

# Discussion Paper

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## **Shopping for raw materials** Should Africa be worried about EU Raw Materials Initiative?

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## Abbreviations

ACP	African, Caribbean and Pacific
AMP	Africa Mining Strategy
AUC	African Union Commission
COMESA	Common Market for Eastern and Southern Africa
DDA	Doha Development Agenda
EC	European Commission
ECDPM	European Centre for Development Policy Management
ECOWAS	Economic Community of West African States
ECSC	European Coal and Steel Community
EITI	Extractive Industry Transparency Initiative
EPA	Economic Partnership Agreement
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GATT	General Agreement on Tariff and Trade
GATS	General Agreement on Trade in Services
LDC	Least Developed Countries
MERCOSUR	Mercado Comun del Sur
NAMA	Non-Agricultural Market Access
NEPAD	New Partnership for Africa's Development
NTB	Non-Tariff Barriers
ODA	Official Development Assistance
OECD	Organisation for Economic Cooperation and Development
PGM	Platinum Group of Metals
REE	Rare Earth Elements
SADC	Southern Africa Development Community
UEMOA	Union Economique et Monetaire Ouest Africain
UNCTAD	United Nations Conference on Trade and Development
US	United States
WTO	World Trade Organization

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## Executive Summary

Most African countries have entered into Economic Partnership Agreement (EPA) negotiations with the European Union (EU) since 2002 and the latter's request to eliminate export restrictions was one of the main "contentious" issues in the negotiations. This has raised increasing concerns among many African countries who believe it could limit their policy space to respond to economic development challenges, including moving up the value chain and the development of downstream and infant industries. It was felt that EU's particular inflexibility about this issue was linked to ensuring undistorted access to raw materials.

Over the last two decades, Africa has become a region of strategic importance for the developed world, and increasingly for new emerging powers, as a major supplier of fuel and raw materials. Indeed, the seemingly inexhaustible rise in demand for some key raw materials has driven countries like China and India to increase their presence on the continent and strengthen their economic ties with African countries, thereby fundamentally and permanently changing the economic, diplomatic and geopolitical relationship between Africa and its traditional and historical trading partners.

In response, both resource-rich and resource-dependent countries have adopted strategies either to maintain their stock or to secure access from outside. While resource-dependent countries have multiplied raw material "diplomacy" actions, many resource-rich countries have taken measures, often of a protectionist nature, to keep their resources for themselves to ensure their own industrial development, often causing serious distortions in the world market. China's recent measures to restrict exports of certain key raw materials, including rare earths are a case in point.

In November 2008, the **European Commission** presented a Communication to the European Parliament and the Council named "*The Raw Materials Initiative – Meeting Our Critical Needs for Growth and Jobs in Europe*". It aimed at providing a policy response to Europe's growing concerns regarding access to raw materials, given the increasing global demand from new emerging powers and the likely possible supply shortages that this could entail.

The Raw Materials Initiative outlined an integrated strategy to ensure sufficient market access to raw materials at fair and undistorted price and on non-discriminatory terms. It is based on three pillars: access to raw materials on world markets at undistorted conditions, sustainable supply of raw materials from European sources and reducing EU's consumption of primary raw materials. It identified 41 minerals and metals of strategic importance to Europe of which, 14 were classified as "critical", based on the "supply risk" and the "environmental country risk".

On 2 February 2011, a new Communication was unveiled, termed "*Tackling the Challenges in Commodity Markets and on Raw Materials*", this time with a wider scope to address policies in areas of financial markets, development, trade, industry and external relations. The new Communication addresses issues linked to commodities markets, including energy (oil, gas and electricity), agriculture and security of food supply as well as raw materials. Regarding raw materials, while it presents the main achievements regarding the implementation of the 2008 Communication, it also thrashes out the future orientation of the 2008 Raw Materials Initiative in terms of actions the EU is likely to take in the three pillars already identified. The scope of the Initiative has now been enlarged beyond metals to include wood and natural rubber.

Although the purpose of this Paper is to focus on the EU's strategy and its likely implications for Africa, it also outlines policies conducted in other resource-dependent countries, in particular, the **United States**,

**Japan, South Korea and China.** Just like the EU, it is interesting to note that these countries have similar concerns, although strategies to access raw materials differ rather significantly.

In the case of the **United States**, the question of access to minerals has been a longstanding concern. Historically, the US had pursued a stockpiling strategy to purchase minerals needed for war production, which ended with the Cold War. More recently however, the rise of emerging powers and the heavy reliance of the US on certain specific minerals caused the US Government to rethink its strategy. It identified 11 strategic minerals, five of which were considered as critical based on what was essential both in use and subject to supply restrictions.

Just like the EU, the US outlined a “*Critical Materials Strategy*” in December 2010. The US Strategy is narrower in scope and examines the role of rare earth metals and other materials in the clean energy economy, based on data collection and research. The main elements of the Strategy include the need to ensure that there is no short-term disruption in materials used in clean energy technologies, with a particular focus on the management of supply risk, innovation to find alternative substitutes and increased recycling.

Like the US, **Japan** has maintained for many years a strategy of stockpiling, meant to cover 60 days of demand by the Japanese industry. Currently, the stockpile contains seven metals, namely chromium, cobalt, manganese, molybdenum, nickel, tungsten and vanadium.

Unlike the EU, the US and Japan, **China** has not publicly articulated its strategy to ensure supply of raw materials. However, in the past few years, its tremendous economic growth has fuelled its appetite for raw materials, not only influencing world demand and supply but also making other countries react and take measures to ensure their access. China conducts a “two ways strategy” to ensure that it can secure access to cheap raw materials, both domestically and internationally.

On the **domestic front**, it has taken measures to expand domestic investment in local exploitation and production and to limit exports of certain key raw materials. In addition, measures to restrict foreign investments in its own raw material resources have been taken. In certain cases, foreign investors are prohibited. On the **international front**, in sharp contrast with its restrictive domestic policies, China has been very active to shop for raw materials around the globe. It has mobilised its state-owned enterprises and has encouraged its private companies to acquire raw materials abroad; it has also finance related infrastructure and services sectors.

The rise of new emerging powers, and in particular China, and their growing appetite for raw materials has rang a wake up bell for both for developed countries and for Africa. In Europe in particular, the fear of an eventual supply shortfall, and more importantly, the fear of losing grip on a longstanding and relatively privileged access to raw materials abroad led to a series of analysis to define those raw materials that were critical to economic growth and employment, and therefore to take policy measures to ensure access to these key raw materials.

*What does this imply for Africa?*

This Paper focuses to a large extent on the EU Raw Materials Initiative, which, in itself, is a policy document of the EU, with no legal enforcement, that makes recommendations for the Commission to act in a coherent manner at different levels. As mentioned, the Initiative provoked numerous animated reactions among many African countries as this was viewed as a way of increasing the pressure in trade

negotiations, both bilaterally (such as in the EPAs) and at the multilateral level, to eliminate current restrictions on exports or to prohibit their uses in the future, that might, as a result, limit their policy space to define their own development strategies.

Africa is well endowed with abundant natural resources. It is known to host 30% of the world's reserves and produces over 60 metals and minerals. Much in its soil is still unexplored and therefore potential reserves are undoubtedly enormous. However, its share in worldwide production is relatively small compared to large emerging economies such as China, Russia or Brazil. As it currently stands, its overall share in global production and exports of critical raw materials to the EU is rather limited, although many African countries have the potential to produce more of these raw materials. Very few African countries, mainly South Africa and the Democratic Republic of Congo, are important producers and exporters of raw materials the EU considers as critical. This situation is however likely to evolve: the overdependence of Europe on China for most of its critical raw materials has proved particularly 'painful' recently, in particular with China's decision to restrict the export of some of those critical raw materials, such as rare earths.

That being said, despite Africa's low share in exports of critical raw materials, the EU is likely to increase pressure on all its trading partners to secure access to raw materials, notably by pursuing a very offensive agenda through autonomous preferences and bilateral trade agreements, by asking countries to remove exports restrictions and seeking to conclude far reaching investment agreements that cover pre- as well as post-establishment rights. Although Africa might not be the main target of the EU for the moment, its potential for future EU's access might however cause the EU to act as a matter of prevention. The EU might also seek to maintain a coherent approach to accessing raw material world wide, and thus not be willing to create a precedent by providing a special – more flexible – treatment in favour of Africa.

It is fair to say that many African countries are heavily reliant on exports of natural resources (including raw materials of strategic and critical importance to the EU) to generate revenue, employment and foreign exchange earnings. Many feel that they have for too long been trapped in a state of mineral dependence and therefore in a vicious circle of raw materials and primary products supply, whose prices have been constantly fluctuating and unstable. To change this dire state of economic affairs and move out of the "resource curse", many African countries have expressed their willingness to take "development" measures, they deem necessary, to add value, to develop downstream industries that would create jobs and to diversify their production and export base. Preserving some policy space is a key ingredient of such a strategy for many countries.

#### *What is in the EU approach?*

The Raw Materials Initiative has triggered wide-ranging and passionate debates around the motives and the likely implications the Initiative could have for resource-rich countries, in particular in Africa. Critics have rightly outlined the challenges, linked to the somewhat self-interested approach of the EU related to trade and investment, where the EU intends to ban the use of export taxes and other trade-related restrictions in the context of its trade agreements, notably in the EPAs.

Equally worrying is the request from the EU to African countries to take market access commitments in non-services investment sector and to grant pre and post establishment rights in the context of EPAs. While no one denies the fact that FDI is a key element for economic development, without a proper legal and institutional set up around the mining sector, granting open market access may do more harm than good to some countries with weak governance.

In its 2008 Communication, the EU has signalled its intention to use the following trade instruments to secure access to raw materials:

1. The use of **trade defence instruments** to protect its markets and industries from unfair competition in case of unnecessary trade distorting measures taken by third countries affect the competitiveness of its domestic industry.
2. The EU is pursuing **trade negotiations** with all its key trading partners: it is negotiating or has concluded free trade agreements (FTAs) with a number of emerging economies and regional organisations such as Mercosur, Korea and India, as well as Mediterranean countries and all sub-Saharan African countries in the context of EPAs. The EU has already clearly shown its determination to address the issue of trade distortions, through its bilateral trade agreements. Indeed, most FTAs signed by the EU, export taxes and quantitative restrictions have been eliminated.

In the EPA, the export taxes clause was one of the main contentious issues, in particular among African countries, which have forcefully resented the pressure to eliminate a trade policy measure they considered important for future industrial development. This binding provision could eventually constrain an important policy instrument for those countries that might want to use such a tool to respond to particular economic development challenges, such as moving up the value chain, infant and downstream industry development or to generate advantages for industrialisation purposes in general.

In its 2011 Communication, the EU further reinforced its willingness to tackle access to raw materials through the trade route by pursuing a “raw materials diplomacy”. It will also reinforce its trade strategy through an open campaign against export restrictions: the EU will work with other international institutions to foster dialogue for a better understanding of the impact of export restrictions on raw materials markets, will further embed removal of trade and investment restrictions in trade negotiations at all levels, will establish a monitoring mechanism for exports restrictions and will use “autonomous measures” against third countries in bilateral and multilateral frameworks.

3. Working towards **stronger disciplines at the World Trade Organization (WTO)**, which have so far remained rather limited. Some countries, including the EU, have made concrete proposals at the WTO with a view to strengthen disciplines on export restrictions. Most African countries are also members of the WTO and participate in the on-going Doha Round negotiations. It is therefore important to remain coherent in their positions in the EPA and their position at the WTO.

4. Given the role of **Foreign Direct Investment (FDI)** as a key means to promote development and economic and social growth and given the resulted inter-dependence and complementarity between trade and FDI, the EU considers that international rules on FDI is important to improve the business climate. It increases legal certainty for investors and reduces the perceived risk to invest.

The EU has attempted to secure pre- and post-establishment rights for its investors in non-services sectors by proposing an EPA that would cover market access for investment. While FDI is potentially beneficial for economic growth and job creation, it requires countries to have sound and functioning investment regulatory, legal and institutional frameworks. Most African countries are not ready to conclude such agreements as they do not have the necessary domestic infrastructure. In this case, liberalising investment might have counter-productive results in the long run as it would crowd-out local private investment. As matters stand, no African country or region has shown the readiness and willingness to sign a rules-based investment agreement with the EU.

*How can African countries best respond strategies to access raw materials?*

Surely, one can understand that the European Initiative is legitimate and is meant to ensure market access for its own investors and to protect jobs for its own people. Similarly, China's ultimate objective to engage in Africa is far from being uninterested. It is purely commercial: access as much raw materials it can and at the lowest cost to feed its gregarious needs.

Just as raw materials are essential for the development of the EU, they are equally essential, and even more so for Africa, considering the development needs of the continent. While African countries acknowledge and fully understand the need of the EU to ensure adequate supply of raw materials for its own legitimate economic development, ultimately, the choice of economic and trade policies that are needed for industrialisation and development needs should rest in the hands of individual African countries. Policy choices need to be made at the national, regional and international level and it is important to ensure coherence.

The 2011 Communication offers some interesting avenues of opportunities for African countries to engage their European counterparts on the need to link development challenges to sustainable supply of raw materials in view of translating resource wealth into sustainable and inclusive growth. A number of areas of action have been identified. These include improved governance and transparency both for the state and the firms, sound trade and investment climate, improved taxation regimes and capacity building and cooperation in geological knowledge to name but a few.

In addition, at the **national level**, reducing dependence on raw materials for revenue generation will require profound structural economic transformation in many African countries. These would include economic reforms to encourage diversification both **within the mining sector**, by moving up the value chain and **outside the mining sector**, by using revenue generated from the mining sector to invest in other productive sectors. They would need to ensure that they integrate the mining sector into the "broader economy" and take complementary measures to reinforce the national regulatory and legislative frameworks and to undertake domestic reforms, including through the use of trade policies such as export taxes or licensing.

There have been growing concerns among African policy makers regarding the EU's request to eliminate all export taxes in the context of EPA negotiations as the current provision in the Interim EPA could constrain an important industrial policy instrument for many developing countries. The pros and cons of the use of export taxes can be widely debated. However, while no African countries have argued against possible negative effects that export restrictions could potentially have on their development, it is felt that the policy choice of taking such measures, deemed appropriate for their future development, ultimately remains theirs.

The main bottlenecks refraining a technical resolution to this issue in the EPA negotiations is therefore one of strategic economic and political interests linked to access to resources. Both the EU and Africa have strong stakes regarding the use of export restrictions and none of them is likely to easily concede on their positions: it is increasingly becoming clear that what was initially regarded as an issue requiring a technical solution has now become one having broader strategic and political implications.

One option that could help unlock the current stalemate in the EPA negotiations could be to leave disciplines on export taxes/restrictions to be resolved at the WTO (as is the case for agricultural subsidies). Alternatively, necessary flexibilities to address the concerns of many African countries regarding **existing**

export taxes could be found by excluding raw materials of key interest for their own industrial development from the scope of the Agreement. In addition, concerning the use of export taxes **in the future**, parties could consider their introduction in special circumstances, such as in case of specific revenue needs, the protection of infant industry, in the case of critical food shortage or to ensure food security, to protect the environment or where a country can justify industrial development needs.

Regarding the crucial issue of **investment** and their related contracts, African countries need to ensure transparency in the process. Very often, megadeals are sealed at the highest political levels. Without clearly articulated domestic policies that outline government policies regarding the much needed investment as well as the need to use their own resources for domestic growth, there is a risk that terms and conditions of contracts might nullify any good willing economic policy as their exclusive rights might have the potential to “jump” measures.

Finally, while it is important for African countries to question whether they should worry about the EU Raw Materials Initiative, there is also a need to closely examine the strategies adopted by other resource-hungry countries, in particular the new emerging powers who often do not have a clearly articulated strategy about access to raw materials, but are even more pro-active in shopping for such raw materials in Africa.

At the **regional level**, regional integration has been, for decades, a central element of the African development strategy. Numerous efforts are being made to harmonise and integrate regulations, namely in SADC, UEMOA and ECOWAS.

At the **continental level**, the African Union has taken the lead on the question of resource management, with its vision on mineral management regarding ownership, transformation and value addition. The Africa Mining Vision 2030 aims at establishing a “transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development.” In addition, in June 2010, the European Commission agreed with the African Union to establish bilateral cooperation on raw materials and other related development issues, based on their respective policies and priorities. Furthermore, at the Joint Africa-EU Summit held in November 2010, both partners agreed to define joint actions on raw materials under the Trade, Regional Integration and Infrastructure Partnership of the Joint Africa-EU Strategy 2011-13. Furthermore the African Mining Partnership (AMP) launched in 2004, aims at coordinating mining and mineral-related initiatives under the auspices of NEPAD.

Finally, African countries might consider the possibility of using regional integration to build regional mining markets, as was the case in Europe with for the European Coal and Steel Community. Its experience may be of particular relevance for Africa, given the importance of mining sector for most countries and the role it often plays in conflicts across borders. Such a framework for specific mining sectors could be used strategically to advance the regional integration agenda and therefore strengthen peace and security.

At the **multilateral level**, discussions at the WTO regarding the treatment of export taxes are likely to be high on the agenda of those countries that have a high demand for critical raw materials. The EU has made its proposals for enhanced disciplines on export restrictions. Furthermore, together with the US, it has lodged a case at the WTO dispute settlement body to address Chinese exports restrictions on raw materials. The Panel ruling is likely to set some clarity on the interpretation of WTO rules regarding exports restrictions. While fair trade practices is a necessary precondition for a smooth flow of trade, development considerations are as important, in particular for developing countries. In this context, African countries need to ensure that they participate fully in the negotiations so that their interests and concerns are reflected in the outcomes of the negotiations.

There is no doubt that the race for raw materials still has a long way to go and more competitors are likely to join the contest. Therefore Africa is likely to remain at the forefront of attention on the part of those that are heavily reliant on its riches for their own development. The EU is likely to continue to push hard to ensure it can secure access to raw materials, so will the US and all the other emerging economies. Undistorted access is essential to ensure that our goods remain affordable. But that should not come at any price, and not at the price of the development of an indigenous African industry. Africa has the potential to create employment and wealth for its own people and therefore lift many out of poverty. Providing raw materials is important for the rest of the world but this should not be done at the expense of Africa's own development.



## 1. Introduction

Most African countries have entered into Economic Partnership Agreement (EPA) negotiations with the European Union (EU) since 2002 and the latter's request to eliminate export restrictions was one of the main "contentious" issues in the negotiations. This has raised increasing concerns among many African countries who believe it could limit their policy space to respond to economic development challenges, including moving up the value chain and the development of downstream and infant industries. It was felt that EU's particular inflexibility about this issue was linked to ensuring undistorted access to raw materials.

Over the last two decades, Africa has become a region of strategic importance for the developed world, and increasingly for new emerging powers, as a major supplier of fuel and raw materials. Indeed, the seemingly inexhaustible rise in demand for some key raw materials has driven countries like China and India to increase their presence on the continent and to strengthen their economic ties with African countries. This has fundamentally and permanently changed the economic, diplomatic and geopolitical relationship between Africa and its traditional and historical trading partners.

The exponential increase in the demand for raw materials was triggered by a combination of factors: rising world population, rapid urbanisation with resulting huge construction projects and vast infrastructure development as well as fast industrialisation, mainly in large emerging economies and the rapid diffusion of emerging technologies in developed countries. Forecasts indicate<sup>1</sup> that if the trend observed in the production of raw materials in the last two decades were to persist in the next 40 years, then, by 2050, the world is expected to produce more raw materials than it has ever produced since the beginning of civilisation.

The strong (and unforeseen) surge in demand has led to a three-fold increase in the price of metals between 2002-2008. China alone accounted for almost 50% of the increase in consumption of industrial metals between 2002-05. This trend is expected to continue at least until 2030. As a result of technical innovation, the demand for key raw materials such as gallium is expected to rise 20-fold and that of indium and germanium is expected to increase 8-fold between 2006 and 2030.

To understand the real stakes behind the passionate debates regarding access to raw materials it is important to underscore their importance to mankind. Perhaps one of the most indispensable elements to modern civilisation, raw materials are a fundamental input to all aspects of basic economic activities, ranging from agriculture, industry, construction, energy and transport to name but a few. They have been, and are increasingly likely to remain essential inputs to industrial development, in particular for high-tech, sophisticated and clean energy industries. The December 2010 US Strategy on Critical Materials<sup>2</sup> indicated that clean energy technologies such as wind turbine, electric vehicles, photovoltaic cells and fluorescent lights alone currently account for 20% of the global consumption of critical materials. As the use of these technologies increase in the future, consumption of critical materials is also expected to increase.

Basic economics indicates that while demand may be unlimited, resources are however scarce. Although there is currently little evidence of imminent physical shortage of raw materials globally, the recent decade has seen the emergence of new and large players, essentially buoyant developing economies such as India, China and Brazil. This has resulted in an increasing pressure on the demand for raw materials and

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<sup>1</sup> Christmann P (Dr) (2010), "Importance of the mining sector for the economies and populations of ACP groups of States", Presentation at the Ministers of Mines Meeting of the Group of ACP States, ACP House, Brussels, 13-15 December 2010.

<sup>2</sup> US Department of Energy (2010): "Critical Materials Strategy" - <http://www.energy.gov/criticalmaterialsstrategy>

therefore caused fundamental changes to the world market, threatening jobs, competitiveness and the survival of many industries to a point that it has now become a political issue that threatens to affect the economic supremacy of some developed countries.

The surge in world demand from resource-dependent countries has triggered new industrial strategies and policies both from resource-rich and resource dependent countries. Resource-dependent countries such as the European Union (EU), the United States (US) and Japan have all adopted strategies and policies to prevent supply risks and to secure access of raw materials from outside. On their part, resource-rich countries have taken measures, often of a protectionist nature, aimed at keeping their resource base to provide for their own industrial development. Such measures have, in many cases, distorted the world market for raw materials. Restrictive measures include, amongst others, export taxes, quantitative restrictions, licensing requirements, price fixing, dual pricing and restrictive investment rules. More than 1233<sup>3</sup> export restrictions measures<sup>4</sup> have been identified, including on metals (metallic ores or metal scrap), non energy-related mineral products, wood, hides and skins and chemicals and related products. Countries imposing the largest number of these measures include Argentina (888), Ukraine (80), China (40), Russia (39), South Africa (30), Kazakhstan (27) and Algeria (25).

In addition to the above, many emerging countries have also conducted parallel bilateral strategies in resource-rich countries, by engaging in infrastructure projects and other related services linked to the extractive activities with a view to securing long-term and privileged access to raw materials. This has granted them the favours of many resource-rich countries, largely attracted by the “generous” assistance that often had little strings attached to them.

This Paper attempts to provide a broad overview of the different strategies developed by resource-dependent countries with a view to securing access of raw materials to preserve their own growth and employment and the likely implications these may have on African mineral-rich countries. While the focus of the Paper is mainly on the European Union’s Raw Materials Initiative, **Section 2** also gives a general overview of similar strategies taken by the United States, Japan and Korea. The entry of China in the race over the past decade has triggered curiosity and fundamentally changed the relationship between Africa and its “traditional” partners, given China’s impressive advancement in the field of raw materials. **Section 3** focuses on the raw materials considered as strategic and critical, especially in Europe. A short comparison between the EU and the US underscores the similarities in concerns but outlines the difference in measures taken to address the concerns. **Section 4** underlines the policy measures to be taken by the EU to secure raw materials and the potential implications some of these could have for Africa. Finally, **Section 5** attempts to provide some possible options African countries could consider at the national, regional and international level to respond to the increasing challenges in the face of resource-dependent countries’ increasing hunger for raw materials.

<sup>3</sup> Source: EC Directorate General for Trade (2009): Raw Materials Policy 2009 Annual Report.

<sup>4</sup> A “measure” is defined as a tariff line at HS 4 level being subject to either quantitative restrictions (export quota or export ban), an export tax or a non-automatic export licensing process.

## 2. Strategies to access raw materials

### 2.1. The European Union's Response Strategy

In October 2006, the European Commission (EC) presented a Communication to the European Parliament and the Council, entitled “*Global Europe: Competing in the World: A contribution to the EU's growth and job strategy*”<sup>5</sup>. It set out the European Union's (EU) strategy to seek new market opportunities for its own companies to ensure they face fair competition. It also committed the EU to open its own markets. One of the main axes of the strategy aimed at focusing on trade restrictions in areas of prime interest to the EU.

In line with the “Global Europe” strategy of 2006, and in response to the increasing concerns from EU industries regarding access to raw materials, the EC presented a Communication named “*The Raw Materials Initiative – Meeting Our Critical Needs for Growth and Jobs in Europe*”<sup>6</sup> in November 2008. The Communication was fully supported by the Council in three Conclusions of 28 May and 4 December 2009 and 1 March 2010. It provided a policy response, based on the EU's assessment of its own demand and supply for raw materials (see Annex 1 for the classification of raw materials according to their uses), namely that:

1. The EU was self sufficient in **construction minerals** (e.g. Gypsum, natural stone);
2. The EU was the world's largest or second largest producer of **certain industrial minerals**, although it remained a net importer of most of them;
3. The EU was highly dependent on imports of **metallic minerals**: its domestic production represented only 3% of world production;
4. The EU was highly dependent on **high tech materials**, which were essential for the development of technologically sophisticated and environmental friendly products (these included cobalt, platinum, rare earths and titanium amongst others).
5. EU industries relied heavily on **secondary raw materials** although recycled aggregates was expected to substitute 10-20% of primary aggregates and the use of recycled scrap increased significantly in recent decades (representing 40% to 60% of input to EU metal production).

#### Box 1: Facts and Figures

Many essential raw materials are concentrated in a limited number of countries. **China produces 95% of all rare earth concentrates** (needed for hand-held consumer electronics, LCD's, high performance magnets) and **Brazil produces 90% of all niobium** (needed for steel alloys in gas pipelines, super alloys in high performance jet aircrafts).

**South Africa produces 79% of all rhodium** (needed for car catalysts) and **45% of world supply of vanadium**. It has **72% of world reserve of chromium** and **75% world reserve of manganese**.

The EU's import dependency rate for minerals ranges from **48% for copper ore, 64% for zinc ore and bauxite, 78% for nickel, to 100% for materials such as cobalt, platinum, titanium and vanadium**.

<sup>5</sup> See Com(2006)/567: “Global Europe: Competing in the world: A contribution to the EU's growth and job strategy”

<sup>6</sup> [http://ec.europa.eu/enterprise/newsroom/cf/document.cfm?action=display&doc\\_id=894&userservice\\_id=1](http://ec.europa.eu/enterprise/newsroom/cf/document.cfm?action=display&doc_id=894&userservice_id=1)

On 2 February 2011, a new Communication was unveiled, termed “*Tackling the Challenges in Commodity Markets and on Raw Materials*”<sup>7</sup>, this time with a wider scope to address policies in areas of financial markets, development, trade, industry and external relations. The new Communication addressed issues linked to commodity markets, including energy (oil, gas and electricity), agriculture and security of food supply as well as raw materials. Regarding raw materials, the Communication presented the main achievements regarding the implementation of the 2008 Communication. It also outlined the future orientation of the 2008 Raw Materials Initiative in terms of actions the EU would take in the three pillars already identified. The coverage of raw materials was enlarged, to include wood and natural rubber.

The 2011 Communication fits into the framework of the Europe 2020 Flagship Initiative entitled “*A resource-efficient Europe*”<sup>8</sup> adopted in January 2011, whose objective is to deliver a more sustainable use of natural resources and to move towards resource efficiency and low-carbon growth in Europe.

## 2.2. What’s in the EU Raw Materials Initiative?

Given the political and economic dimension of the dynamics happening in the world and following its previous analysis of the competitiveness of the sector, the EU found it necessary to address this very important issue at the highest level. The 2008 Raw Materials Initiative therefore outlined an **integrated strategy** to ensure sufficient market access to raw materials at fair and undistorted price and on non-discriminatory terms.

The 2008 integrated strategy was based on **three pillars**:

### 2.2.1. Pillar I: Access to raw materials on world markets at undistorted conditions

This pillar included **five** main areas of action:

1. Pursuing **raw material diplomacy**: The EU would ensure better and increased coordination and coherence among the different actors of EU external policies (trade, development and external relations).
2. **Reinforcing dialogue** with the strategic partners:
  - a. Africa, in areas of access to raw material and natural resource management;
  - b. Emerging resource-rich economies (such as China, India, Russia), with a view to remove trade distorting measures;
  - c. Resource-dependent countries (such as the US and Japan) by indentifying areas of common interests, defining joint strategies at the multilateral level and developing joint projects (geological surveys for instance).
3. **Promoting and enhancing international cooperation** and support awareness-raising with other organisations such as the World Bank, OECD, UNCTAD through processes such as the Kimberley Process Certification Scheme (on diamonds) and the Extractive Industry Transparency Initiative<sup>9</sup>.
4. Making access to raw material a priority in the **EU trade and regulatory policy**, through:
  - a. The use of various trade instruments such as free trade agreements, market access partnerships and non-preferential agreements;
  - b. Increased vigilance in international fora through stronger disciplines at the World Trade Organization (WTO) on export restrictions and improved regulations on subsidies;

<sup>7</sup> See Com (2011)/25: “Tackling the Challenges on Commodity Markets and on Raw Materials” - [http://ec.europa.eu/enterprise/policies/raw-materials/files/docs/communication\\_en.pdf](http://ec.europa.eu/enterprise/policies/raw-materials/files/docs/communication_en.pdf)

<sup>8</sup> See Com (2011)/21: “A Resource-Efficient Europe – Flagship Initiative under Europe 2020 Strategy” - [http://ec.europa.eu/resource-efficient-europe/pdf/resource\\_efficient\\_europe\\_en.pdf](http://ec.europa.eu/resource-efficient-europe/pdf/resource_efficient_europe_en.pdf)

<sup>9</sup> See [www.kimberleyprocess.com](http://www.kimberleyprocess.com) and <http://eiti.org>

- c. Use of dispute settlement cases against violation of WTO or bilateral rules;
  - d. Use of anti-dumping investigations to offset price-distorting mechanisms and any other trade defence instrument relevant to tackle trade distortions; and
  - e. Use of EU's competition rules in case of anti-competitive agreements or market concentration
5. Improving coherence between **EU Development Policy** and the need for undistorted access to raw materials. This included:
- a. Strengthening states through improved good governance;
  - b. Promoting a sound investment policy through transparency of mining deals and mining revenue, level playing fields for all companies, financing opportunities, sound taxation regimes amongst others; and
  - c. Promoting the sustainable management of natural resources.

### 2.2.2. Pillar II: Sustainable supply of raw materials from European sources

The EU would reinforce its framework conditions to facilitate access to raw materials from its own deposits. Measures included access to land, streamlining administrative procedures for exploration and extraction activities, modernisation of mining legislations and reduction of time between discovery of deposits and production.

Furthermore, the knowledge base of mineral deposits within Europe and their long-term access would have to be improved, notably through geological surveys and land use planning. Exchange of information and data among countries through networking among national geological surveys would be pursued and medium-to-long term strategies would be developed.

The EU would also promote research projects to address technological challenges related to mineral production. Funding would be provided under the Cohesion Policy Funding, in particular from the European Regional Development Fund.

Finally, the EU would address the problem of growing skills shortages in the field of mining, through, amongst others, effective partnerships with universities, geological surveys and industries and by promoting higher studies (masters and doctoral studies in new high skills areas such as geology, earth observation and environmental issues).

### 2.2.3. Pillar III: Reduce EU's Consumption of Primary Raw Materials

To reduce EU's dependency on primary raw materials, resource efficiency, recycling, substitution and increased use of renewable raw materials would be pursued as outlined in specific EC Communications<sup>10</sup> aimed at developing long-term strategies and at promoting resource efficiency. The EU would promote research to focus on resource-efficient products and production and to develop substitutes in the interest of flexibility in the production process.

The EU would increase its use of secondary raw materials, in particular the use of end-of-life products. There were concerns regarding increasing exports of end-of-life vehicles and electronics that left Europe to be dismantled abroad. Legislations to facilitate the recycling of secondary raw materials would be enacted and relations with third countries would be reinforced to ensure that the treatment of waste take place under fair and sustainable conditions.

<sup>10</sup> See COM(2005)670: "EU Thematic Strategy on the Sustainable Use of Natural Resources" and COM(2008)397: "Action Plan on Sustainable Consumption and Production and Sustainable Industrial Policy".

A fair and transparent market, based on agreed minimum standards, certification schemes and appropriate legal frameworks, was essential for the reuse or recycling of raw materials. In this context, legislations, standards and labelling, public procurement, financing, knowledge sharing and international actions would be developed. Finally, the EU would monitor its policies on renewable raw materials key to European industries.

The Communication released in February 2011 confirmed and further strengthened emphasis on all three pillars defined in 2008. It outlined the main achievements since 2008, as mentioned in Box 2 below.

#### **Box 2: Key achievements since 2008.**

##### **1. Identifying critical raw materials.**

As explained in Section 3 below, in 2010 EU identified a list of 41 minerals of strategic importance, of which 14 were defined as “critical”. This list will be reviewed and updated every 3 years to take into account market developments, technological development and information regarding the environmental impact of the material.

##### **2. Implementing the EU trade strategy for raw materials:**

In terms of trade disciplines and enforcement, in 2009, the EU launched a case at the WTO against Chinese exports restrictions, jointly with the United States and Mexico in view of resolving unjustified trade distorted measures, covering 9 key raw materials. Following an inconclusive consultation process, a Panel was established in 2010 (see Box 5 below). In addition, in the context of WTO accession, the EU is assessing ways to eliminate export restrictions in countries of particular interest, namely Russia, Kazakhstan, Belarus, Azerbaijan and Algeria. Finally, regarding bilateral agreements, the EU has secured undistorted access under the Korea-EU FTA. The removal of export taxes is still considered as a major contentious issue under EPA negotiations. (see discussion in section 4.1.2 below).

##### **3. Development Instruments**

Good governance and strengthening of states have been included in the 10<sup>th</sup> European Development Fund (EDF). In addition, the EU-Africa Infrastructure Fund, through the European Investment Bank, has financed mining projects in Africa. The EU is also fully supportive of initiatives such as the Extractive Industry Transparency Initiative and is working closely with specific countries to improve investment climates and good governance in tax matters<sup>11</sup>.

##### **4. New research opportunities**

The EU has taken important steps to improve its actual and future domestic knowledge base, in particular for critical raw materials. In this regard, the FP7 project ProMine was launched in 2009 to assess the real value of European mineral resources, to develop advanced underground technologies for intelligent mining, to develop substitution of critical raw materials and to coordinate activities with its member states in the field of industrial handling of raw materials.

##### **5. Guidelines on the implementation of Natura 2000 legislation**

To respond to concerns regarding the potential conflicting objectives of the protection of Natura 2000 areas and the development of extractive industries, the Commission has developed guidelines<sup>12</sup> to clarify some Natura 2000 rules to improve the compatibility between the two issues. The guidance indicated that there was no automatic exclusion of non-energy extraction activities in or near Natura 2000 areas. It also

<sup>11</sup> See COM(2010)/163, “Co-operating with developing countries on promoting good governance in tax matters”,

<sup>12</sup> [http://ec.europa.eu/environment/nature/natura2000/management/guidance\\_en.htm](http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm)

presented good practices for the exploitation of wood resources while ensuring sustainable resource management.

#### 6. Increased resource efficiency and improved conditions for recycling

There has been some improvement regarding the legal clarification on the definition of reprocessed waste as a product, in particular concerning the development of “end-of-waste” criteria, where new rules regarding aluminium and steel, copper, recovered paper and glass are being developed. Since 2008, the Commission has prevented the illegal export or dumping of waste of electronic and electrical equipments and is currently proposing stricter rules for the shipment of “used” electronics and electrical goods, requiring exporters to provide “proof of functionality” for every item exported.

*Source: COM(2011)/25: “Tackling the challenges in commodity markets and on raw materials”.*

### 2.3. Future orientations of the Raw Materials Initiative

While confirming the approach taken by the 2008 Communication, the 2011 Communication proposed new areas of action in the three pillars, based on new developments regarding the demand and supply of raw materials and more generally, in the face of the increasing challenges on global markets as a result of excessive price volatility.

At the request of some member states and industries, the EC will also examine the possibility of setting up a stockpiling programme.

#### 2.3.1. Pillar I: Fair and sustainable supply of raw materials from global markets

The EU will engage in “raw materials diplomacy” by pursuing two policies, namely:

##### *a. Development policy and sustainable supply of raw materials:*

Many developing countries have not succeeded in translating the gains from their resources into sustainable and inclusive growth. According to the EU, this is partly due to issues related to governance of regulatory and institutional frameworks as well as taxation systems that may not be conducive to growth.

As a result, a number of areas of action were identified. The EC proposed to:

1. Increase financial and political support to the Extractive Industries Transparency Initiative and assist developing countries in its implementation;
2. Define avenues to enhance transparency along the supply chain and to improve coordination with countries where revenue from extractive industries is used to finance wars and conflicts;
3. Encourage extractive industries to disclose financial information, including the possibility to adopt a country-by-country reporting mechanism. This is expected to improve revenue transparency.
4. Encourage EU companies based in developing countries to apply EU standards and develop a code of conduct for EU companies operating in third countries.
5. Enhance cooperation with resource-rich countries in the field of geological surveys to improve geological knowledge.

In addition, the Commission and its financial institutions, in cooperation with African national and regional authorities, will explore ways of promoting infrastructure, energy and transport projects that could contribute to the sustainable use of resources and enhance raw materials supply. The EC will:



1. Examine the possibility of increasing lending to industries, including in mining, refining and post-extractive sectors;
2. Assess the possibility of providing financial instruments, on the basis of guarantees provided by the EU, including through EDF, to help reduce risks for investors.

Finally, the Communication proposed to examine ways to link extractive industries to local industries to encourage diversification and improve the value chain.

#### *b. Reinforcing the raw materials trade strategy*

The 2011 Communication, further reinforced the EU's willingness to tackle access to raw materials through the trade route by pursuing a "raw materials diplomacy". It will also reinforce its trade strategy through an open campaign against export restrictions. In particular:

1. The EU will work with other international institutions to foster dialogue for a better understanding of the impact of export restrictions on raw materials markets;
2. It will continue to promote the removal of trade and investment restrictions in trade negotiations at all levels;
3. It will establish a monitoring mechanism for exports restrictions and will address trade-distorted measures, including through dispute settlement mechanisms;
4. It will use competition policy instruments to combat anti-competitive practices in agreements, mergers or unilateral company actions; and
5. It will use "autonomous measures" against third countries in bilateral and multilateral frameworks.

### **2.3.2. Pillar II: Fostering sustainable supply within the EU**

The supply of resources in Europe often falls under the competence of national member states. The EU therefore acts mainly as a facilitator for the exchange of best practices. In line with the Europe 2020 Strategy to promote technologies that would foster investment in EU's own resources, the 2011 Communication proposes to:

1. Define National Mineral Policies, to ensure that resources are extracted in an economically sustainable manner, in line with national policies and based on sustainable development principles;
2. Set up land use planning policies for minerals that have a digital geological knowledge base, a clear methodology to identify mineral resources and long-term forecasts for regional and local demand;
3. Set up fast-track and clear processes to authorise mineral exploration and extraction and streamline administrative procedures.

The Communication also proposes to member states to set up a mechanism to monitor the latter's actions in the above areas.

Finally, the Communication proposes to assess, in collaboration with member states, ways of increasing synergies and sharing of information among national geological surveys to allow cost-efficient use of resources, economies of scale and to develop joint projects (such as harmonised minerals database or European raw materials yearbook).



### 2.3.3. Pillar III: Boosting resource efficiency and promoting recycling

The 2011 Communication proposes to improve efforts on recycling in order to reduce the pressure on demand for primary raw materials, to prevent waste of valuable materials that could be reused and to reduce energy consumption and pollution from extraction and processing. In this regard, a resource-efficiency road map will be outlined in line with the Europe 2020 flagship initiative.

The EU will further exploit the use of “urban mining”<sup>13</sup> with a view to make greater use of secondary materials from urban waste and therefore contribute to the preservation of the environment. To achieve this objective, the EU will have to address three main barriers, namely: (i) “leakage” of waste to sub-standard treatment in or outside Europe; (ii) obstacles to the development of the recycling industry; and (iii) insufficient innovation in the field of recycling.

The EU will carry out research programmes and evaluation of EU waste acquis to promote resource efficiency. It will also review strategies on waste prevention, review the action plan on sustainable consumption and production and develop new initiatives to improve the competitiveness of recycling industries. The problem of environmental dumping of waste products through illegal shipment of waste to third countries will also be addressed.

## 2.4. The US Economy and critical minerals

The rising concerns regarding supply and access risks to raw materials have not only been voiced out by the EU. Indeed, this has been a longstanding concern for the US as well. Historically, even prior to World War II, the Strategic and Critical Minerals Stockpiling Act of 1939 authorised the US Government to purchase strategic raw materials for a stockpile. At that time, the Army and Navy Munitions Board had established a list of strategic and critical raw materials needed for war production<sup>14</sup>. The list was then based on the potential loss of imports of key minerals as a result of the Japanese conquest in Asia and a possible war looming in Europe. The National Defence Stockpile still stores 21 materials at different locations through the US.

In the last few years, the US was also increasingly concerned about the exponential increase in the demand and the sharp rises in the price of minerals, which could result in important risks of a supply crisis. The heavy reliance of the US on certain specific raw materials, essential for its high-tech industries and its clean energy policy, caused the Government to rethink its strategy. This was further compounded by the significant investments of China in Africa that might cause them to lose the competition with China on raw materials.

In this context in 2008, the Committee on Critical Mineral Impacts of the US economy, the Committee on Earth Resources and the National Research Council conducted a **study** entitled “**Minerals, Critical Minerals and the US Economy**” to identify minerals that were critical for the US economy and that could eventually be subject to supply risks.<sup>15</sup> The report made strong recommendations to the Federal Government to guide their future policy actions regarding access to minerals.

<sup>13</sup> Urban mining is the process of extracting useful materials from urban waste. It is one of the main sources of metals and minerals for European industries.

<sup>14</sup> Source: Committee on Earth Resources and National Research Council (2008): “Minerals, Critical Minerals and the US Economy”.

<sup>15</sup> Eggert, G. R (2010): “Minerals, Critical Minerals and the US Economy: Lessons from the US National Research Study”, Division of Economics and Business, Colorado School of Mines.

It was however observed that while foreign competition for minerals was one important aspect of the supply of minerals to the US economy, a high degree of dependence for certain minerals was not in itself a cause of concern. What mattered instead for the Government was the need to have the knowledge of the potential restrictions in the supply of minerals as a result of the high competition for resources and that could therefore expose US industries to political, economic and other risks and hence negatively affect domestic growth. Well-informed planning was therefore crucial to take the necessary measures to mitigate the effects of such restrictions.

Following the Study, the US Department of Energy released a “**Critical Materials Strategy**”<sup>16</sup> in December 2010, aimed at examining the role of rare earth metals and other minerals in the clean economy. The Strategy was however limited in scope and did not address all materials needed for the entire economy.

## 2.5. What’s in the US Strategy?

The Study on Minerals, Critical Minerals and the US Economy highlighted the concerns of various stakeholders in the US, including Government and the private sector, regarding the availability and use of non-fuel minerals in the domestic economy. It further outlined the need to articulate clearly in national (and ultimately in international) debates, the impact of potential restrictions on the supply of minerals and their likely effects on different sectors of the US economy.

In particular it considered:

1. Which minerals were critical and why. The Study defined “**criticality**” as a mineral that was essential both **in use** and **subject to supply restrictions** (see Section 3 below). In particular, it identified the strategic and critical minerals essential for industry and emerging technologies in the US economy;
2. The extent to which the availability of such minerals were likely to be subject to **actual and potential constraints**, including, but not limited to geological, technological, economic and political factors, in the short- to long-term;
3. The impacts that **disruptions in supply** of critical minerals could have **on employment and the economy** in general;
4. When assessing criticality, it provided available **information and data** regarding mineral policy issues and made recommendations to decision makers in view of taking appropriate measures to mitigate the impacts of the restrictions.

Recognising the importance of minerals for the US economy and the dynamic nature of demand and supply of critical minerals, the Study recommended the following to the Federal Government to inform their domestic and foreign policies regarding access to critical minerals:

1. The Federal Government need to **enhance the types of data and information** it collected, disseminated and analysed on minerals, in particular when these data relate to critical or potentially critical minerals. It had to pay more attention to those areas of the life-cycle of the mineral (such as secondary material, by-products, reserves, recycled products). Enhanced mineral analysis would have to include **regular assessment** of mineral criticality, covering a larger number of minerals.

<sup>16</sup> See [www.energy.gov/criticalmaterialsstrategy](http://www.energy.gov/criticalmaterialsstrategy)

2. The Federal Government should continue to **conduct and support research** and to gather and disseminate information regarding minerals and should have **greater authority and autonomy** to take the necessary steps to address concerns. It should be given sufficient financing means to carry out its functions and should establish formal channels of communication with users, including government and private sector.
3. Federal agencies should **develop and fund activities**, including basic science and policy research, to encourage US innovation in the areas of critical minerals to enhance the understanding of global mineral availability and use. This was crucial to anticipate and respond to short-to long term supply restrictions. Programmes should be cooperative and include academic organisations, industry and government.

Taking into account the recommendations of the 2008 Study, the “Critical Minerals Strategy” examined the case of rare earths in the clean energy economy. The Strategy was based on the fact that clean energy technologies, embedded in wind turbines, electric cars, photovoltaic cells or fluorescent lights, a prime priority of the US Government, constituted 20% of the global consumption of “critical” minerals, considered at risk of supply disruptions in the short term.

The Strategy proposed to develop of an integrated research agenda to address the concerns linked to the critical minerals, to strengthen the capacity of the Department of Energy regarding information gathering; and to work closely with international partners, including the EU and Japan to reduce vulnerability to supply disruptions and address critical mineral needs.

The Strategy was based on three major principles, namely that:

1. Diversification of global supply chain was essential. In this respect, the US would seek multiple sources to obtain its materials. It would also encourage and facilitate extraction, processing and manufacturing within the US and would encourage other countries to do the same, in an environmentally sound manner.
2. Development of substitutes was critical. In this context, it would encourage research to develop material and technological substitutes to meet the needs of the clean energy industry; and
3. Recycling, reuse and more efficient use of resources were fundamental to lower global demand for new raw materials. It would encourage research to improve recycling processes and would define policies to make recycling cost-effective.

Compared to the EU Raw Materials Initiative, the US’ response is essentially directed towards seeking domestic solutions and alternatives to address potential supply risks. While in parallel, the US has lodged a case against China for unfair trade practices at the World Trade Organization (WTO), it however does not make specific recommendations to use international trade policies to secure access to raw materials. Despite the lack of explicit strategies regarding international trade, in the most of its recent free trade agreements (FTAs), the US has ensured that parties take the commitment to eliminate all forms of export restrictions, while remaining compatible with the provisions of the General Agreement on Tariffs and Trade (GATT) 1994.

**Box 3: Treatment of Export Restrictions in US FTAs**

The US has signed a number of FTAs, namely with Peru, Chile, Morocco, Singapore and more recently with Korea. With the exception of the US-Jordan FTA that entered into force in 2001 where parties have not taken any commitments to eliminate restrictions in exports, all other FTAs call for the parties to eliminate import and export restrictions, while remaining compatible with Article XI of GATT. This includes the prohibition of export price requirements, voluntary export restraints and elimination of quantitative restrictions. Some countries have maintained some exceptions on a limited number of products listed in an Annex to the Agreements. Furthermore, the FTAs also prohibit the use of export duties, taxes and other charges.

**2.6. Japan: Strategy for Ensuring Stable Supplies of Rare Metals**

Japan's raw materials policy is based on its limited domestic resources and the importance of some rare raw materials for its electronic and automobiles industries. In 2008, the Government published "**Guidelines for Securing National Resources**"<sup>17</sup>, to be followed by the entire government, including related agencies, in supporting rights acquisition issues and natural resource procurement projects that are considered essential to securing a stable supply of energy resources for Japan.

The **Guidelines** encouraged the Japanese government to:

1. **Support key resource acquisition projects** that would contribute to a stable supply of oil, coal, natural gas, uranium, rare metals and other mineral resources for Japan. The projects would need to lead to the acquisition of exploration or the development of interests or would have to be related to long-term supply contracts that would ensure supply of natural resources to Japan.
2. **Promote active diplomacy** by requesting the governments of certain resource-producing countries to comply with multilateral or bilateral international rules in order to ensure the implementation of contracts. This concern arose out of the fact that an increasing number of resource-rich countries were taking measures to allow state-run companies to exclusively own domestic exploration or to tighten regulations to restrict the entry of foreign capital. Japan is also expected to strengthen relationships of trust with resource-rich countries to incite them to join multilateral and bilateral agreements and will engage with these countries at the highest political level.
3. **Encourage private sector companies to carry out research** in resource development projects in countries where domestic reserves are not fully developed. Support will be given in the form of surveys for exploration and development, cooperation project for resource development, investment in and financing of resource development projects, as well as debt guarantee, trade insurance and other financial instruments.
4. **Strengthen comprehensive and strategic relationship** with resource-rich countries to help them achieve stable and self-sustainable economic growth by using the development of their domestic resources as a driving force. Japan will therefore support countries in the field of energy, trade and investment promotion, industrial development, human resource development, research and development, infrastructure building and education projects amongst others. It will also make effective use of official development assistance (ODA).

<sup>17</sup> [www.meti.go.jp/english/newtopics/data/pdf/080328Guidelines.pdf](http://www.meti.go.jp/english/newtopics/data/pdf/080328Guidelines.pdf)

In addition, in 2009, the Government outlined a “**Strategy for Ensuring Stable Supplies of Rare Metals**”<sup>18</sup> aimed at (i) maintaining a stable supply of metals for Japanese industries by securing foreign sources of critical materials (ii) recycling scrap metals (iii) developing alternative materials; and (iv) stockpiling some rare metals.

The Strategy outlined five key activities that Government had to pursue to promote a stable supply of important metals, namely:

1. The provision of partial funding for overseas field surveys;
2. Access to loan guarantees and other financial assistance to high risk mine development projects;
3. Maintenance of stockpiles of seven metals – nickel, chromium, manganese, cobalt, tungsten, molybdenum and vanadium and close monitoring of access to indium, rare earth elements, platinum, gallium, niobium, tantalum and strontium;
4. Gathering and disseminating information on mineral availability and policies in resource-rich and resource-dependent countries; and
5. Encouraging and financing specific research on new types of exploration, mining and recycling.

## 2.7. Republic of Korea: Plan for Stable Procurement of Rare Metals

Like Japan, Korea focuses its raw materials strategy around materials of critical importance for the competitiveness of its industries, and in particular of consumer electronic, information technology, automobile and clean technology. In 2010, a “**Plan for Stable Procurement of Rare Metals**” was defined to spend US\$15 million by 2016 in order to secure 1,200 tonnes of rare earth elements and to develop domestic mines of other rare earths.

South Korea has identified 56 raw materials of interest, of which 11 are considered as “strategic critical” based on rarity, unfavourable geological distribution and price instability. In order to reduce its over-dependence on imported raw materials, South Korea adopted a four-pronged approach:

1. Government would back investments in the exploration of overseas sources of rare metals – in 2010, the state-owned firm Korea Resources Corporation planned to invest \$285.2 million to develop mines of lithium, nickel, uranium, copper and manganese in Africa and Latin America;
2. It would increase its stockpile programme (to 15 metals) with flexibility to meet the country’s needs;
3. It would reduce consumption through the development of substitutes; and
4. It would increase recycling and the re-use of materials from end-products and is expected to focus its research and development efforts on 40 core technologies.

## 2.8. China: the two-ways strategy

Unlike the EU, US and Japan, **China** has not publicly articulated its strategy to ensure supply of raw materials although its engagement in resource-rich countries and its domestic measures have clearly pictured its objectives. In the last decade, its tremendous economic growth has fuelled its appetite for raw materials, not only influencing world demand and supply but also triggering reactions in other countries to secure access and to prevent supply risks.

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<sup>18</sup> Japan’s raw materials policy is guided by the Ministry of Economy, Trade and Industry (METI) and implemented by the Japan Oil, Gas and Metals National Corporation (JOGMEC) and the Japan Bank of International Cooperation (JBIC), with the support of other ministries and government institutions.

China is a large producer and consumer of raw materials (see Table 3 below). However, given its enormous domestic needs, its import dependence has increased significantly. For instance, it consumes **more than half of the world's cement** to serve its booming construction industry, **a third of the world's steel** to satisfy its ambitious infrastructure projects and **over a quarter of the world's aluminium**.

In order to secure access to raw materials, it has conducted a "two ways strategy": it has taken domestic measures and has gone global, often to strategic locations where resources are abundant unexplored.

On the **domestic front**, the Chinese Government has taken a series of measures to expand domestic investment in local exploitation and production and to limit exports of certain key raw materials. The measures to restrict exports of raw materials were meant to ensure that its own manufacturers have ready access to raw materials in sufficient quantities and at low prices. These measures include export bans, export quotas, export licensing requirements, resource protection fees and restrictions on which enterprises are eligible to export. China's export restrictions policies is based in Article 30 of its Steel and Industrial Development Policy<sup>19</sup> of 2005, which specifies that *"the export of such preliminarily processed as coke, iron ally, pig iron and steel base with high energy consumption and serious pollution shall be restricted"*.

#### Box 4: Chinese barriers to exports of raw materials

Export quotas are determined by the Ministry of Commerce. China imposes **quotas** on coke, antimony, bauxite, magnesium carbonate, molybdenum, silicon carbide, tin, tungsten, zinc, fluorspar, indium, rare earths and talc. In addition to the quota, in certain circumstances, the Government requires qualified enterprises to **bid for an annual export quota** on certain commodities. Generally, the bidder needs to be a registered legal person who is entitled to conduct importing and exporting activities or a foreign enterprise approved by the Ministry of Commerce. Normally, bidders are also required to have a minimum registered capital (for e.g US\$ 717,650 for magnesium carbonate) and a minimum average export volume (3,000 tonnes per year for magnesium carbonate).

To qualify for the exports of certain commodities, companies must apply for an **export licence**, costing between US\$ 144 and 287. Applicants must have imports/exports rights and must provide relevant export contracts. Export licences may not exceed 6 months.

China imposes substantial **export taxes** on a number of raw materials, including antimony, molybdenum, scrap, zinc, magnesium carbonate, coke, tin, silicon and manganese. It varies between 10% on steel to 40% on coke. In recent years, export taxes have increased substantially. For instance, China imposes a 120% tax on exports of yellow phosphorus.

Source: Wiley R (2008): Raw Deal: How governmental trade barriers and subsidies are distorting global trade in raw materials.

In addition to exports restrictions, China has taken measures to restrict foreign investments in its own mines. In certain cases, foreign investors are even prohibited. For instance, only state-owned or collectively-owned Chinese companies are permitted to operate in the exploitation and mining of antimony, molybdenum, tungsten and tin. Similarly, only state-owned companies are allowed to refine and process tungsten and tin. Furthermore, non-transparent procedures and legislations in other fields have

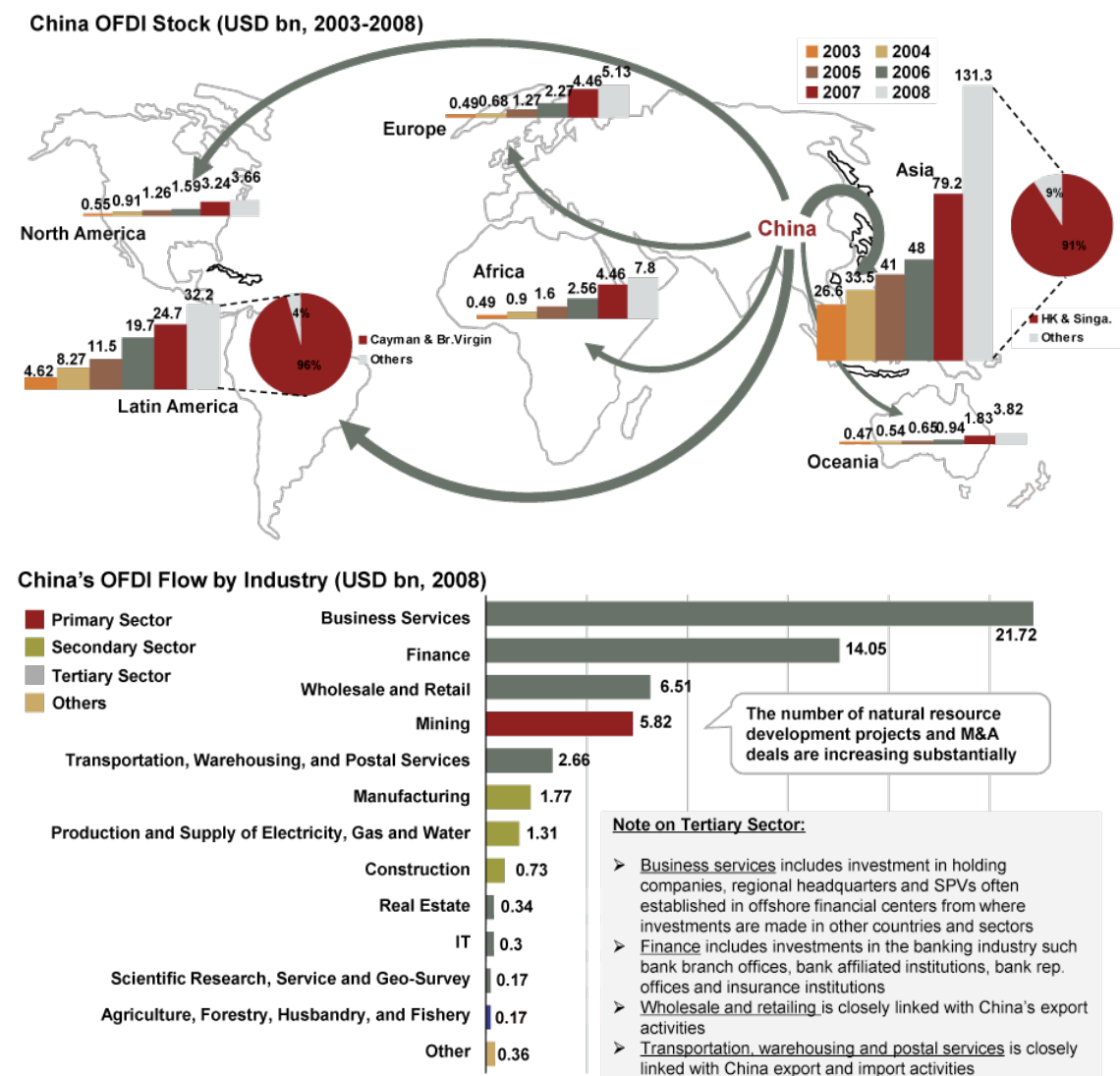
<sup>19</sup> Steel and Iron Industry Development Policy, Order No 25 of the National Reform and Development Commission, July 2005, Article 30.

discouraged foreign investment. Sometimes, exploration rights had to be given up because local governments wanted to exploit the deposit themselves after the foreign investors discovered them.

On the **international front**, in sharp contrast with its restrictive domestic policies, China has been very active to shop for raw materials around the globe. To ensure access, China has mobilised its state-owned enterprises and has encouraged its private companies to acquire mineral fields abroad. Recently, China through its state-owned banks, has financed a number of projects, not only in mining, but also in related infrastructure and services sectors that are expected to facilitate access to sites and to ensure that the raw materials are shipped back to China.

Figure 1 illustrates Chinese frenzy investment abroad between 2003-08. While much of its investment was directed towards its neighbouring Asian counties, it has also pursued a “going-out” policy towards Latin America and increasingly towards Africa. The latter registered a 15-fold increase during that period. Surprisingly, the bulk of Chinese investments was directed to the tertiary sector, closely linked to export activities. Mining ranks 4<sup>th</sup> in its priority, showing Chinese necessity to secure access to raw materials to satisfy its own growth and employment.

**Figure 1: China's Foreign Direct Investment, between 2003-2008 and by industry in 2008.**



Source: The Beijing Axis Analysis



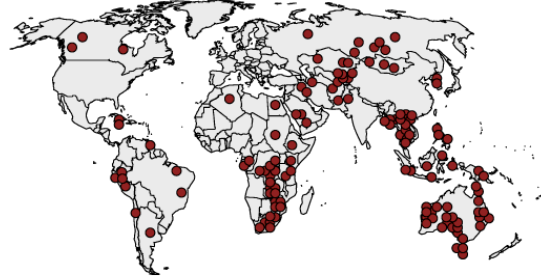
Historically, China was not the major investor in mining. However, over the past six years, as shown in figure 2, its expansion in mining has been impressive, much to the discomfort and disadvantage of other resource-dependent developed countries who had a long established primacy in resource-rich developing countries.

**Figure 2: China's Global expansion in the field of mining**

CHINA HAS NOT HISTORICALLY BEEN A MAJOR FOREIGN INVESTOR IN MINING – (A SNAPSHOT OF SIX YEARS AGO)



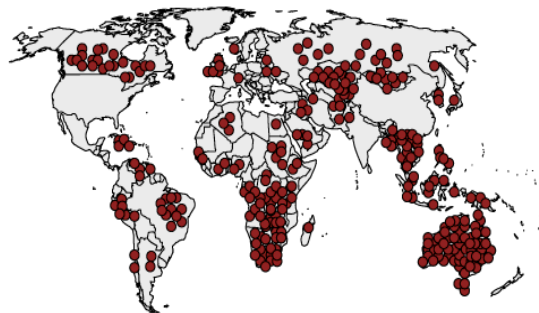
BUT IN RECENT YEARS CHINA STARTED TO MAKE MANY MAJOR GLOBAL MINING INVESTMENTS – (ONE YEAR AGO)



THESE GLOBAL MINING INVESTMENTS ARE ACCELERATING RAPIDLY – (NOW)



EXPECT MORE TO COME IN THE NEXT TWO YEARS  
Chinese firms have greater cash holdings and access to credit than their foreign competitors

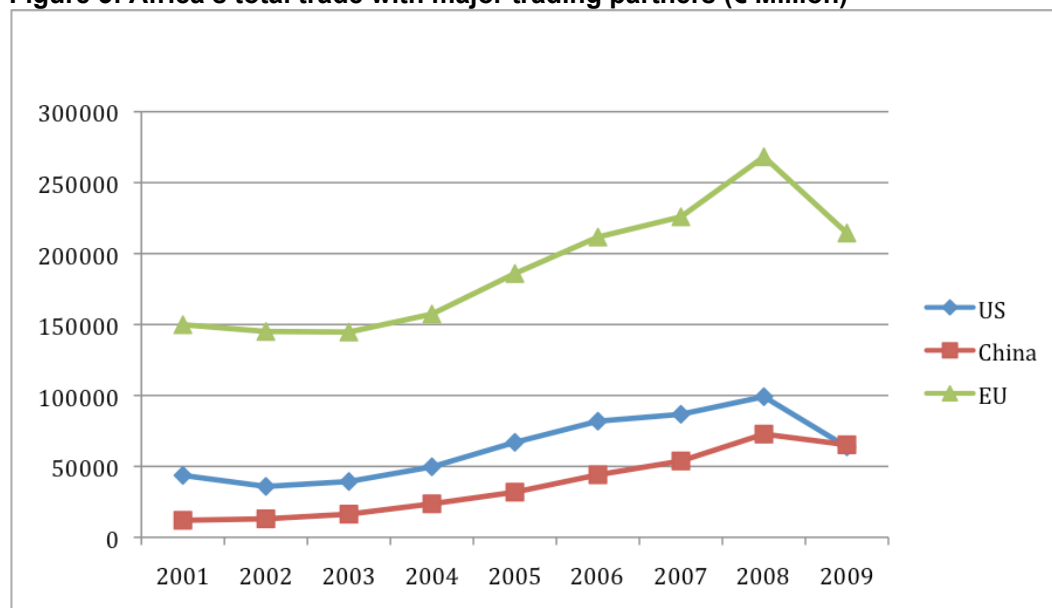


Source: *The Beijing Axis Analysis*

In just six years, massive investments were made notably in Africa and in Central Asia, and interestingly in Australia, which is the world's biggest exporter of coal and the world's second largest exporter of iron ore. This trend is expected to accelerate in the years to come, with other new emerging powers coming in the scene.

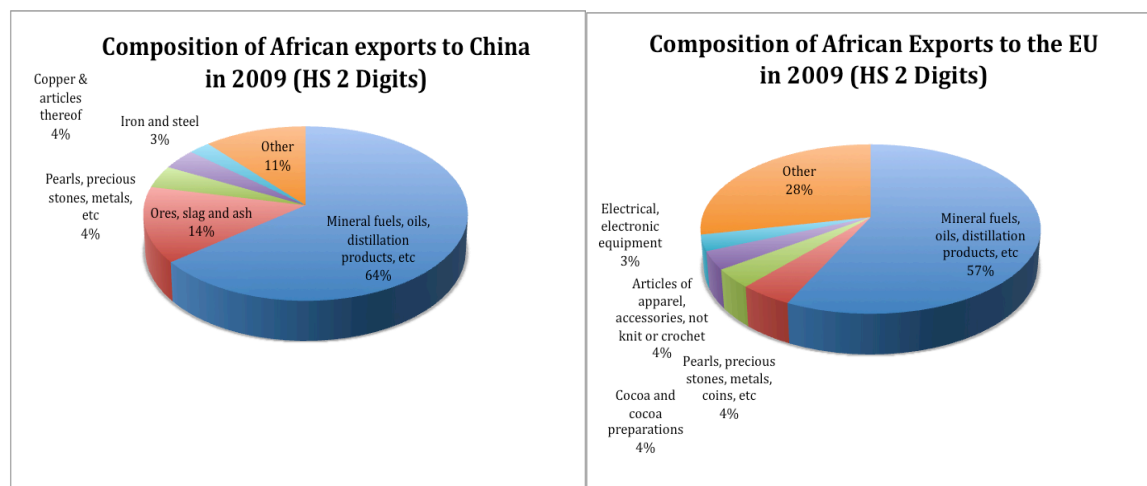
China has made significant economic and political inroads in Africa. For instance, trade between China and Africa grew by an annual average of 20% over the past 6 years, with a peak of 40% between 2006-07. Figure 3 below pictures the rapidly growing share of China in Africa, compared to the EU and the US. It illustrates one particularly interesting point. While the EU remains by far Africa's main trading partner (and is likely to remain so for some time), in 2009, China outpaced the US, to become the second main trading partner of Africa. Furthermore, during the global economic crisis in 2008, while Africa's total trade with all its major trading partners was negatively affected, the impact on China was relatively less important compared to its Western counterparts.



**Figure 3: Africa's total trade with major trading partners (€ Million)**

Source: ITC Trade Map, based on COMTRADE Statistics

The composition of trade between Africa and its main trading partners is also quite revealing: raw materials and mineral fuels accounted for more than 90% of total Africa's export to China in 2009, as compared to 61% for Europe, as shown by Figure 4 below. This indicated clearly where the interests of parties lie.

**Figure 4: Composition of Africa's Export to China and Europe**

Source: ITC Trade Map, based on COMTRADE Statistics

Many Africa governments have been seduced by the Chinese way of doing business: compared to the its traditional partners, in particular the EU, China has provided a generous mix of preferential loans and credits, infrastructure development, debt relief and development assistance, all of which seem to have little apparent strings attached.

It makes no doubt that China's tactical expansion in resource-rich countries is linked to the increasing consumption of its growing population, expanding urbanisation and insatiable industrial needs. China is particularly attracted to Africa, given its large resources and its enormous (unexploited) reserves. While China has not concluded any trade agreement with African countries, most of the investments are made

under exclusive contracts that often grant Chinese firms a number of rights for exploitation and export of raw materials. As it is the case in many cases, contracts are however very often kept secret and non-transparent and the conditions of access to raw materials remain unknown.

China is also heavily investing in infrastructure projects in most countries where they have mining projects. Such investments have helped filled in infrastructure deficits, so far a major handicap for trade facilitation in Africa. While infrastructure development is often welcomed and often seen as a long-awaited manna from heaven, it is feared that it might become a Trojan horse. The financing of infrastructure projects has been guaranteed and backed by mining projects<sup>20</sup>, the so-called “mines for infrastructure” deals. Such a barter deal may, in the long-run, turn out to be to the greater advantage of Chinese firms: mining deals are usually based on long-term lease and information about the geological contents of the mines might be rather weak. In addition, it may increase the debt burden of African countries, in particular when those investments are financed by lines of credit.

### 3. Raw materials of strategic and critical importance: An overview

The rise of new emerging powers, and in particular China, and their growing appetite for raw materials rang a wake up bell for developed countries. In Europe, in particular, numerous private sector organisations called upon the European Commission to react and to take domestic and international policies to address their concerns. The fear of an eventual supply shortfall, and more importantly, the fear of losing grip on a longstanding and relatively privileged access to raw materials led to a series of analysis to define those raw materials that were critical to economic growth and employment with a view to informing decision making regarding strategies to access these key raw materials.

In this regard, following the EC Communication (2008), **41 minerals and metals of strategic importance** for Europe were analysed and as a result, **14 (in bold)** were classified as “critical”<sup>21</sup>, as listed in Table 1.

Table 1: Strategic and critical raw materials			
1. Aluminium	12. Diatomite	23. Magnesite	34. Silver
<b>2. Antimony</b>	13. Feldspar	<b>24. Magnesium</b>	35. Talc
3. Barites	<b>14. Fluorspar</b>	25. Manganese	<b>36. Tantalum</b>
4. Bauxite	<b>15. Gallium</b>	26. Molybdenum	37. Tellurium
5. Bentonite	<b>16. Germanium</b>	27. Nickel	38. Titanium
<b>6. Beryllium</b>	<b>17. Graphite</b>	<b>28. Niobium</b>	<b>39. Tungsten</b>
7. Borates	18. Gypsum	29. Perlum	40. Vanadium
8. Chromium	<b>19. Indium</b>	<b>30. Platinum Group Metals</b> <sup>22</sup>	41. Zinc
9. Clays (and Kaolin)	20. Iron Ore	<b>31. Rare earths</b> <sup>23</sup>	
<b>10. Cobalt</b>	21. Limestone	32. Rhenium	
11. Copper	22. Lithium	33. Silica sand	

Source: EC (2010): *Critical Raw Materials from the EU: Report of the Ad-Hoc working group on defining critical raw materials*.

<sup>20</sup> For a detailed study, see World Bank, PPIAF (2008): “Building Bridges – China’s growing role as infrastructure financier in Africa”

<sup>21</sup> European Commission Enterprise and Industry (2010): “Critical Raw Materials for the EU: Report of the Ad-Hoc Working Group defining critical raw materials”. [http://ec.europa.eu/enterprise/policies/raw-materials/critical/index\\_en.htm](http://ec.europa.eu/enterprise/policies/raw-materials/critical/index_en.htm)

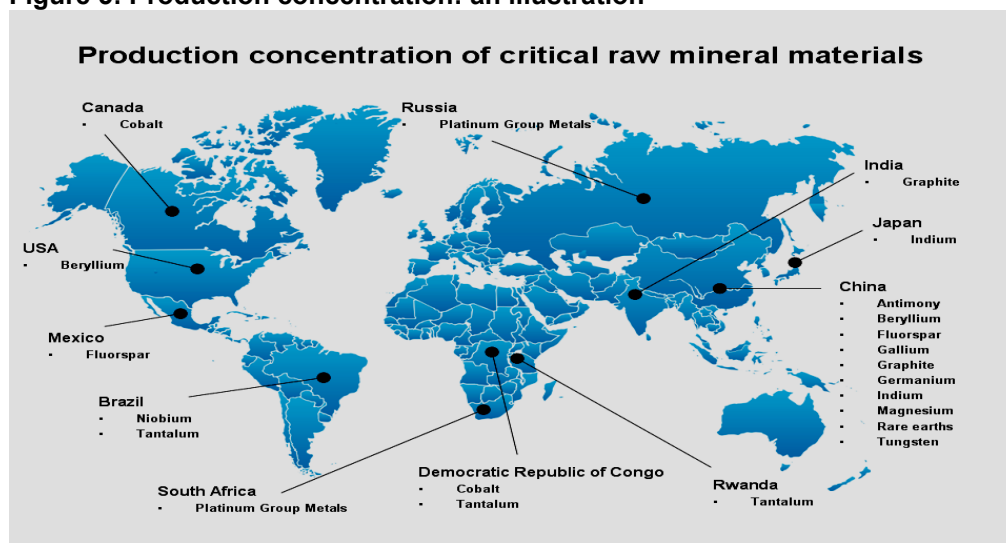
<sup>22</sup> PGM includes 6 metals: platinum, palladium, iridium, rhodium, ruthenium and osmium

<sup>23</sup> Rare earths include 17 metals: yttrium, scandium, lanthanum, cerium, praseodymium, neodymium, promethium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium and lutetium.

To define the “criticality” of raw materials, the EU used two criteria:

1. The “supply risk”, taking into account the political and economic stability of the producing country, the level of concentration of production, the potential for substitution and the recycling rate. As shown in Figure 5, worldwide production of critical raw materials is highly concentrated in few countries, leaving the EU highly dependent on external sources. Furthermore, this concentration is further compounded by low substitutability and low recycling rates.
2. The “environmental country risk”, assessing the risk that measures may be taken by countries with weak environmental performance in order to protect the environment, and in so doing, impact on the supply of raw materials to the EU.

**Figure 5: Production concentration: an illustration**



Source: European Commission (2010): Memo 10/263 reporting on the list of 14 critical raw materials.

Like the EU, the **US** also distinguished between “**strategic**” and “**critical**” raw materials. “**Strategic**” raw materials are those required to maintain national security and military needs as well as the demand for national emergencies. “**Critical**” raw materials are those that are important for significant uses for the US economy and society and where there are risks of supply constraints that could have significant adverse impacts.

As noted earlier, historically, **the US** has defined the issue of criticality with respect to defence and military considerations. Minerals were regarded as critical only if they performed an essential function for which there are very few or no satisfactory substitutes.

**Criticality** was therefore defined according to the criteria:

1. Importance in use and the probability that the demand for the mineral meeting precise specifications and could lead to economic, political, social and other consequences if those essential functions were not met. Substitution was a key element.
2. Availability, i.e, if there was a high risk of supply restriction, leading to physical unavailability or to significantly higher prices. Availability is a function of geological, technological, environment and social, political, economic factors and may evolve over time given rapid technological changes. Supply risk, in the short term, could result from an unexpected rise in demand, in particular if the

demand rises more quickly than supply can respond or from production concentration in a few countries or by few companies.

As shown in Table 2, the 2008 Study identified 11 **strategic minerals** of which 5 were identified as **critical (in bold)**.

Table 2: Strategic and critical raw materials for the US			
1. Copper	4. Lithium	<b>7. PGMs</b>	10. Titanium
2. Gallium	<b>5. Manganese</b>	<b>8. REEs</b>	11. Vanadium
<b>3. Indium</b>	<b>6. Niobium</b>	9. Tantalum	

### 3.1 World production of critical raw materials and share in EU's imports

Table 3 shows the main global producers of the 14 critical raw materials as well as their respective shares in EU's imports. **China** is by far the **largest producer** of 9 out of the 14 critical raw materials and second largest producer of another one. It is also the **largest exporter to the EU** of 7 out of the 14 critical raw materials and is an important source for 3 others. **Russia and Brazil** rank high in the list of the select few where critical raw materials are produced and exported to the EU.

On the African continent, **South Africa** is the world largest producer of platinum group metals (PGMs) and the principal exporter to the EU (see also table 3 for main mineral deposits in some African countries). It also provides a quarter of the needs of fluorspar to the EU. **DR Congo** is the second key African producer of critical raw materials as the main producer (40.8% of world production) and exporter of cobalt (70.3% of EU's imports). Exports from other African countries to the EU include tantalum and tungsten in Rwanda, fluorspar in Kenya and Namibia and graphite in Zimbabwe and Madagascar).

As it currently stands, Africa's overall share in global production and exports of critical raw materials to the EU is rather limited, although many countries have the potential to produce more of these raw materials (see Table 4 in section 3.2). Currently, few African countries are important producers and exporters of raw materials to the EU as shown in Table 3 (highlighted in **bold**).

Table 3: Main producers and import sources of critical raw materials to the EU				
Raw Materials	Top world producers	Share in world production (%)	Main EU import source	Share in EU imports (%)
<b>1. Antimony</b> (EU dependency on imports: 100%)	In 2009: 1. China 2. Bolivia 3. Russia 4. <b><u>South Africa</u></b>	91.2% 2.4% 1.6% <b><u>1.6%</u></b>	In 2007: 1. Bolivia 2. China 3. Peru	76.8% 15.4% 6.1%
<b>2. Beryllium</b> (EU dependency on imports: 100%)	In 2009: 1. USA 2. China 3. <b><u>Mozambique</u></b>	85.1% 14.2% <b><u>0.7%</u></b>	Trading partners vary from year to year and include USA, China, Brazil and Canada.	

<b>3. Cobalt</b> (EU dependency on imports: 100%)	<i>In 2008:</i> <b>1. DR Congo</b> 2. Canada <b>3. Zambia</b>  <b>Other African producers*:</b> <u>Uganda</u> <u>Botswana</u> <u>South Africa</u> <u>Zimbabwe</u>	<b>40.8%</b> 11.3% <b>9.1%</b>  <b>In 2008*:</b> <u>1.0%</u> <u>0.51%</u> <u>0.34%</u> <u>0.04%</u>	<i>In 2007:</i> <b>1. DR Congo</b> 2. Russia <b>3. Tanzania</b>	<b>70.3%</b> 19.1% <b>5%</b>
<b>4. Fluorspar</b> (EU dependency on imports: 69%)	<i>In 2009:</i> 1. China 2. Mexico 3. Mongolia <b>4. South Africa</b> <u>Kenya</u> <u>Namibia</u>	59% 18% 6% <b>3.5%</b> <u>2.14%</u> <u>1.94%</u>	<i>In 2007:</i> 1. China <b>2. South Africa</b> 3. Mexico <b>4. Namibia</b> <b>5. Kenya</b>	27% <b>25%</b> 24% <b>15.7%</b> <b>6.1%</b>
<b>5. Gallium</b> (EU dependency on imports: large changes in statistics in different years)	<i>In 2010:*</i> 1. China 2. EU 3. Japan	75% 12.5% 12.5%	Trading partners vary from year to year and include USA, China and Russia.	
<b>6. Germanium</b> (EU dependency on imports: 100%)	<i>In 2009:</i> 1. China 2. Russia 3. USA	71.6% 3.6% 3.3%	<i>In 2007:</i> 1. China 2. USA 3. Hong-Kong	72.3% 18.6% 7.1%
<b>7. Graphite</b> (EU dependency on imports: 95%)	<i>In 2008:</i> 1. China 2. India 3. Brazil  <b>Other African producers*:</b> <u>Zimbabwe</u> <u>Madagascar</u>	72.3% 12.5% 6.9%  <b>In 2008*:</b> <u>0.6%</u> <u>0.44%</u>	<i>In 2007:</i> 1. China 2. Brazil <b>3. Madagascar</b> 4. Canada	74.1% 7.7% <b>3%</b> 3%
<b>8. Indium</b> (EU dependency on imports: 100%)	<i>In 2008:</i> 1. China 2. Japan 3. Korea 4. Canada	58.1% 10.6% 8.8% 8.8%	<i>In 2006:</i> 1. China 2. Hong Kong 3. USA 4. Singapore	81.3% 4.0% 3.8% 3.8%
<b>9. Magnesium</b> (EU dependency on imports: 100%)	<i>In 2009:</i> 1. China 2. Turkey 3. Russia	56.1% 12.0% 7.0%	<i>In 2006:</i> 1. China 2. Israel 3. Norway 4. Russia	81.5% 9% 3% 3.1%
<b>10. Niobium</b> (EU dependency on imports: 100%)	<i>In 2009:</i> 1. Brazil 2. Canada	92.4% 7.0%	<i>In 2006:</i> 1. Brazil 2. Canada	84.1% 15.8%
<b>11. PGMs</b> (EU dependency on imports: 100%)	<i>Only Platinum, 2009:</i> <b>1. South Africa</b> 2. Russia <b>3. Zimbabwe</b>  <b>Other African producers*:</b> <u>Botswana</u> <u>Ethiopia</u>	<b>78.7%</b> 11.2% <b>3.4%</b>  <b>In 2008*:</b> <u>0.1%</u> <u>&lt; 0.01%</u>	<i>In 2006:</i> <b>1. South Africa</b> 2. Russia 3. Norway	<b>60%</b> 32% 4%
<b>12. Rare Earths</b> (EU dependency on imports: 100%)	<i>In 2009:</i> 1. China 2. India 3. Brazil	97% 2.2% 0.5%	<i>In 2007:</i> 1. China 2. Russia 3. Kazakhstan	89.7% 9.2% 0.6%

13. Tantalum (EU dependency on imports: 100%)	In 2009: 1. Australia 2. Brazil <b><u>3. Rwanda</u></b> <b><u>4. DR Congo</u></b>	48.3% 15.5% <b><u>8.6%</u></b> <b><u>8.6%</u></b>	In 2007: 1. China 2. Japan 3. Kazakhstan	46% 40% 14%
	<b>Other African producers*:</b> <u>Mozambique</u> <u>Ethiopia</u> <u>Nigeria</u> <u>Burundi</u>	<b>In 2008*:</b> <u>Data n/a for Tantalum only</u>		
14. Tungsten	In 2008: 1. China 2. Russia 3. Canada	77.8% 5.4% 4.1%	In 2006: 1. Russia <b><u>2. Rwanda</u></b> 3. Bolivia	75.6% <b><u>13%</u></b> 6.6%
	<b>Other African producers*:</b> <u>Rwanda</u> <u>DR Congo</u> <u>Uganda</u>	<b>In 2008*:</b> <u>2.4%</u> <u>0.6%</u> <u>0.12%</u>		

Source: Table compiled by the author, extracted from EC (2010): "Critical Raw Materials for the EU: Report of the Ad-Hoc working group on defining critical raw materials". For data marked with an (\*), source: World Mining Data 2010.

This situation is however likely to evolve: the overdependence of Europe on China for a large number of critical raw materials has proved painful recently, in particular with China's decision to restrict the export of some critical raw materials such as rare earths. In this respect, both the EU and the US are likely to turn to other sources to diversify their sources of imports. While China has some comparative advantage over Africa in many raw materials as a result of their large volume of extraction, there is no doubt that Africa's production and share of exports is likely to increase sooner rather than later.

That being said, the EU is likely to **increase pressure** on all its trading partners to secure access to raw materials, notably by removal of trade-distorting measures through bilateral trade agreements, asking countries to remove exports restrictions and by seeking to conclude far reaching investment agreements that cover pre- as well as post-establishment rights.

As matters stand, few African countries (with the exception of DR Congo and South Africa) fall into the category of "main exporters of critical raw materials to the EU". But due to their enormous potential to increase production in the future, the EU is increasingly likely to turn to Africa to secure access to such raw materials. In this regard, the 2011 EC Communication has outlined EU's strategy to use its development policies to benefit from "sustainable supply of raw materials", in particular in Africa.

### 3.2 Importance of raw materials for Africa

Statistics<sup>24</sup> have shown that the share of Africa's exports of fuels and mining products to Europe has sharply declined from 50% in 2000 to 39% in 2009, while the share of exports to Asia has increased from 17% to 22% in the same period. Similarly, during that same period, it has been observed that the share of Africa's global exports of agriculture has fallen from 12% to 10% and that of manufacturing products has gone down from 24% to 19%. By contrast, during that same period, the share of Africa's global exports of mining and fuel rose from 59% to 64%. This translates an increasing dependence on primary products at the expense of industrialisation and therefore of value-added development.

<sup>24</sup> See International Trade Statistics 2010, WTO.

Africa is well endowed with abundant natural resources. It is known to host 30% of the world's reserves and produces over 60 metals and minerals, including the most demanded ones, such as PGMs, copper, cobalt and nickel. Furthermore, the decades to come are likely to put Africa at the forefront as resource dependent countries increase their quest for its raw materials.

Paradoxically however, it is interesting to note, as shown in Table 3, that Africa's current share in worldwide production is relatively small compared to other resource-rich countries such as China, Russia or Brazil.

Despite their known deposits, which is largely underestimated, effective production in many African countries have remained so far below optimum. This is explained by the lack of local investment in mining and other related infrastructure, the lack of geological surveys and research to evaluate the potential of the countries and several conflict situations, that have not encouraged foreign investors to venture into the extractive business. However, with the rising demand and the resulting race towards raw materials of key importance to industrial development, exploitation and extraction is expected to increase significantly and so will the share of Africa in the world's production.

Table 4 gives an overview of the main strategic and critical mineral as well as other raw materials (including fuels) deposits in a selected group of African countries. It highlights the enormous potential of African countries and depicts mineral deposits that are currently exploited as well as deposits that have been identified but are not fully exploited. The critical raw materials are in *italics*.

Table 4: Main strategic and critical mineral deposits in selected African countries			
Country	Strategic and critical raw materials	Other raw materials	Petroleum and natural gas
<b>Angola</b>	Nickel, copper, iron, zinc gypsum, manganese, silver, <i>cobalt, tungsten</i> , vanadium, <i>beryllium</i> , aluminium	Diamonds, gold, uranium, lead, Phosphate, granite, marble, salt, lignite, mica, peat, quartz	Crude petroleum, natural gas
<b>Botswana</b>	Copper, nickel, <i>cobalt, PGM, graphite</i> , zinc, feldspar, gypsum, iron, manganese	Coal, soda ash, salt, diamond, gold, semi precious gemstones, asbestos, chromite, lead	
<b>Burundi</b>	Nickel, copper, <i>cobalt, niobium</i> , vanadium, limestone, <i>tungsten, tantalum</i>	Tin, peat, gold, sand, uranium	
<b>Congo DR</b>	Copper, zinc, <i>cobalt, tungsten, germanium, tantalum, niobium</i> , silver, aluminium, iron	Coal, tin, lead, diamond, gold	Crude petroleum
<b>Congo</b>	Copper, zinc, iron, <i>magnesium</i>	Potash, lead, diamond, gold, lime	Natural gas; liquid petroleum gas; crude petroleum
<b>Cote d'Ivoire</b>	<i>Cobalt, niobium, tantalum</i> , nickel, copper, iron, bauxite, manganese, silica sand	Gold, diamond	Natural gas; crude petroleum
<b>Ethiopia</b>	<i>Niobium, Tantalum</i> , feldspar, iron, limestone, gypsum, kaolin, silica sand, silver, diatomite, <i>PGMs</i>	Salt, soda ash, granite, marble, pumice, rhyolite, gold, gemstones, quartz, coal	Petroleum



<b>Gabon</b>	<b>Niobium</b> , iron, manganese	Uranium, phosphate, gold, diamond	Crude petroleum, natural gas
<b>Kenya</b>	Iron, <b>fluorspar</b> , diatomite, gypsum, kaolin, bentonite, feldspar, limestone, aluminium	Lead, soda ash, salt, gemstones, gold, marble, granite	Petroleum refinery products
<b>Madagascar</b>	Aluminium, <b>beryllium</b> , <b>tantalum</b> , <b>niobium</b> , vanadium, kaolin, <b>graphite</b> , limestone, chromium, nickel, bauxite, copper, <b>cobalt</b> , <b>titanium</b> , gypsum, <b>PGMs</b> , <b>graphite</b>	Coal, labradorite, ilmenite, rutile, gemstones, quartz, salt, mica, marble, gold	Crude petroleum, refines petroleum
<b>Mali</b>	Copper, lithium, nickel, iron, chromium, <b>titanium</b> , <b>tungsten</b> , <b>niobium</b> , bauxite <b>PGMs</b> , silver, gypsum, manganese, talc	Granite, marble, phosphate, salt, rutile, zircon lead, tin, uranium, thorium, kaolinite, Gold, diamond, semi-precious stones	
<b>Mozambique</b>	Bauxite, iron, <b>niobium</b> , <b>tantalum</b> , titanium, <b>beryllium</b> , diatomite, bentonite, aluminium, silver, <b>graphite</b> , copper, limestone	Salt, quartz, marble, rutile, zirconium, ilmenite, gold, coal, gemstones, diamond, coal, granite, uranium	Natural gas
<b>Namibia</b>	Copper, zinc, <b>fluorspar</b> , manganese, silver,	Salt, granite, marble, sodalite, wollastonite, lead, tin, uranium, tantalite, diamond, gold, gemstones, sulphur, dolomite	
<b>Nigeria</b>	Aluminium, limestone, <b>tantalum</b> , <b>niobium</b> , copper, zinc, iron, <b>tungsten</b> , barite, kaoline, feldspar, gypsum	Tin, lead, coal, granite, marble, soda ash, talc, zircon, phosphate, rutile, monazite, ilmenite, gold, gemstone, diamond	Crude petroleum, refined petroleum, natural gas
<b>Rwanda</b>	<b>Tungsten</b> , <b>tantalum</b> , <b>niobium</b> , nickel	Tin, pozzolana, gold, columbium, gemstones	Natural gas
<b>South Africa</b>	Zinc, bauxite, copper, nickel, iron, chromium, vanadium, titanium, <b>cobalt</b> , <b>antimony</b> , <b>fluorspar</b> , bentonite, feldspar, gypsum, kaolin, silver, talc, limestone, aluminium, manganese, <b>PGMs</b>	Lead, Coal, phosphate, kyanite, vermiculite, ilmenite, silicon, asbestos mica, rutile, zircon uranium, gold, diamond, gemstone, perlite, salt, sulphur, granite	Crude petroleum, natural gas
<b>Tanzania</b>	Nickel, bauxite, copper, <b>cobalt</b> , gypsum, silver, limestone	Coal, phosphate, uranium, gemstone, marble, diamond, gold, salt, soda ash, pozzolana	Natural gas
<b>Uganda</b>	Copper, <b>cobalt</b> , <b>tungsten</b> , <b>niobium</b> , <b>tantalum</b> , iron, gypsum, kaolin, silica sand, <b>beryllium</b> , limestone	Gold, tin, lead, uranium, salt, vermiculite, pozzolana, marble, soapstone, phosphate	Petroleum
<b>Zambia</b>	Copper, nickel, <b>cobalt</b> , manganese, feldspar, barite, silver, limestone, zinc, <b>magnesium</b>	Gemstones, diamond, gold, tin, uranium, coal, sulphur, lead	Petroleum refinery products
<b>Zimbabwe</b>	<b>PGMs</b> , silver, nickel, copper, iron, chromium, <b>cobalt</b> , lithium, feldspar, <b>graphite</b> , talc, barite, aluminium, <b>tungsten</b> , <b>tantalum</b> , <b>niobium</b> , limestone, kaolin	Gold, diamond, coke, tin, lead, coal, vermiculite, phosphate, kyanite, perlite, mica, sulphur, asbestos	

Source: Table compiled by the author, extracted from US Geological Country Surveys, 2008, 2009, <http://minerals.usgs.gov/minerals/pubs/country/africa.html#bc> ; British Geological Survey – African Mineral Production 2001-05, [www.bgs.ac.uk/downloads/start.cfm?id=1390](http://www.bgs.ac.uk/downloads/start.cfm?id=1390)

With regards to Africa's trade, it is fair to say that many of African countries are heavily reliant on exports of raw materials to generate revenue, employment and foreign exchange earnings. Many African countries



feel that they have for too long been trapped in a state of mineral dependence and therefore in a vicious circle of raw materials and primary products supply, whose prices have been constantly fluctuating and unstable.

Table 5 illustrates the importance of exports of raw materials (excluding oil) to the EU for a selected group of African countries. The share of exports of critical raw materials is highlighted in **bold**. They represent an important share of exports for few countries, such as DR Congo (cobalt, 19.4%), Rwanda (tungsten, 18.5%) and to some extent South Africa (PGMs, 8.7%) but are relatively less important for the other countries. It is important to observe that “critical raw materials” do not represent a large share of exports from most African countries to the EU.

Table 5: Share of selected raw materials in selected African countries in export to the EU			
Country	HS Code	Product Description	Share of raw material in country's exports to EU (2007)
Botswana	7102	<i>Diamonds</i>	92.2%
	2604	<i>Nickel ores</i>	1.6%
	<b>Total</b>		<b>93.8%</b>
Congo	2603	<i>Copper ores</i>	18.9%
	7402	<i>Copper unrefined</i>	13.0%
	7403	<i>Copper, refined</i>	1.5%
	7404	<i>Waste and scrap of copper</i>	1.1%
	8105	<b><u>Cobalt mattes</u></b>	<b>1.1%</b>
	<b>Total</b>		<b>35.6%</b>
DR Congo	8105	<b><u>Cobalt mattes</u></b>	<b>14.5%</b>
	2605	<b><u>Cobalt ores</u></b>	<b>4.9%</b>
	7402	<i>Copper unrefined</i>	4.3%
	7403	<i>Copper, refined</i>	3.9%
	7404	<i>Waste and scrap of copper</i>	0.9%
	<b>Total</b>		<b>28.5%</b>
Guinea	2606	<i>Aluminium ores</i>	68.8%
	7102	<i>Diamonds</i>	5.9%
	7404	<i>Waste and scrap of copper</i>	1.0%
	<b>Total</b>		<b>75.7%</b>
Lesotho	7102	<i>Diamonds</i>	98.1%
Mauritania	2601	<i>Iron Ores</i>	78.1%
Mozambique	7601	<i>Unwrought Aluminium</i>	83.9%
Namibia	7901	<i>Unwrought zinc</i>	27.7%
	7102	<i>Diamonds</i>	26.6%
	7402	<i>Copper, unrefined</i>	6.1%
	2529	<b><u>Feldspar</u></b>	<b>1.9%</b>
	<b>Total</b>		<b>62.3%</b>
Rwanda	2611	<b><u>Tungsten</u></b>	<b>18.5%</b>
	2609	<i>Tin ores</i>	0.8%
	<b>Total</b>		<b>19.3%</b>
South Africa	7102	<i>Diamonds</i>	15.3%
	7110	<b><u>Platinum</u></b>	<b>8.1%</b>
	7108	<i>Gold</i>	4.7%
	7202	<i>Ferro-alloys</i>	4.7%
	2616	<i>Precious metal ores</i>	2.8%
	2601	<i>Iron ores</i>	2.0%
	7601	<i>Unwrought aluminium</i>	1.3%
	2615	<b><u>Niobium, tantalum, vanadium</u></b>	<b>0.6%</b>
	<b>Total</b>		<b>39.5%</b>
Tanzania	7102	<i>Diamonds</i>	3.8%
	7403	<i>Copper, refined</i>	1.5%
	2611	<b><u>Tungsten ores</u></b>	<b>0.9%</b>
	2605	<b><u>Cobalt ores</u></b>	<b>0.7%</b>
	<b>Total</b>		<b>6.9%</b>

Zambia	7403	Copper, refined	55.2%
	8105	<b>Cobalt mattes</b>	<b>4.9%</b>
	7408	Copper wires	0.9%
	7402	Copper, unrefined	0.5%
Total			<b>61.5%</b>
Zimbabwe	7202	Ferro alloys	26.3%
	7403	Copper, refined	5.7%
	2603	Copper ores	4.6%
	7502	Unwrought nickel	3.6%
	7102	Diamonds	3.5%
Total			<b>43.7%</b>

Source: Table compiled by the author, extracted from EU External trade Statistics, 2007.

To change this dire state of economic affairs and move out of the “resource curse”, many African countries have expressed their willingness to take “development” measures, they deem necessary. This includes adding value, developing downstream industries and diversifying their production and export base. Such measures could include domestic policies to diversify both **within** and **outside** the mining industries but also trade measures in view of addressing their own development needs, including mobilising domestic resources from the extractive industries and imposing export restrictions on certain key raw materials to promote national development.

While the pros and cons of the use of export restrictions and their likely effects on trade and development can be widely debated, ultimately, such measures would only have a significant effect in terms of revenue and foreign exchange generation if the raw materials concerned represented an important share of the country's exports to the EU.

Finally, it is important to highlight one particular aspect of the extractive sector, which makes it different from other traditional goods sector. Because of the heavy investments required, extractive companies have acquired long-term licences and concluded contracts to guarantee the supply of raw materials over a long period of time. These contracts generally specify the conditions of extraction and exploitation. These contracts are often accompanied by specific (and generous) fiscal regimes, such as corporate tax rebates, value added tax exemptions or export taxes exemptions. As a result, contracts allowed extractive industries to “jump” fiscal measures such as export taxes. This has therefore discouraged value addition and the use of raw materials in the industrialisation process.

African countries therefore need to remain vigilant: seeking to keep policy space, at all costs in trade agreements by using export taxes for industrial development purposes might serve little purpose if, in parallel, foreign companies are able to export their raw materials under conditions defined in their contracts.

## 4. Possible Implications of the EU Raw Materials Initiative for Africa: A Trade Perspective

The Raw Materials Initiative in itself is a policy document of the EU, with no legal enforcement. It makes recommendations for the Commission to act in a coherent manner at different levels. It is meant to be used by EU policy makers and is expected to largely inform their positions when they define their trade, development, industrial and other strategies that are important to safeguard the interest of the EU on the global scene.

The Initiative has raised increasing concerns among many African countries. It is felt that EU's external trade policies is likely to put increasing pressure in trade negotiations, both bilaterally (such as in the Economic Partnership Agreement - EPAs) and at the multilateral level, to eliminate current restrictions on exports or to prohibit their uses in the future. This might, as a result, limit their policy space to define their own development strategies.

Many African countries have taken policy measures to restrict exports of certain products, including on some raw materials. However, it is fair to say that measures taken by African countries have, in most cases, not been the major factors that triggered the EU to design its policy regarding access to raw materials. Indeed, most of African exports are concentrated in raw materials that the EU itself does not consider as critical, at least for the moment.

Although Africa might not be the main target of the EU for the moment, its potential might however cause the EU to act as a matter of prevention. The EU might also seek to maintain a coherent approach to accessing raw materials worldwide and thus not be willing to create a precedent by providing a special – more flexible – treatment in favour of Africa.

As mentioned in Section 2 above, Pillar I (*Access to raw materials on world markets*) of the integrated strategy, and as reinforced by the 2011 Communication, is likely to shape EU's strategies on several fronts. Implementation of these strategies will not only cause challenges for many African countries, mostly linked to trade and investment, but might as well open up some interesting opportunities, in particular with respect to the coherence between EU's development policy and undistorted access to raw materials.

## 4.1. Possible Challenges

### 4.1.1. Use of trade defence instruments

The EU is expected to increasingly use its trade defence mechanisms (in particular anti-dumping and countervailing measures) to protect the competitiveness of its markets and industries from unfair competition due to unnecessary trade distorting measures taken by third countries. Should any country give subsidies that cause or threaten to cause disturbances on the EU market, the latter might be subject to countervailing measures. Similarly foreign enterprises could be subject to anti-dumping measures if they export raw materials to the EU at prices that are lower than the normal value of the raw material in its own market.

### 4.1.2. Access to raw materials through trade policies

The EU is pursuing trade negotiations with all its key trading partners with a view to expanding its market access but also to securing predictable trading environment. This was one of the main axes of the 2006 Global Europe trade policy strategy<sup>25</sup>, in which the Commission expressly signified its intention to address barriers to the free trade, including on in raw materials. It is negotiating or has concluded free trade agreement (FTAs) with a number of emerging economies and regional organisations such Mercosur, Korea, India as well as Mediterranean countries.

Most African countries, in particular those that belong to the group of African, Caribbean and Caribbean (ACP) countries, have entered into Economic Partnership Agreement (EPA) negotiations with the EU since

<sup>25</sup> <http://ec.europa.eu/trade/creating-opportunities/trade-topics/european-competitiveness/global-europe/>

2002, with a view to replacing the long-standing non-preferential trade relationship with a reciprocal - though asymmetric one - to be compatible with the rules of the WTO.

Of the 46 African countries that are part of the negotiations, only 20 have so far initialled an Interim EPA, covering trade in goods. Some key elements of the interim EPAs include commitments to substantially liberalise imports, to limit the use of export taxes and quantitative restrictions (both on imports and exports).

The EU has clearly shown its determination to address the issue of trade distortions, through its bilateral trade agreements. Indeed, most FTAs signed by the EU so far include a clause to eliminate export taxes and to remove quantitative restrictions. The purpose of the provisions regarding export taxes and quantitative restriction are meant to regulate the use of tariff and non-tariff barriers. The provisions are aimed at restricting the use of such measures by ensuring that existing measures are gradually removed and that in the future, no such measure could be applied to exports.

The provision regarding export taxes was one of the main contentious issues in the EPA negotiations, in particular among African countries, which have forcefully resented pressures to eliminate a trade policy measure they considered important for their future industrial development<sup>26</sup>. This binding provision could eventually constrain an important policy instrument for countries that might want to use such a tool to respond to particular economic development challenges, such as moving up the value chain, infant and downstream industry development or to generate advantages for industrialisation purposes in general.

While the 2011 Communication has reinforced the EU's willingness to have fair access to raw materials through negotiations, it might also used "autonomous measures" vis-à-vis third countries with which it does not have any trade agreement. While the term "autonomous measures" is not defined in the 2011 Communication, one may assess that the EU might take measures against countries that benefit from its Generalised System of Preferences (GSP), which is an autonomous scheme, if the latter apply unjustified trade and investment restrictive measures on exports of raw materials. If that is the case, the GSP will loose its primary objective, which is meant to be a development tool. The question of conditioning access to GSP to access to raw materials was proposed by business representatives and some member states, namely Germany who made explicit mention in its own raw materials strategy<sup>27</sup>. Although this is not explicitly reflected in the final version of the Communication, the upcoming review of the GSP Scheme will unveil the EC's position on this question.

#### 4.1.3. Working towards stronger disciplines at the WTO

Disciplines relating to export taxes at the WTO have remained rather limited. Indeed, the GATT does not explicitly prevent countries from applying export taxes and so far, most countries have made concessions mainly in relations to imports. However, some recently acceding countries (for instance China, Vietnam, Saudi Arabia and Ukraine) have been asked to take commitments to progressively remove restrictions on exports.

<sup>26</sup> For more information regarding contentious issues in the EPA, refer to Lui D and Bilal S (2009): Contentious Issues in the Interim EPA: Potential Flexibility in the Negotiations. DP 89. Available on [http://www.ecdpm.org/Web\\_ECDPM/Web/Content/Content.nsf/7732def81dddfa7ac1256c240034fe65/6133074b85c2b9fac125757c0048fc1b?OpenDocument](http://www.ecdpm.org/Web_ECDPM/Web/Content/Content.nsf/7732def81dddfa7ac1256c240034fe65/6133074b85c2b9fac125757c0048fc1b?OpenDocument) and Bilal, S. and I. Ramdoo. 2010. *Which Way Forward in EPA Negotiations? Seeking Political leadership to address bottlenecks* (Discussion Paper 100), available at <http://www.ecdpm.org/dp100>

<sup>27</sup> See Federal Ministry of Economics and Technology: "German Government's Raw Materials Strategy: safeguarding a sustainable supply of non-energy mineral resources for Germany", downloadable on <http://www.bmwi.de/English/Redaktion/Pdf/raw-materials-strategy.property=pdf.bereich=bmwi.sprache=en.rwb=true.pdf>

Some countries, including the EU, have made concrete proposals at the WTO with a view to have stronger disciplines on export restrictions since it is felt that WTO legal texts are limited in scope and lack clarity. In 2007, the EU proposed a Draft WTO Agreement on Export Taxes in the Negotiating Group on Market Access<sup>28</sup>. The proposal was not accepted and was widely criticised by many other members. It was however revised in the context of the 4<sup>th</sup> Revision of the Non-Agricultural Market Access (NAMA) Modalities, where the EU proposed a new submission on Export Taxes in 2008. The elements of the EU proposal on export taxes are threefold:

1. The need to operationalise the basic GATT principles relating to export duties and charges, in particular GATT Articles I, VII, VIII and XVII, to apply to situations where WTO members use export taxes for industrial or trade policy purposes with negative effects on other WTO members. The proposal however includes exceptional circumstances where export taxes could be maintained or introduced, such as financial crises, infant industry, environment (preservation of natural resources) and local short supply;
2. Incorporation of additional flexibility for small developing countries and least-developed countries (LDCs) to maintain or introduce export taxes in other situations; and
3. Limitations of GATT disciplines for export taxes to non-agricultural products (hence excluding agricultural products).

The new text is now part of the Doha Development package on non-agriculture market access and is currently being discussed. Most African countries are also members of the WTO and participate in the ongoing Doha Round negotiations. It is therefore important that they ensure the coherence of their positions in the EPA and their positions at the WTO.

Finally, EU has signified its intention to give particular consideration to launching dispute settlement cases in the event of trade distorting, WTO-incompatible trade practices in relation to raw materials of importance to EU industries.

#### **Box 5: First WTO Dispute on Export Restrictions**

China's ambition and far reaching policies and plans have propelled its economic and industrial development but has also created significant barriers to trade. In effect, China applies export restrictions on a number of raw materials. While it is not the only country to do so, because of its especially strong position as a global supplier, these restrictions led to upward price pressures and distorted global competition for many downstream industries.

Resource-dependent countries have raised these concerns with China for many years, including at the bilateral level. However, their efforts did not meet any significant engagement from the Chinese side. In reaction, the EU, the US and Mexico made a formal request at the WTO for consultations on 23 June 2009. Again, the discussions did not lead to an amicable and acceptable solution by the Parties. On 21 December 2009, a request was made for the establishment of a Panel regarding measures related to the exportation of various raw materials.

The Panel request focuses on some raw materials on which China imposes four types of restraints on exports, namely:

<sup>28</sup> See Communication from the European Communities in the negotiating group on market access relating to a Proposal on NTBs entitled "WTO Agreement on Export Taxes", Job(07)/43, 2 April 2007. [www.wto.org](http://www.wto.org)

1. Export duties on bauxite (10-15%), coke (40%), fluorspar (15%), magnesium (10%), manganese (15-20%), silicon metal (15%), yellow phosphorus (20%) and zinc (10%);
2. Export quotas on bauxite, coke, fluorspar, silicon carbide and zinc;
3. Export licensing requirements on bauxite, coke, fluorspar, manganese, silicon carbide and zinc and
4. Minimum export price requirements on bauxite, coke fluorspar, magnesium, silicon carbide, yellow phosphorus and zinc.

The measures in place seem to be violating the WTO requirements of GATT 1994 but also some specific commitments that China signed up to as part of its WTO Accession Protocol. This sets out prohibitions against the use of export duties or establishes strict caps on a limited number of products. Furthermore, export quotas, without justifications, are not permitted under Article XI of the GATT 1994. Finally, China did not notify many of the export taxes despite commitments to do so.

Despite the current dispute case, China announced in September 2009, that it would start applying export quotas on rare earths and other metals of which it is the world's largest supplier (95% for rare earth concentrates), this time citing environmental reasons to justify its actions.

*Source: First written submission of the US in DS394/395/395 in China – Measures related to the exportation of various raw materials, June 2010.*

#### 4.1.4. International Investment Agreements

Foreign Direct Investment (FDI) is a very important factor to promote development, economic and social growth. There is also an increasing inter-dependence and complementarity between trade and FDI. As a result, the EU considers that international rules on FDI, meant to increase legal certainty and to reduce the perceived investment risk, are important to improve the business climate.

The EU investment policy is focused on providing legal certainty as well as a stable, predictable, fair and properly regulated environment in which to conduct their business, in line with the existing international rules<sup>29</sup>. Furthermore, it seeks to obtain maximum protection for its investors, through the establishment of minimum standards of treatment of investment.

The EU is has therefore focused on the negotiation of investment rules in the context of preferential trade agreements with third countries, based on the following principles:

- Long-term investment, i.e. establishment that generates stable employment and growth;
- Improved market access and national treatment for foreign investments both at pre- and post-establishment stages, where investors are accorded the same rights as domestic investors;
- Transparency of the regulatory framework;
- Ensuring that host and home countries fully retain their rights to regulate the domestic sectors;
- Ensuring free flows of payments and investment-related capital movements, which secures the right of investors to repatriate profits and restricts the ability of host countries to impose controls on capital movement while preserving the possibility to take safeguard measures in exceptional circumstances; and
- Facilitating the movement of investment-related natural persons ("key personnel").

<sup>29</sup> These include the WTO General Agreement on Trade in Services (GATS), the guidelines for multilateral enterprises developed in the OECD framework, and other OECD instruments.



The recent Lisbon Treaty<sup>30</sup> explicitly mentioned FDI as forming part of the common commercial policy. As such, the Treaty established the EU's exclusive competence on FDI. The purpose was to ensure that EU investors abroad enjoy a level playing field, which assured both uniform and optimal conditions for investment through the progressive abolition of restrictions on investment.

In the context of the EPA, the EU has attempted to secure pre- and post-establishment rights for investors in non-services sectors by proposing an Agreement that would cover market access for investment. While foreign direct investment is potentially beneficial for economic growth and job creation, it requires countries to have sound and functioning investment regulatory, legal and institutional frameworks. Most African countries are not ready to conclude such agreements as they do not have the necessary domestic infrastructure. In this case, liberalising investment might have counter-productive results in the long-run as it would crowd-out local private investment. As matters stand, no African country or region has shown the readiness and willingness to sign an investment agreement with the EU.

## 4.2. Possible Opportunities

Despite the numerous challenges rightly associated with the increasing demand for raw materials, it is nevertheless important to highlight that the Raw Materials Initiative could also present some interesting **opportunities** for many African countries. While engaging with the EU is key, it is however important for mineral-rich African countries to engage all other trade and investment partners to ensure activities in the extractive industries ultimately leads to inclusive and sustainable development. Too often, countries have not been able to translate short-term revenues from mining into long-term welfare.

### 4.2.1 Improving resource management

The aim of all resource-dependent countries is to secure market access to minerals and therefore it is in their interest that resources are well-managed, both economically and environmentally. It is therefore the responsibility of the resource-rich countries to ensure that sufficient parts of resource rents are invested and saved to achieve long-term economic development objectives. It is crucial to plan resources in such a way to insulate the economy against revenue shocks arising from the volatility and unpredictability of resource prices (the so called "Dutch Disease"). In this regard, they might consider the setting up of a Fund, where a share of government revenues arising from resource extraction would be saved for the purpose of economic diversification and development.

Mineral extraction can often conflict with other development objectives such as the conservation and sustainable management of renewable natural resources. Countries and companies need to reach a consensus before the beginning of extraction activities. In this regard, support could be sought to inform the consultation and decision procedures among stakeholders (administrations, companies and civil society). In addition, studies would have to be conducted to inform decision-making about negative externalities relating to extractive activities.

Efficient management of resources however necessitate sufficient human and technical capacity, strong institutions and sound legal and regulatory frameworks as well as financial means. In this regard, it may be important to ensure that activities related to the management of resources are reflected in countries' national priorities and therefore fully integrated in their national indicative programmes. These priorities

<sup>30</sup> For more discussion on the implications of the Lisbon Treaty on EPA, see Koeb, E. and M. Dalleau. 2010. [Trade relevant provisions in the Treaty of Lisbon. Implications for Economic Partnership Agreements](#) (Discussion Paper 98)

could also to be reflected at the regional level when regional economic communities define their priorities with the EU under their respective regional indicative programmes. In addition, African countries also need to engage all the other partner countries to help them manage these resources.

#### **4.2.2 Strengthening capacity to conduct geological surveys**

The 2011 Communication proposed that the EU would cooperate with African institutions in the field of geological surveys. This is a good opportunity to build capacity and improve geological knowledge. Few African countries have the capacity to conduct their own surveys and in many cases, countries simply do not have the technical and technological capacity to do so. This is one of the reasons why potential reserves of the continent in many countries are still widely unknown. Furthermore, it is one of the biggest weaknesses of many resource rich, but economically poor countries. They are often confronted with the challenge of information asymmetry compared to investors, who, very often, are more informed than Governments about the soil content. This has resulted in poor deals.

#### **4.2.3 Strengthening states and governance**

Transparency, governance and solid states are considered as crucial elements to improve the benefits derived from resources. These are important factors since in most cases, raw materials are under the control of the State. Achieving better governance and transparency would require the setting up of solid institutions capable of collecting and managing contracts and revenues from resources and of sharing the benefits from resources with local communities. It will also necessitate a strong regulatory and legal framework.

The 2011 Communication mentions that the EU would work towards strengthening states and governance. It might be a good opportunity to engage the EU in technical and financial assistance to set up the necessary institutions and to strengthen the capacity of those institutions.

Governance and transparency is however not only be a matter for the state. It is an equally important matter for foreign firms. The 2011 Communication is quite innovative in this field and has proposed that the Commission encourages European companies to disclose information, to adopt EU standards when operating in developing countries and examine ways to adopt country-by-country reporting. This could be another good opportunity to ensure that foreign companies disclose information related to contracts, payments of royalties and other fees as well as declaration of revenues to the Government and publish regularly audits and accounting reports. It would also be a good way to track situations where revenues from extractive industries are used to finance wars and conflicts. It might be interesting to assess the possibility of have regulations, in the spirit of the recent legislation passed in the US, named Dodd-Frank law (see Box 6 below).

Resource-rich African countries could engage all other partner countries that have foreign companies operating in their territories. Transparency in contracts would help in the effective management of resources and would ensure that policies taken by governments aimed at fostering economic development are not “jumped” in the contracts.



**Box 6: Dodd-Frank Law: A pioneering legislation**

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 21 July 2010 passed by the US Congress made a pioneering move towards ensuring transparency and governance by all companies listed at the New York Stock Exchange. The legislation, which will be managed by the Stock Exchange Commission, makes it compulsory for resource extractive industries in oil, natural gas and minerals to disclose payments of taxes, royalties, fees (including licence fees), production entitlements, bonuses and other material benefits, consistent with the guidelines of the Extractive Industries Transparency Initiative.

The law also requires manufacturing companies who file with the Stock Exchange Commission and use minerals originating in the Democratic Republic of Congo to disclose measures taken to exercise due diligence on the source and chain of custody of the materials and the products manufactured.

In addition, it requires the State Department to submit a strategy to address the illicit minerals trade in the region and a map to address links between conflict minerals and armed groups and establish a baseline against which to judge effectiveness.

**4.2.4 Making use of local content**

While FDI is very valued and important for future growth, African countries should, as far as possible encourage foreign companies to use, wherever available, local content, through the sourcing and procurement of locally available goods and services as well as the employment of local staff. This would be a means of ensuring that investment projects generate employment and business opportunities. It might also be a way to strengthen local business capacities, through on-the-job training, formal training or transfer of technical know-how and technology. This would be a way to generate poles of growth around the mining sector and foster entrepreneurship and create jobs.

It is important to mention that resource-rich countries' ability to require the use of local content may be affected by international obligations that Governments may have contracted through bilateral trade on investment agreements or at the multilateral level, notably at the WTO. As explained in Box 7 below, the Trade Related Investment Measures contained in the GATT of 1994 prohibits the use of trade-distorting local contents for goods only. In the field of trade in services, the Agreement is more flexible as WTO member states are allowed to require local contents, as long as it is inscribed in their schedules of commitments.

However, most African resource-rich countries (with the exception of South Africa) are categorised as developing countries at the WTO and are therefore allowed some flexibilities, provided they provide the necessary justifications. If well crafted, and justified according to flexibilities accorded to them under the TRIMS, countries could still require foreign companies to source goods and services and staff locally.

**Box 7: Local content requirements and WTO compatibility**

The Trade Related Investment Measures (TRIMS)<sup>31</sup> as laid down in the GATT<sup>32</sup> 1994 of the WTO prohibits measures in relations to trade in goods that are inconsistent with member states' commitments not to discriminate against non-nationals (national treatment) and to remove quantitative restrictions. Obligations

<sup>31</sup> See TRIMS Agreement - [http://www.wto.org/english/docs\\_e/legal\\_e/18-trims.pdf](http://www.wto.org/english/docs_e/legal_e/18-trims.pdf)

<sup>32</sup> See GATT Text - [http://www.wto.org/english/docs\\_e/legal\\_e/06-gatt.pdf](http://www.wto.org/english/docs_e/legal_e/06-gatt.pdf); [http://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_e.pdf](http://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf)

are embodied in Articles III and XI of the GATT. The TRIMS Agreement lists a number of prohibited measures, which includes local content requirements. Local content requirements regarding employment and services are outside the scope of TRIMS Agreement. The General Agreement on Trade in Services<sup>33</sup> (GATS) defines the scope of local content requirements in the field of trade in services.

There are however a number of exceptions to the TRIMS Agreement that could be invoked by developing countries. Article III of the Agreement allows member states to invoke all exceptions available under the GATT, namely relating to:

- (i) The use of safeguard measures to protect seriously injured domestic industry;
- (ii) General exceptions relating, amongst others, to the conservation of exhaustible natural resources and restrictions relating to “restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan”.
- (iii) Security exemptions.

In addition to the above exceptions, Article 4 of TRIMS allows **developing countries** to deviate temporarily from the obligations of the Agreement, as provided for in Article XVIII (Governmental assistance to economic development) of GATT 1994 and related WTO provisions on safeguard measures for balance-of-payments difficulties.

In relations to trade in services, in principle, member states are not allowed to take measures, amongst others, relating to limitations on the value of transactions in the form of numerical quotas and limitations on the total number of natural persons employed by the foreign firm, unless it is specified in their schedules of commitments. Local content is therefore only permitted if inscribed the schedule of commitments. Countries have no obligations if they have not taken any commitments in services related to mineral extractions at the WTO.

### 4.3. Beyond Trade Policies: ensuring coherence with EU Development Policy

Equitable and sustainable development is first and foremost, the core responsibility of the resource-rich countries themselves and therefore it is crucial to define their own development agenda, based on domestic priorities. Clear national development agenda is essential to ensure coherence between national priorities and access to raw materials from foreign firms.

The 2011 Communication mentions the need to improve coherence between development and the supply of raw materials. It is important to note that for the first time, the EU has mentioned development policies before trade policies. Such declaration of good intention shows the importance of policy coherence but would need to be translated into concrete actions.

Resource-rich countries need to engage the EU to ensure that the “development aspect” of the Initiative is in effect the prime concern of the EU and not a Trojan horse to secure higher market access. While transparency, good governance and tax reforms are all critical development factors, it is important to remain vigilant that development assistance does not become conditional to attaining these objectives.

The EU has signified its intention to pursue cooperation with key stakeholders to encourage the use of development policies and instruments at three levels, namely:

<sup>33</sup> See GATS Text - [http://www.wto.org/english/docs\\_e/legal\\_e/26-gats.pdf](http://www.wto.org/english/docs_e/legal_e/26-gats.pdf)

1. By strengthening states through good governance, increased budget support and transparency in mining deals and mining revenue;
2. By promoting a sound investment climate that is conducive to increase supply; by ensuring a level playing field for all foreign and local companies; by providing financing opportunities and by encouraging sound taxation regimes and development practices; and
3. By promoting the sustainable management of raw materials. This issue first came out as one of the conclusions of the EU-Africa Summit held in Lisbon in 2007. It has since then been part of the Joint Africa-EU Strategy. The EC incorporated the same objectives in its “*European Consensus on Development*”<sup>34</sup> and the “*Thematic Strategy on the Sustainable Use of Natural Resources*”<sup>35</sup>.

Transparency and governance are important elements to ensure that strong policies bear positive results. Turning the resource curse into a boon for the economy would require governments to take strong measures to transfer the earnings from the extractive sector to other productive sectors in the economy. In this regard, the Raw Materials Initiative could represent an opportunity for resource-rich African countries to seek technical and financial assistance from the EU to improve capacity, build strong institutions and create the right regulatory environment.

It is important to highlight that transparency and governance need to be endogenous initiatives of the States, where strong leaders have the political will to move reforms forward. It requires visionary and “transformative” leaders<sup>36</sup> who believe that clear rules of the game can make a difference.

Mineral rich-countries in Africa also need to engage their new partners and define with them ways to mainstream wealth from mineral extraction into equitable and sustainable development. It would be opportune to encourage foreign firms to engage for instance, in corporate social responsibility or to increase the participation of local communities and small businesses.

#### *Working with international institutions*

The EU is a strong supporter of international initiatives with international partners. It supports the Kimberley Process Certification Scheme, which is a mechanism to curb the trade in conflict diamonds and is an important conflict-prevention instrument to promote peace and security.

The EU also supports the Extractive Industries Transparency Initiative (EITI), which is a process by which government revenues generated by extractive industries such as taxes, profits and royalties are published in independently verified reports. This initiative is led by the Government and the private sector and NGOs play an important role. The purpose is to improve transparency in countries rich in oil, gas and mineral resources. The 2011 Communication proposed to strengthen EU's financial and political support to the Initiative and to help developing countries to implement it.

In 2010, there were 33 countries implementing EITI (1 was suspended), of which 20 were from Sub Saharan Africa. A 2010 EITI Report<sup>37</sup> on its impact in Africa concluded that EITI activities had positive

<sup>34</sup> Joint statement by the Council and the representatives of the Governments of the Member States meeting with the Council, the European Parliament and the Commission, The European Consensus on Development. November 2005

<sup>35</sup> Communication from the Commission and the Council, the European Parliament and the European Economic and Social Committee and the Committee of the Regions, Thematic Strategy on the Sustainable Use of Natural Resources, COM (2005)670, December 2005

<sup>36</sup> Rylander S (2010): “*Governance and Transformative Leadership in Africa: Progress, prospects and challenges*” in ACBP Development Memoirs Series, September 2010. Sten Rylander is the former Swedish Ambassador to Zimbabwe.

<sup>37</sup> EITI (2010): “EITI Impact in Africa: Stories from the ground”, <http://eiti.org/files/EITI%20Impact%20in%20Africa.pdf>

implications on larger-scale efforts to reduce corruption, improve public financial management and improve the business operating environment.

At the continental level, the EU is working closely with the African Union, notably through the Joint Africa-EU Strategy to foster cooperation on raw materials. Actions are now foreseen under the Trade, Regional Economic Integration and Infrastructure Partnership of the Africa-EU Joint Strategy 2011-2013, as endorsed by the Africa-EU Summit held in November 2010. One of the priorities outlined in the Strategy is *“to help Africa improve its productive capacities, move up the value-added scale and become less dependent on raw materials and simple processed products, which in the long term is the best way to avoid a deterioration of the terms of trade and participate in, and benefit from, the global economy”*<sup>38</sup>.

The African Union Commission (AUC) and the European Commission have agreed to enhance bilateral co-operation with regard to access to raw materials and to work together on governance, infrastructure and geological knowledge and skills, taking fully into account the Africa Mining Vision of February 2009 and the EU Raw Materials Initiative of December 2008.

## 5. Way Forward: Possible Policy responses

Just as raw materials are essential for the development of the EU, they are equally essential, and even more so for Africa, considering the development needs of the continent. African countries acknowledge and fully understand the need of the EU to ensure adequate supply of raw materials for its own legitimate economic development. However, ultimately, it is felt that the choice of economic and trade policies needed for industrialisation and development should remain in the hands of individual African countries.

The Raw Materials Initiative is a policy document that has no international legal force to “impose” any measure onto any country although the EU is expected to adopt a tough line in bilateral and multilateral negotiations on policy issues that may affect the supply of raw materials. Policy choices would have to be made at the national, regional and international level and it is important to ensure coherence.

### 5.1. At the national level

#### 5.1.1. Reducing dependence on raw materials

Reducing dependence on raw materials for revenue generation will require profound structural economic transformation in many African countries. These would include economic reforms to encourage diversification both **within** the mining sector, by moving up the value chain and **outside** the mining sector, by using revenue generated from the mining sector to invest in other productive sectors.

Countries would need to ensure they integrate the mining sector into the “broader economy” by building forward and backward linkages through the creation of a favourable business environment, supported by strong public institutions that would set legal and regulatory frameworks conducive for growth.

In order to encourage value addition and foster industrialisation, countries can take a number of complementary measures. These include, *inter alia*:

<sup>38</sup> [http://ec.europa.eu/development/geographical/regionscountries/euafrika\\_en.cfm](http://ec.europa.eu/development/geographical/regionscountries/euafrika_en.cfm)

1. Reinforcing national regulatory and legislative frameworks by:
  - Ensuring that contracts and deals in the mining sector are transparent;
  - Strengthening the fiscal system, including tax incentive packages to attract foreign investors and sound management of revenue collection;
  - Fighting against corruption and rent-seeking activities.
2. Undertaking domestic reforms by improving the investment environment, including by providing incentives for domestic industries and by encouraging investors, as far as possible, to use local sources of goods, services and qualified employment, where available;
3. Using trade policies to protect local industries and, where necessary, reduce exports of raw materials which would in turn be used as inputs for industrial purposes, including through the use of trade measures such as export taxes or licensing.

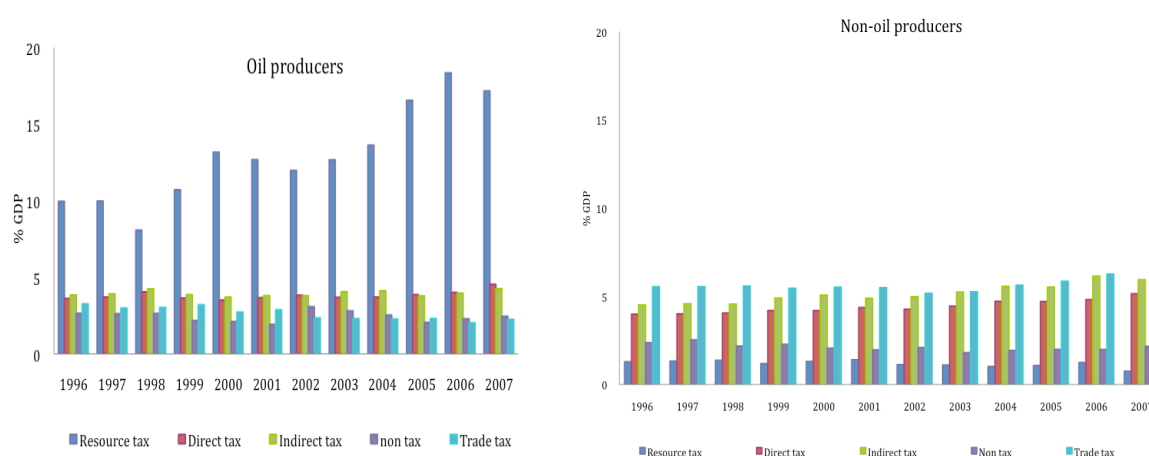
### 5.1.2. Increasing revenue from taxation

#### *Taxing resources*

Many African countries have failed to transform revenue from extractive industries into welfare gains and inclusive growth, in particular during commodity price booms. This is partly explained by the generous concessions and tax-rebates granted to foreign companies and partly by the mismanagement of the resources. It is also due to a number of bottlenecks, including a vast informal economy, poor quality of tax policies and tax administration.

Yet, the mining industry can contribute significantly to the development of resource-rich countries. To do so, mining-tax regimes need to be reformed and payment mechanisms need to become more transparent. Revenue from mining industries can be mobilised from various sources, namely corporate taxes paid by industries, indirect taxes, such as value added taxes, excise duties and sales tax or trade taxes, levied both on imports or on exports. As indicated in Figure 6 below, it is interesting to note that oil-producing countries have raised more revenue from direct taxes on resources compared to non-oil producing countries.

**Figure 6: Tax ratio as a share of GDP of oil and non-oil producing countries in Africa**



Source: Based on African Economic Outlook, 2010

Success stories include countries such as Norway and Chile, who have been able to avoid the resource curse by taxing natural resources and re-investing the money in productive sectors. A key challenge for Governments in imposing taxes in the raw materials sector is how to maximise government revenue over the long-term. Setting taxes too high run the risk of deterring investment thereby holding back the growth of the industry. Conversely, too low tax rates have the risk of raising too little revenue and therefore not raising enough to redistribute in other productive sectors and to spend on development.

Of course, for such measures to be efficient, there is a need to have a number of pre-conditions, such as democracy, good infrastructure, human capital, transparency and good governance, not only at the level of the Government, but equally, at the level of companies.

#### *The use of trade taxes*

While domestic reforms and the strengthening of the regulatory framework are necessary but often lengthy processes and may yield positive results only in the longer term, many countries have increasingly been tempted to address their concerns by imposing export restrictions on mineral sectors, leading to the subsidisation of lagging (or uncompetitive) industrial sectors, the rationale being to give downstream domestic industries a competitive edge against foreign competition.

While many countries, including developed countries<sup>39</sup>, have used extensively export restrictions in the past to foster their own industrial development, the results of the use of such restrictions for the industrialisation and diversification of the production base have however been rather mixed and disappointing in many African countries. Only few countries such as Kenya (see Box 8) have used export taxes to develop their industries by adding value, creating employment and supporting infant industries.

#### **Box 8: Export taxes to the benefit of Kenya's leather industry**

Kenya currently produces more than 2 million hides (of cattle) and 4 million skins (of goat and sheep) annually. Prior to the wave of tariff liberalisation in 1990, where duties were reduced on imported leather and footwear, Kenya had 19 tanning industries employing about 4000 people. Cheap imports caused a number of companies to close down, leading to numerous job losses and resulting in US\$15.2 million revenue loss per year. As part of its Vision 2030 Strategy to promote industrialisation and value addition, the Kenyan government introduced an export tax on raw hides and skin of 20% in 2006, with a subsequent increase to 40% in 2007, with the aim to encourage tanning industries. As a result, exports of raw hides and skins were sharply reduced and 98% of raw skins were processed compared to 56% in 2004, while 96% of raw hides are processed. The production of finished leather increased four-fold during the period 2003-07. Total earnings from the leather industries rose by 21% and the number of processing plants (tanneries) rose from 9 to 12 between 2005 and 2008.

The success story of Kenya shows that export taxes may be used as a policy instrument. However, the measure is only likely to unlock development benefits and hence lead to diversification, if it was part of an overall strategy, used in complementarity with other reform programmes, accompanying measures (including access to credit and infrastructure development) as well as support policies to help the industry sustain itself in the long-run. This was the case in Kenya, which concurrently developed a five-year strategic plan for its leather industry and set up an institutional framework (created of a Leather Development Council) to monitor development in the sector.

<sup>39</sup> England and Canada have used export taxes in the past.

Export taxes have, in many other cases, not created the desired effect. In fact, mining operations are usually conducted through concessions or contracts, with negotiated terms and conditions, including for extraction and exports. Often, in the early stages of exploration and extraction, foreign companies are exempted from taxes, including export taxes, to allow them to recover the costs of their heavy investments. These special conditions have therefore “jumped” export taxes policies and therefore nullified any development objectives of the measures.

In other cases, export taxes failed to foster economic development because they were not accompanied by strong reform policies. They have instead resulted in the maintenance of inefficient companies and sometimes encouraged corrupt and rent-seeking behaviour, especially in sectors where political interests were at stake. In addition, the lack of flexible financial markets and efficient tax systems and of carefully crafted and coherent industrial policies, made it difficult for developing countries to mainstream revenue from export taxes into economically sustainable programmes.

However, the use of export restrictions could be meaningful and have the desired effect if the country imposing the measure was sufficiently large to influence the world price. In such a case, it could yield increased revenue while having a distributional effect. However, if the country is not a major global supplier but instead only relies heavily on exports of raw materials to generate foreign revenue and if other (larger) competing raw material producers do not have such export restrictions, the measure may have the reverse effect in terms of revenue: the raw materials will become more expensive and less competitive: as a result, total exports (and hence revenue from exports) is more likely to go down.

#### *Export Restrictions in the context of EPA negotiations<sup>40</sup>*

There have been growing concerns among African policy makers regarding the EU’s request to eliminate all export taxes in the context of Economic Partnership Agreement (EPA) negotiations. Most countries, in particular the producers and exporters of raw materials have argued for the need to maintain their policy space. At it stands, the current provision in the interim EPA would constrain an important industrial policy instrument for many developing countries that may want to use a trade measure to respond to particular economic development challenges, such as value addition, infant industry development or promotion of industrialisation in general.

The EU has argued in favour of the elimination of export taxes, on the ground that, so far export taxes have not been very conclusive from a development point of view but instead have discouraged exports and have contributed to bring down the price of agricultural commodities. But fundamentally, their pressing demand for the elimination of trade-distorting measure largely emanates from their broader external policy to secure their own growth and jobs.

Although compatibility with the rules of WTO remains the key issue in trade agreements, the GATT 1994 itself does not explicitly prevent countries from applying export taxes although implicitly, export taxes is also part of the family of “customs duties”. So far at the WTO, most countries have taken commitments to reduce duties only on imports. But some recently acceding members (such as China, Vietnam, Saudi Arabia and Ukraine) were asked to take commitments to progressively eliminate restrictions on exports.

In the context of a FTA notified under Article XXIV of the GATT 1994, countries are required to “eliminate **duties and other restrictions of commerce** on substantially all **trade**”. By definition, “**duties**” implies

<sup>40</sup> For further discussions regarding Export taxes in the context of the EPA, see Bilal S & Ramdoo I (2010): “Which way forward in EPA negotiations? Seeking political leadership to address bottlenecks”, ECDPM, <http://www.ecdpm.org/dp100>



charges and levies applied both to imports and exports and “trade” covers both imports and exports. This ultimately implies that any agreement that would be notified under Article XXIV should, in principle, also cover exports. However, the article requires restrictions to be eliminated on “***substantially*** all trade”, and not on “all trade”, implying that some restrictions, including some export taxes, can still be maintained.

Until now, export taxes have remained a fairly “under-regulated” area of WTO laws. Yet, in the recent years, it has become increasingly important: for instance, during the 2007-2008 food crisis, many countries have imposed various forms of export restrictions on staple food in order to maintain domestic food security and contain rising food prices. The rise of new emerging powers since the past two decades has also led to an increasing quest for raw materials, in particular those that are of strategic importance for high-tech and sophisticated industries. As a result, some of those emerging powers, which also happen to host a high concentration of the production of these strategic raw materials, have increased the use of export restrictions to maintain the domestic availability of supplies.

#### **Box 9: Selected African countries that apply export restrictions**

In DR Congo, tin exports from the North Kivu Province were stopped after the customs and excise department more than tripled the reference price (from US\$ 4 per kg to US\$ 14 per kg) on which it imposes a 11% tax. Additionally, it is reported that the Government intends to ban exports of tin, tungsten and tantalum from the eastern provinces of North and South Kivu and Maniema. Since 2001, Gabon imposes a 3% duty on exports of Manganese and Ghana imposes a 6% duty on exports of Manganese. Guinea maintains a US\$ 5.24 per ton tax on exports of scrap. South Africa requires a permit for the export of scrap metal, including ferrous scrap since June 2008. The Government of Zimbabwe imposes a ban on scrap metal exports

*Source: Wiley R (2008): Raw Deal: How Governmental Trade Barriers and Subsidies are distorting global trade in raw materials.*

In addition, to further strengthen the disciplines regarding export taxes and restrictions, some countries, including the EU, have made concrete proposals to discipline their uses in the context of the Doha Development Agenda negotiations since it is felt that WTO legal texts are relatively limited in scope and lack clarity. As mentioned earlier, in 2007, The EU proposed a Draft WTO Agreement on Export Taxes in the Negotiating Group on Market Access<sup>41</sup>. African countries need to remain vigilant at the WTO to ensure that the outcome does not threaten their domestic policy space. Moreover, they must remain consistent with what they are agreeing (or not) at the bilateral level.

The main bottlenecks refraining a technical resolution to this issue in the EPA negotiations is therefore one of strategic economic and political interests linked to access to resources, in particular given the surge in demand for raw materials coming from large emerging economies over the past few years. While the EU's main purpose is to maintain undistorted access to primary products to safeguard the interests of its own industries, most African countries claim that they have the same legitimate right to maintain policy space for their future industrial development and introduce measures they deem fit on their own resources.

Both the EU and Africa have strong stakes regarding the use of export restrictions and none of them is likely to easily concede on their positions: it is increasingly becoming clear that what was initially regarded as an issue requiring a technical solution has now become one having broader strategic and political implications.

<sup>41</sup> See Job(07)/43: Communication from the European Communities in the negotiating group on market access relating to a Proposal on NTBs entitled “WTO Agreement on Export Taxes”, 2 April 2007.



One option that could help unlock the current stalemate in the EPA negotiations could be to leave disciplines on export taxes/restrictions to be resolved at the WTO (as is the case for agricultural subsidies). With the current dispute regarding China's restrictions on exports and the proposal in NAMA modalities, there are likely to have clearer rules at the WTO sooner than later. This option is also likely to provide greater flexibilities to African countries as it currently proposes to "*limit GATT disciplines for export taxes on non-agricultural products*" (hence excluding agriculture) and to give "*additional flexibility for small developing economies and LDCs to maintain or introduce export taxes in other situations*"<sup>42</sup>. African countries would need to be fully involved in the debates and remain vigilant about their likely implications on their own policies.

Alternatively, technical solutions could also be found to improve the current provisions of the interim EPA, with necessary flexibilities to address the concerns of certain countries and regions.

As it stands in the Interim EPAs (i.e calling for the elimination and prohibitions of all export taxes) could be made more flexible to accommodate the major concerns of most African countries/ regions if a two-pronged approach was adopted:

To address the concern relating to **existing** export taxes, countries/ regions could exclude raw materials of key interest for their own industrial development from the scope of the Agreement.

In addition, to take into account the concern relating to the use of export taxes **in the future**, countries could agree to their introduction in special circumstances, in particular in case of specific revenue needs, the protection of infant industry, in the case of critical food shortage or to ensure food security, to protect the environment or where a country can justify industrial development needs. However, the major issue here is how likely countries would be willing to "negotiate the right" or to "justify" themselves vis-à-vis a third party in the future when they will have to take policy measures, which they believe emanates from their fundamental sovereign rights.

Regarding the crucial issue of **investment** and their related contracts, African countries need to ensure transparency in the process. Very often, megadeals are sealed at the highest political levels, with little information transpiring about the terms and conditions of the deal. Without clearly articulated domestic policies that outline government policies regarding the much needed investment as well as the need to use their own resources for domestic growth, there is a risk that terms and conditions of contracts might nullify any good willing economic policy as their exclusive rights might have the potential to "jump" measures. Furthermore, many companies do not disclose their accounts so that very little is known of how much revenue they pay back to the Government.

While foreign investment is key, it is important to ensure that foreign firms use as much as possible local content, in terms of goods and services available and produced by local companies as well as employ, when the expertise is available, local staff. This is key to ensure that the benefits of the mining sector, although indirectly, to local enterprises, including small and medium ones. Furthermore, foreign investors need to be invited, as much as possible, to engage in the transfer of technology and technical know-how, so that in the long-term, mineral rich countries can have their own domestic enterprise to engage in the business.

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<sup>42</sup> See Job(07)/43: Communication from the European Communities in the negotiating group on market access relating to a Proposal on NTBs entitled "WTO Agreement on Export Taxes", 2 April 2007.

Finally, while it is important for African countries to question whether they should worry about the EU Raw Materials Initiative, there is also a need to closely examine the strategy adopted other resource-hungry countries, in particular the new emerging powers who often do not have a clearly articulated strategy about access to raw materials, but are even more aggressive in shopping for such raw materials in Africa. The case of China outlined in section 2 above is a case in point. It has expanded massively its presence in the last decade in Africa. It is now the second largest trading partner of Africa, just behind the US, and is likely pass the first pole in the years to come.

While the increasing interest of new emerging powers is certainly to the benefit of Africa, there is however a need to remain vigilant to make sure that the new investments and markets create spillover effects that will unlock the development potential of African countries rather than create another spiral of resource-dependence and hence maintain the vicious circle of supplier of raw materials.

## 5.2. At the regional level

For decades, regional integration has been a central element of the African development strategy. Numerous efforts are being made to harmonise and integrate regulations. The Southern African Development Community (SADC) has been the most active in developing cooperation and integration programmes. It identified specific areas of cooperation, including the harmonisation of national policies, facilitating the development of human and technological capacities, promoting private sector participation in the region's mineral industry. SADC Mining Ministers adopted a framework for the "Harmonisation of Mining Policies, Standards, Legislative and Regulatory Framework in Southern Africa" in March 2007. Another pioneering contribution of SADC was the setting up of a common geological infrastructure in Southern Africa that permitted the use of common geological survey technologies for data processing and harmonised standard for mapping publishing.

In November 2000, the West African Economic and Monetary Union (UEMOA) member States agreed to adopt a common mining policy and legislation, including a harmonised fiscal code in an effort to foster sub-regional harmonisation. On its side, Economic Community of West African States (ECOWAS) Ministers of Mines recently adopted a Draft ECOWAS Directive regarding the Harmonisation of Guiding Principles and Policies in the mining sector, as required by the revised ECOWAS Treaty, which ask members to "harmonise and coordinate their policies and programme in the field of natural resources" as well as to "coordinate their programmes for development and utilisation of mineral and water resources".

In February 2004, 21 African mining ministers launched the African Mining Partnership (AMP), with the aim of coordinating mining and mineral-related initiatives under the auspices of NEPAD. The ministers identified six key mining programmes and projects, namely in artisanal or small-scale mining; harmonisation of mining policies; environment and sustainable development; beneficiation and value addition; human resource development; and promoting foreign investment and indigenous participation in mining ventures. Furthermore, in February 2008, the Tenth Ordinary Session of the Assembly of Heads of State and Government of the African Union adopted a Decision on the Action Plan for the Accelerated Industrial Development of Africa and a Declaration on Africa's Industrial Development which recognised the role that Africa's mineral resources can play in promoting development and the industrialisation of the continent.

At the continental level, the AU has taken the lead on the question of resource management, with its vision on mineral management regarding ownership, transformation and value addition. In 2009, together with

United Nations Economic Commission for Africa, it launched the Africa Mining Vision 2030 with a view to establishing a “transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development.”

African countries might consider the possibility of using regional integration to build regional mining markets, as was the case for the European Coal and Steel Community of the European Union, as illustrated in Box 10.

#### **Box 10: The European Coal and Steel Community (ECSC)**

Established by the Treaty of Paris in 1951, the ECSC created a common market for coal and steel among its six member countries, namely France, West Germany, Italy, Belgium, the Netherlands and Luxembourg. It removed tariff and non-tariff barriers, established a common external tariff, regulated production and sales and facilitated investment in coal and steel among member states. Having as a background the second world war and the need to rebuild Europe, the main purpose of the Community was largely to ensure supply of coal and steel.

While the fear of the scarcity of coal and steel never materialised, the Community was useful in harmonising policies and was a significant accomplishment at the political level, by establishing the fundamental link between the natural resources of coal and steel and peace and security in Europe. In particular, it created a climate of confidence between France and Germany, given the latter's large coal and iron ore deposits and therefore alleviated concerns regarding the potential threat of their use to build up arms. It further established economic interdependence and cooperation, which allowed for German's reconstruction.

Despite its political success, it did not succeed in preventing member states to pursue their own agenda through protectionist measures for their national coal and steel industries. It also failed in preventing the formation of cartels.

The ECSC levied a tax to ensure its functioning and also established a research fund from industry contributions. It was also able to leverage foreign funding.

The ECSC ceased its operations in 2002 when the Treaty of Paris expired.

The ECSC was one of the three pillars that laid the foundation of the European common market and played a key role in consolidating regional integration and maintaining peace in Europe. Its experience may be of relevance for Africa, given the importance of mining sector for most countries and the role it often plays in conflicts across borders. Such a framework for specific mining sectors could be used strategically to advance the regional integration agenda and therefore strengthen peace and security.

### **5.3. At the multilateral level**

As mentioned in section 4 above, discussions at the WTO regarding the treatment of export taxes are likely to be high on the agenda of those countries that have a high demand for critical raw materials. EU has made its proposals for enhanced disciplines on export restrictions. While fair trade practices is a necessary precondition for a smooth flow of trade, development considerations are as important, in particular for

developing countries. In this context, African countries need to ensure that they participate fully in the negotiations so that their interests and concerns are reflected in the outcomes of the negotiations.

## 6. Conclusion

This paper has attempted to present the likely implications of the EU Raw Materials Initiative for Africa and possible policy responses that could be taken at the national, regional and multilateral level. While Africa has the obligation to remain consistent with its international commitments, it goes without saying that the right to take policy measures to ensure its own growth and employment creation lies within its own prerogatives.

There is no doubt that the race for raw materials still has a long way to go and more competitors are likely to join the contest. Therefore Africa is likely to remain at the forefront of attention on the part of those that are heavily reliant on its riches for their own development. Yet providing raw materials is important to maintain growth and jobs in the rest of the world but this should not be done at the expense of Africa's own development.

Development is a fundamental legitimate right of every nation and Africa should not be denied that right. A large share of responsibility also lies in the hands of African countries themselves. African governments as well as regional organisations need to take clear steps and define their own strategies to ensure that their raw materials are used to the benefits of their own people. It is a fact that many countries are heavily reliant on exports of raw materials to generate revenue and employment and therefore any measure likely to restrict exports would have negative implications for these countries, at least in the short term. At the same time, overdependence on exports of raw materials has trapped countries into a state of primary products providers and therefore discouraging value addition and diversification. The challenge is therefore how to ensure revenue generation and at the same time promote industrialisation and economic diversification.

There is of course no miracle answer to this longstanding challenge: however, change is only likely to come if countries are bold enough to undertake the right mix of domestic and international policies, including reforms, many of which are usually painful and politically costly, at least in the short term. Successful development policies can only be conducted if African countries would be bold enough to undertake necessary reforms to address the resource curse.

The EU is likely to continue to push hard to ensure it can secure access raw materials, so will the US and all the other emerging economies. Undistorted access is essential to ensure that goods that are essential for modern civilisation remain affordable. But that should not come at any price, and not at the price of the development of an indigenous African industry, that will create employment and wealth for its own people and therefore lift many out of poverty.

## Annex 1: Classification of selected raw materials according to their uses:

Construction Minerals	Industrial Minerals	Metallic Minerals	High-Tech Minerals
Sand	Fuller Earth	<b>Rare earth concentrates</b>	Platinum
Gravel	<b>Graphite</b>	<b>Niobium-columbium</b>	Palladium
Limestone	Feldspar	<b>Antimony</b>	<b>REE*</b>
Sandstone	Barite	<b>Tungsten</b>	<b>Cobalt</b>
Chalk	Perlite	<b>Gallium</b>	Samarium
Granite	Boron	<b>Germanium</b>	Silver
Slate	<b>Fluorspar</b>	Rhodium	Ruthenium
Natural stone (such as marble)	Zircon	Platinum	Silicon
Clay	Phosphate	Lithium	<b>Gallium</b>
Shale	Bentonite	<b>Indium</b>	Gold
Gypsum	Vermiculite	<b>Tantalum</b>	<b>Indium</b>
	Talc	Mercury	Rhenium
	Magnesite	Tellurium	<b>Tantalum</b>
	Kaolin	Selenium	
	Diamond (gemstones)	Palladium	
	Potash	Vanadium	
	Gypsum	Titanium	
	Salt	Rhenium	
	Sulphur	Chromium	
		Bismuth	
		Tin	
		<b>Cobalt</b>	
		Copper	
		Lead	
		Molybdenum	
		Bauxite	
		Zinc	
		Iron ore	
		Cadmium	
		Manganese	
		Nickel	
		Silver	
		Gold	

\* REE: Rare Earth Elements (Scandium, Yttrium and Lanthanides)

Source: EC (2008): Commission Staff Working Paper accompanying Communication from European Council and European Parliament - "The Raw Materials Initiative – Meeting our critical needs for growth and jobs in Europe".

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