourages those in the mineral process, including Swiss refineries, to follow.¹⁰⁴ Many argue that these refineries are often several steps removed from the mining process, making strict due diligence a difficult endeavor, especially for large refineries that import tons of gold each year.¹⁰⁵ This issue, along with the fact that the OECD principles are purely voluntary, creates a significant imbalance in incentives when the alternative is to have easier access to large volumes of gold, thereby improving competitiveness.¹⁰⁶

As discussed above, while these non-governmental organizations play an important role in crafting due diligence practices for the gold supply chain as a whole, and more particularly for the Swiss gold refineries, there is a lack of enforcement of these regulations. Part VI of this Note will combine the regulations discussed in both Part IV and V. Enforcement of both internal governmental regulations and NGO regulations may be a solution to the weak system in place to create a cleaner, more structured, and regulated gold supply chain.

¹⁰¹ *Id.* at 16.

¹⁰² *See id.* at 15.

¹⁰³ *Switzerland and the OECD supra* note 83; Convention on the Org. for Econ. Co-operation and Dev., Dec. 14, 1960, 4 U.N.T.S. 12736.

¹⁰⁴ Pam Ly, *Targeting the Conflict Minerals Trade: Corporate Social Responsibility Governance and the Multilateral System*, 25 WILLAMETTE J. INT’L L. & DISP. RESOL. 25, 38-39 (2017).

¹⁰⁵ *Id.* at 33.

¹⁰⁶ *See id.*

V. POTENTIAL SOLUTION FOR THE REGULATION OF GOLD IMPORTING

A. *The Need for Further Government Intervention in Both the Mining and Importation Phases of the Gold Supply Chain*

A common theme throughout this note has been the significance of every stage of the gold mining process and how each step can greatly affect human rights, environmental rights, businesses, and societies as a whole. In order for the gold process to become “clean,” changes need to be made all along the supply chain starting from top to bottom.

An article discussing the lack of action on corruption in Swiss trade business states that this is a prevailing issue because prosecutors lack uniformity and apply different criminal provisions to violators of these current regulations depending on the situation.¹⁰⁷ This creates a weak incentive for companies, such as gold mining companies, to comply with transparency regulations designated by both NGOs and the government itself.¹⁰⁸ This is an ideal example of how the government could slowly implement directives that make gold refineries more aware of the risks and penalties of not having a clean supply chain. The question is, what kind of penalty should be applied to the wide range of gold refineries? The Swiss Attorney General stated that companies that make billions in profits will not be fazed by a monetary penalty, regardless of the loss.¹⁰⁹ While this is true, it should also be considered that perhaps some smaller scale refineries with less profits may find this as a heavy deterrent, which may positively affect how they handle their supply chain.

Any change toward a regulated and clean gold supply chain is a good change, but the target audience of these governmental changes should be focused on the gold refineries that import and trade the largest amounts of gold. While this proposed change may seem radical, the government should consider revisions to the Criminal

¹⁰⁷ Katy Romy, *NGO Criticises Swiss lack of Action on Multinational Corruption*, SWISS INFO (Jan. 13, 2023, 3:15 PM), <https://www.swissinfo.ch/eng/business/ngo-deplores-swiss-lack-of-action-on-multinational-corruption/48202690>.

¹⁰⁸ *See id.*

¹⁰⁹ *Id.*

Code, making penalties more significant than just a monetary fine. This could include criminal charges for leaders of these companies that knowingly and purposefully neglect due diligence on the origins of the imported gold or fail to improve the current practices of the company if they are currently working within an illegal supply chain. Another change the government can make is to create legislation that incentivizes whistleblowers who have valid and reasonable proof of misconduct and protect them from their company and the outside world.¹¹⁰

B. Expanding the Implementation of International Standards

While NGOs such as the LBMA, the Responsible Jewelry Council, and the OECD work diligently to monitor gold refining companies, further action is necessary to facilitate greater change that will reach the beginning of the gold supply chain in order to affect the human rights and environmental issues that these organizations aim to resolve. While these organizations are constantly creating newer and stronger guidelines for responsible gold mining and trading practices, compliance remains voluntary for companies.¹¹¹ If NGOs had more resources to uncover the true origins and supply chain practices of gold companies, they could raise social awareness of these issues, and negative press may get companies to act in order to stay on the positive side of the media and avoid governmental repercussions. An example of this can be seen in 2023 when Valcambi, one of Switzerland's largest gold refineries, resigned from the Swiss Association of Precious Metal Manufacturers and Traders, an organization that monitors the conduct and trade of Swiss refineries.¹¹² While Valcambi stated that its due diligence standards had received approval through LBMA audits, it still faced public scrutiny from other NGOs, which likely influenced its decision.¹¹³ Refiners might describe this as an "irreconcilable difference" between the company

¹¹⁰ *See id.*

¹¹¹ Mbiyavanga, *supra* note 95.

¹¹² Eddie Spence, *Top Gold Refiner Exits Swiss Industry Group over Sourcing Fight*, MINING (Oct. 27, 2023, 7:29 AM), <https://www.mining.com/web/top-gold-refiner-exits-swiss-industry-group-over-sourcing-fight/>.

¹¹³ *Id.*

and the organization, but these public displays of issues could pave the way towards further investigations into opaque supply chains, where other NGOs or the government could step in to further monitor and ensure that there is proper due diligence and a legal supply chain.¹¹⁴

An interview with Antoine de Montmollin, CEO of Metalor, one of Switzerland's renowned gold refineries, exemplifies how companies should handle gold importation and due diligence.¹¹⁵ The CEO describes how Metalor works with approximately twenty-five mines, developing strong relationships through robust and evolving strict due diligence, ensuring that no human rights or environmental issues arise from these mines.¹¹⁶ Metalor has created its own origin traceability to ensure the legality of the mining origins and the flow of the gold until its final destination in Switzerland.¹¹⁷ Metalor does not do business with mines in the Amazon or Dubai and it avoids purchasing gold from small-scale mines because of their lack of traceability and transparency in the supply chain.¹¹⁸ Metalor's goal is to have full transparency and work closely with the mines to ensure legality, as well as to continue following the guidelines set out by the LBMA, Responsible Jewelry Council, and Swiss authorities.¹¹⁹

Having refineries such as Metalor publicly display their commitment to human rights and environmental protection within their supply chain can positively influence other companies to follow in those steps. While the largest gold refineries have been in the public spotlight for decades because of their ability to produce large volumes of quality gold, another positive incentive could be international recognition from regulatory NGOs for complying with due diligence standards. No matter how famous a company may be, recognition for assisting in the change toward greater human and environmental rights by their business decisions may boost their completion. This can be an incentive not only for large gold refineries but also the smaller ones, which may have a greater ability to control their small business

¹¹⁴ *See id.*

¹¹⁵ Soguel & Leysinger, *supra* note 31.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *See id.*

gold supply chain. This could have the greatest impact on younger generations entering the purchasing market, who increasingly prioritize sustainable business practices.¹²⁰ The purchasing power of generations like Millennials and Gen Z is growing, and their focus within the global jewelry industry is on finding responsible companies that implement conscious supply chain practices that do not harm human or environmental rights.¹²¹ Public statements from NGOs regarding the impact these refineries have could influence not only the public's purchasing decisions but also the actions refineries take to improve their supply chains.

CONCLUSION

Since the beginning of time, gold has been one of the most sought-after minerals. It is a mineral that is highly malleable and is one of the minerals that has retained its precious value for years.¹²² Because of its uses and demand, the gold mining, the flow of the gold through the supply chain, and the refinery process can be easily ignored. This Note has given an overview of how every action within the creation of the final process of the gold can have significant consequences.

When considering the gold supply chain, it is important to recognize that one of the most pivotal stages is the extraction of the gold from the earth. This step is where most human and environmental rights issues occur.¹²³ Many mining operations are done in locations where there is no regulation or where harsh chemicals are being used in the excavation process, leading to child labor, community health issues, and environmental degradation.¹²⁴ Although Swiss refineries may seem far removed from the initial stages of mining, their actions highly impact what happens from the very start.

¹²⁰ See *Driven by Millennial and Gen Z Demand, Sustainable Jewelry is Here to Stay*, ZILLION (Nov. 5, 2021), <https://www.myzillion.com/post/driven-by-millennial-and-gen-z-demand-sustainable-jewelry-is-here-to-stay/>.

¹²¹ See *id.*

¹²² Williams, *supra* note 8.

¹²³ See Bento, *supra* note 24.

¹²⁴ See *id.* at 291.

Switzerland, home to some of the largest refineries in the world, has some of the greatest control over the trade of gold internationally.¹²⁵ As discussed in the Note, the Swiss Government has several regulations in place for the refineries to follow when working within the gold trading industry.¹²⁶ Similarly, the United States has implemented several regulations regarding which gold is accepted within its borders.¹²⁷ The issue described in Part IV of the Note is the lack of specificity of these regulations and the lack of governmental enforcement of these regulations.

Another set of accepted regulations by the Swiss refineries are NGO guidelines such as the OECD and LBMA standards. These NGOs have been established for many years and have garnered the interest of governments, companies, and the general public. The regulations these NGOs have in place push the refineries to consider the due diligence guidelines and other standards such as country of origin, inspection, and general supply chain. While these regulations have led to some progress in improving the gold supply chain, there is still a significant way to go. The biggest setback of these NGOs is the lack of enforcement against countries or companies that claim to adhere to their standards.

The proposed solution for the lack of enforcement of regulations within the gold supply chain, specifically the issues connected with the Swiss refineries, is to get governments involved and further NGO action. The United States attempted to regulate the gold trade through the Dodd Frank Act, while quite narrow, it still it made an impact on illegal gold coming from a particularly problematic gold mining region.¹²⁸ If the Swiss Government were to create a regulation similar to the one the U.S. adopted it could start making small changes toward a cleaner supply chain. This, along with stronger enforcement of the rules currently in place, which may include greater sanctions, could reach both large and smaller refineries.

Additionally, if the public, governments, and companies put more emphasis on the important work and regulations that are being shared by the NGOs, it may lead to a change in the gold supply chain.

¹²⁵ BULLION MAX, *supra* note 1.

¹²⁶ SWITZ. FED. OFF. FOR CUSTOMS & BORDER SEC., *supra* note 75.

¹²⁷ U.S. SEC. & EXCH. COMM'N, *supra* note 55.

¹²⁸ Stork, *supra* note 4.

If these NGOs continue to tailor guidelines for Swiss refineries while also having an enforcement strategy or penalty for those who do not comply, there may also be a shift in action. Seeing as how competition is one of the largest motivators for action within these Swiss refineries, having NGOs also target the general public's attitude toward them by showing the impacts these companies' trading and importation actions can have on human and environmental rights can also be a large motivator for refineries to comply.

There is no one right answer or perfect solution to the humanitarian and environmental issues that are part of the gold mining and trading process. These issues also cannot be fixed overnight. However, implementing some of these proposed solutions one step at a time can be the start of a greater movement, beginning with some of the biggest players in the supply chain, the Swiss gold refineries.

While business is motivated by profit and social success, the morality of the actions taken in order to achieve those goals cannot be forgotten or set aside. Every action has a reaction, and within the gold mining industry those reactions can impact the health and daily lives of many, as well as the environment. The world cannot be distracted or fooled by the glitter of the gold. Just because the final purification and product of the gold glitters does not mean its origins or the hands it has been passed through are perfect as well.