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European Union Raw Material Initiative

Trade Restrictions and Access to South African Minerals

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Introduction

The Raw Materials Initiative (RMI) is a European Union (EU) project to secure and protect its access to strategic raw materials, which are critical for economic growth, continued development – and modern life in general. The EU has depleted most of its metallic minerals – including cobalt, platinum, platinum group metals, rare earth metals and tantalum – and depends on imports to satisfy its demands. Dependence on importing these resources has become a major cause for concern considering their economic importance and increasing supply risks.[1] Competition for these resources is growing swiftly with demand soaring in emerging economies, such as China, India, Brazil and Russia – all of whom are pursuing a path of rapid industrialisation and development. As this scramble intensifies, the EU's monopoly access to these precious resources is being eroded in many parts of the world, including Africa.

The EU is concerned that countries that possess these minerals are starting to introduce trade restrictions, which will make it difficult for the EU to access them. Any restriction on these resources would undermine the EU's future growth and particularly its capacity to shift towards sustainable production and more environmentally friendly products. The EU argues that the RMI's objective is to discourage and eliminate trade distortions. For the EU, securing reliable and undistorted access to raw material is critical if it is to remain competitive.

South Africa is one of the leading suppliers of strategic minerals and the EU has identified it as one of the countries that apply trade restrictions on raw materials. Indeed, South Africa currently imposes 30 restrictions and is ranked among the nations with the highest number of restrictions. The EU is concerned that increasing restrictions, trade distortions and protectionist policies will limit its access to some critical raw materials. While this might be a genuine concern, this paper argues

that in the case of South Africa, most of what could be regarded as export restrictions should be viewed as 'positive restrictions', which are applied to support economic growth, job creation and industrialisation in a country where the majority of the population has never benefited from its wealth of natural resources.

This paper reviews in general terms the possible restrictive measures on raw material that might exist in South Africa. It does not attempt to identify and analyse each one of them (which would have necessitated broader field research).

The importance of South African raw materials to the world economy

South Africa is one the world's main depositories of the strategic raw materials that the EU needs.[2] It has nearly 90 percent of the world's reserves of platinum metals, 80 percent of manganese, 73 percent of chromium and 45 percent of vanadium. In 2008, South Africa was the world's largest producer of alumina-silicates, chrome, ferro-chrome, platinum group metals, vanadium and vermiculite. The South African mining industry was also a significant supplier of aluminium (world rank 9), antimony (7), coal (6), manganese (2), ferro-manganese (4), gold (2), iron ore (7), nickel (9), phosphate rock (10), silicon (8), titanium minerals (2), uranium (11) and zirconium (2). South Africa is among the top producers among African, Caribbean and Pacific (ACP) states of chromium (1), copper (3), diamonds (3), gold (1), iron ore (1), lead (1), manganese (1), nickel (1), platinum (1), titanium (imenite) (1), titanium (rutile) (1), vanadum (the only country) and zinc (2). All of these raw materials are critical to EU industries, and any interruption or reduction in their supply will threaten the EU's hopes for economic growth.

In particular, South Africa is the major supplier of two of the three raw materials that are regarded by the EU as potentially critical – platinum, titanium and niobium.[3] In 2005, South Africa supplied about 5.11 Moz (158.9 tonnes) or 77 percent of the world supply.[4] There is a soaring demand for platinum group metals (PGMs) – such as rhodium, iridium, ruthenium and osmium – and for platinum itself in high-tech applications. Clean air legislation in the United States, Europe and many other major economies has also pushed up demand for platinum, which is a critical component in catalytic converters in vehicles. South Africa has a fairly well developed infrastructure, good human resources, transport and accountable systems, advanced research facilities and skills, which all facilitate extraction and evacuation. This is why South

Africa – among all African producing countries – remains the most important destination for mining and mineral-processing investments.

A study released by the Department of Minerals and Energy of South Africa showed increased interest by mining companies in committing financial resources to mining projects in South Africa.[5] Developed countries are certainly interested in South Africa's minerals. Equally, the aggressive penetration of China into the South African mining sector is of concern to the western powers. China is not only one of the most influential players on the world financial stage today, but it has also become an important consumer of South African commodities and therefore integral to the South African economy. The same could be said of India, although India's pace is slower.

In the case of platinum and PGMs, the possibility of effective export restrictions is greater because of the production monopoly that South Africa enjoys. The monopolistic or quasi-monopolistic status on the world market could become a great concern for importing countries if South Africa decides to impose an export restriction because of the absence of alternative sources of imports. For South Africa, mineral exploration and production constitute significant parts of its economy and remain key to future economic growth.

The Mining sector and its contribution to the South African Economy

The South African mining sector is regulated by the Mineral and Petroleum Resources Development Act of 2002 (MPRDA). The MPRDA was promulgated in 2004, and recognises the state's custodianship over the country's resources. In the Act, the role of the state in the mining industry is seen as complementary and supportive in nature. The state provides a legal and fiscal environment that allows rational exploration, mining, beneficiation and marketing of the country's minerals. It also provides an efficient physical infrastructure including road, rail and air links, as well as harbour facilities, communications and health services, and power and water supplies.

South Africa intends to use its abundant resources in a strategic way so that they contribute positively to the country's economic growth and development. Mining is crucial to the South African economy. In 2007, it contributed R135.6 billion (US$19.2 Billion) – or 7.7 percent of GDP. The mining sector paid R32 billion in direct taxes and a substantial amount in indirect taxes to the fiscus in 2008. Direct mining taxes accounted for 17.3 percent of total company tax paid to government.

Those who are calling for the nationalisation of mines argue that the government revenue generated from taxes will not be able to build a better life for all South Africans. They believe that South Africa will never have the resources to provide housing, free education, better healthcare, safety and security, and employment to all if the State is not in control of the key strategic sectors of the economy.

From protectionism to liberalism

During the era of colonialism and apartheid, the government identified strategic industrial priorities (such as iron and steel production and oil from coal), which were generally relatively capital-intensive upstream industrial activities. These priority sectors were accorded tariff protection, as well as other forms of support and nurturing. The intention of legislators pre-1990 was also to restrict the precious metals trade in South Africa. Apartheid policy on minerals was nationalistic in nature. The main reason for this was that precious metals, in particular gold, were the most important method of foreign exchange and a crucial reserve asset. But this changed with the advent of democracy in 1994, when the ANC government liberalised the sector.

Mineral tax regime

The problem with the South African tax regime is that it is too liberal. Post-1994, industrial policy has no *a priori* approach to tariff policy. South Africa has neither a high nor a low tariff policy. The major initiatives so far have involved lowering tariffs on formerly protected upstream, capital-intensive industries, which produce inputs that are important cost items for downstream industries that the ANC government wants to encourage and nurture. For example, South Africa has removed the moderate tariff protection that was accorded to steel products in the context of a highly consolidated domestic steel industry.

According to David Van Wyk, a researcher with the South African based Bench Mark Foundation, South Africa has a very tariff liberal policy compared to other African countries. In fact, the problem with South Africa is that it is too liberal.[6]

South Africa earns its mining revenue from corporate income tax of 28 per cent. This is the lowest on the continent. Gold mines in South Africa have a variable

income tax rate – those declaring less than 5 percent profits as a percentage of revenue pay no tax. South Africa also has an export levy of 5 per cent on rough diamonds. In 2008, South Africa introduced a new tax regime where companies were required to pay royalties of 8 per cent on gross sales. Most African governments earn their income from mining licences and export duties (which are calculated in the same way as royalties).

However, the South African government is aiming to create an environment that encourages companies to convert resources – and not simply export raw materials. So the government has introduced a high export tax on certain commodities when they are exported without being transformed, as a way of discouraging companies from exporting the raw commodities. For example, there is a 3 percent tax on chromium exports.

South Africa is reforming its taxation regime continuously to increase the contribution of mining to the government budget. But export taxes are also intended as a way to enhance industrial diversification efforts. Other countries have introduced restrictions on raw materials exports – Russia imposes an export duty of 50 per cent on scrap aluminium, India taxes iron ore exports at 50 rupees a ton, and China has introduced an export tax of 120 percent on yellow phosphorous and increased export duties on coke to 40 percent. However, there is apparently an understanding in South Africa that raising trade barriers in one of its most important sectors risks pushing the economy into prolonged contraction. South Africa is also aware that export restriction in one sector can induce responses from importing countries in an area where South Africa is vulnerable. Equally, South Africa is aware of the possibility that the high prices that might be caused by export restrictions can encourage production in countries where such restrictions are not applied, thereby increasing supplies, which will reduce prices in the long term.

Empowerment, ownership and beneficiation – all about transformation

While the EU is strategising to secure its access to strategic minerals, South Africa is introducing changes to mineral production after a bitter observation that resource extraction is producing questionable welfare gains and development outcomes for the majority of South African citizens.

Empowerment

Transformation has been identified as key issue facing South Africa's mining sector. Equitable access to mineral resources and opportunities has now been regulated with a meaningful participation of historically disadvantaged people through – what is known as – black economic empowerment (BEE). The Empowerment Charter for the South African mining industry became law in 2003. The Charter called for historically disadvantaged South Africans to control 15 percent of mines within 5 years and 26 percent within 10 years. It is estimated that three quarters of the labour force are black, but that blacks occupy less than 5 percent of managerial positions. The government also set a target to increase the number of black managers – with 40 percent of managers in all companies being black by 2009 (a target that has still not been met). Furthermore, the government set a target to transfer 26 percent of mining assets to black-owned companies and to ensure that black-owned firms control 51 percent of future mining projects.

Ownership

It seems that the debate over ownership is moving away from increasing equity ownership to the demand for total control of the mining sector by the state through nationalisation. The African National Congress Youth League (ANCYL) released its perspective on nationalisation in February 2010 when it called for nationalisation of

mines. The ANCYL argues that South Africa should create a State Owned Mining Company (SOMCO) that should consolidate all of the State's current mining interests – and eventually own and control all of South Africa's mineral resources. One of the main objectives of the nationalisation project is to change the South African economy from its over-dependence and over-reliance on exporting natural resources and importing finished goods and services. This means that South Africa will discourage the export of raw materials and will encourage beneficiation to advance the industrialisation agenda by establishing downstream and upstream industries. This is called resource nationalism, which the EU argues will make the system more politically unstable and less resource-efficient.[7]

The debate about nationalisation is being taken seriously in South Africa among politicians and ordinary people. While it is difficult to see the ANC opting for the nationalisation of the mines, the debate has highlighted the difficult question of how to transform the industry to ensure that it benefits all South Africans.

Beneficiation – or what the EU will call export bans or quotas

Beneficiation or value added processing involves the transformation of raw materials using local factors (labour and capital) into a more finished product that has a higher value than the simple raw materials. EU mining companies are not generally interested in beneficiating minerals in the African countries where they are mined since they find this approach restrictive. The EU argues that export bans or quotas linked to beneficiation aims may lead to the temporary or even definitive closure of production units in the EU.[8] And there is no doubt that beneficiation could reduce the ability of EU companies to access inputs that they need to remain in business. However, South Africa (like most African countries) wants to diversify its economy away from raw material exports – something that will become important if it hopes to increase intra-regional trade.

In the natural resource sector, South Africa is increasingly focusing on beneficiation and less on protecting strategic commodities (as it did during the apartheid regime). This policy is in tune with the country's need to industrialise. Beneficiation in the minerals and mining policy of South Africa is defined as the successive processes of adding value. South Africa (like many countries on the continent) has now moved to

reduce or stop completely the export of some raw materials. It wants multinational companies to add value to its minerals before exporting them. This is not new. Indeed, it is in line with the experience of all countries which have succeeded from Venice in the middle ages to Britain in the 18th and 19th centuries, to the newly industrialised East Asian economies in the late 20th century, to China and India today. Without exception, they all succeeded by nurturing a cluster of industrial activities characterised by increased, rather than diminishing, returns. This nurturing has involved the identification and targeting of appropriate value adding activities, the deployment of public and private resources to support innovation, entrepreneurship and infrastructure development as well as the judicious use of tariffs and other forms of protection. The judicious use of tariffs does not mean protection, which allows permanent rent seeking by inefficient industries, but it does mean creating the space and time to allow such industries to develop or to restructure themselves in the face of global competition.[9]

Unfortunately, the South African government's beneficiation policy is being frustrated. Companies are reluctant to embrace this policy, arguing that they are in the business of mining and not value addition. If government wants beneficiation, it should address other players who are in the business of value addition. So most South African minerals are still beneficiated in developed countries, destroying the capacity of the mining sector to develop downstream and upstream industries. South Africa does beneficiate its platinum, but at an insignificant level for the world's biggest producer of platinum.

In general, beneficiation attempts across the continent have not been successful. Despite efforts by countries such as South Africa, Botswana and Angola to polish and cut their diamonds in country, they have not been achieved very much. In Botswana and Angola, the polishing and cutting industry is controlled by Israeli businesses. In South Africa, diamond companies have frustrated the government's plans by allowing the government to keep only five per cent of rough diamonds for polishing and cutting domestically. This is contrary to numerous calls from the country's biggest trade union (COSATU), which has been calling for 50 percent of rough diamonds to be set aside for the domestic cutting industry.

These limitations have hampered industry growth. Botswana and South Africa employ only 3,000 and 1,000 people respectively in their cutting industries, compared

to India, which employs 1 million people. In addition, companies do not allow innovative technology to emerge. For example, Dr John Bond created a laser machine that could cut diamonds 40 times faster and more effectively than the traditional way of cutting by hand. The machine could also be used as a monitoring tool in the fight against blood diamonds since it can utilise a bar code that gives the history of a stone from source to factory. Dr Bond received an award from President Thabo Mbeki for the machine, but diamond companies refused to endorse it (although the machine is today being used in India).

The point this paper is making is that restrictions that are intended to promote beneficiation cannot be qualified as unjust. The EU will need to distinguish between positive restrictions and negative ones. The EU must observe due diligence when trying to combat export restrictions to make this distinction, especially where Africa is concerned. The goal of sustainable development in the context of minerals is to find, extract, produce, add value to, use, re-use, re-cycle, and (when necessary) dispose of mineral and metal products in the most efficient, competitive and environmentally responsible manner possible, using best practices. Nowhere in the RMI does the EU discuss helping the continent to add value to their resources before export. EU companies have the means to do something about these problems, but they choose not to.

Export tax

Export taxes can lead to increased input costs with a negative effect on competitiveness. The EU sees export taxes as an element that could affect EU companies. While this might be the case, the situation must not only be analysed from the demand side. It is important to look at the supply side. Why is the supplier introducing an export tax? In the case of South Africa, taxation is seen as tool to support social transformation.

There is an understanding, it seems, that South Africa should use tariffs not to limit access by third parties to its minerals, but to help the sector to contribute to social transformation. The National Industrial Policy Framework states that 'Our fundamental approach is that tariff policy should be decided primarily on a sector by sector basis, dictated by the needs and imperatives of sector strategies'. The resolution of the 52nd National Conference of the ANC in Polokwane states that 'In general, industrial policy should lead our overall approach to sectoral development, whilst trade policy should pay a supporting role and be sensitive to employment outcomes'. The two mandates suggest that sector level strategies should be sensitive to employment and development outcomes and must be decisive in shaping the country's approach to tariff policy. For South Africa, it appears to be a matter of common sense – so its tax regime is flexible and continuously changing. This is to ensure that it is always able to reduce or remove duties where evidence shows that such a move will be beneficial to the industries or sectors that need to be promoted; equally, where evidence points to the need for tariffs to protect certain industries.

South Africa's approach is designed to respond to the global environment within which it operates. South Africa is known for respecting its multilateral and bilateral agreements. This is certainly a value that the EU should appreciate; it has partner that will not simply change policy or legislation unilaterally. This situation gives the EU

security for its current and future investment in South Africa. However, the current global trend is towards reducing tariffs generally. This situation obliges South Africa to increasingly sharpen its negotiation skills to ensure that it is able to protect and promote policies that are necessary for its strategic industries.

Using international rules to achieve national goals

South Africa also uses remedies available under the World Trade Organisation (WTO) rules to support its defence of its local products against unfair trade practices. Put differently, South Africa would consider 'defensive measures' within the space allowed by WTO rules for national interests. The Trade and Industries Minister, Rob Davies, argued in parliament that South Africa must have the courage to raise tariffs to prevent de-industrialisation, which will result in the destruction of its capacity to sustain decent work.[10] South Africa's official unemployment rate rose to 23.5% in the first quarter of 2009 as the mining and manufacturing sectors (in particular) struggled to adjust to the country's first recession in 17 years, as well as to a fall-off in demand for South African exports. Davies argued that:

> South Africa should have the "courage" to increase tariffs where there was evidence to show that this would prevent the destruction of the economy's productive capacity and where such remedies were in line with South Africa's international trade commitments.

South Africa is also aware that it needs to continuously improve its investment climate, which is necessary if it is to attract foreign direct investment (FDI). In this perspective, South Africa is very careful not to take steps that will hamper FDI coming into the country and into its most strategic sector – mining. Although export restrictions can provide an incentive for foreign investment in downstream industries, case-by-case analysis is necessary to evaluate their effectiveness. Investment decisions are based on several factors, and benefits associated with better access to raw materials will be weighed against other factors.[11]

A recent report by the World Bank *"South Africa's Investment Climate: Greater emphasis on productivity and competitiveness needed to boost economic growth and job creation"* found that South African compares favourably to their peer group in upper- to middle-income economies globally. It is an indication that South Africa's objective is to remain competitive in the global economy. South Africa's main challenge is job creation and sustained economic growth. Job creation can only be a consequence of economic growth. Economic growth and job creation cannot be achieved through protectionism.

South Africa's policy on mineral export is driven by the need to increase the opportunity for the sector to contribute sufficiently through job creation to the alleviation of poverty, to reduce inequalities and to ensure a fair distribution of wealth. It is clear that a better business environment will continue to generate necessary conditions for growth. South Africa does not rely on unfriendly or unjust restrictions. This is a guarantee for the EU that South Africa will not unreasonably put in place protective legislation that could also be harmful to its own economy.

South Africa is different from most African countries when it comes to managing its resources. South Africa has always had a systematic approach to long-term planning in mining. Where the EU identifies restrictions, as might happen, it will find South Africa ready to engage. South Africa's trade is based on negotiation (multilateral and bilateral) and dispute settlement.

Discussing restrictions and application of the law

In general, South Africa does not have restrictions on licensing, prospecting or mining rights. However, there is a growing perception that there is now a less-than-transparent process for being granted mineral rights. Most the time what seems to be restrictions are simply acts of corruption during the process of securing rights.

Indeed, sometimes the biggest restrictions are not in the form of export restrictions or mine licensing requirements. Some restrictions can be bureaucratic when access to mineral rights is made difficult due to a lack of sufficient administrative capacity, which can include unnecessary red tape as well as corruption and nepotism. While the South African administration has been admired for its transparency in the management of its mining sector, the recent Lonmin mining rights debacle has raised serious questions among investors about whether the access to mineral rights is becoming politicised.

In the case of Lonmin,[12] the South African government asked the company to stop producing some metals, which are the by-product of platinum mining. The South African Department of Mineral Resources ordered it to "refrain from selling nickel, copper, chrome, or any other minerals other than platinum group metals with immediate effect".[13] Lonmin argues that the mining law does not prohibit it from producing these minerals, which are platinum by-products. Old South African mining laws gave miners automatic rights over whatever metals and minerals are extracted in concessions granted to them. However, new legislation from 2002 does not rule one way or the other on the question of whether a miner has automatic rights to by-product metals. In the meantime, the ministry gave another company the right to extract these minerals on Lonmin's concession. The problem with the Lonmin issue is that

there was no consultation between the ministry and Lonmin. While the ministry might be correct that a company that has been given a licence to mine platinum cannot extract the by-products without accounting for them (even if the law is not clear), it should have engaged the company to explain its position. Another troubling question is why Lonmin has been singled out when other companies (such Anglo-Platinum) are in the same situation.

The action of the ministry is surprising. At face value, the government's decision in this case seemed designed to drive companies out of lucrative lines of business or to force them to pay off well-connected locals. It is similar to how other African governments behave. In many instances in the rest of the continent, mining companies complain that they operate without clear knowledge of government regulations. Indeed, beyond the statutory rules, investors in Africa are acutely concerned with the *transparency* of regulations and the lack of consistency in the application of the law and regulations.

As far as lack of transparency is concerned, there are three main reasons (NEPAD/OECD, 2005). First, it can be difficult to find reliable, detailed information about the regulatory regimes of some countries. Second, a number of countries appear to apply a high degree of administrative or political discretion to the regulatory process (e.g. the granting of investment licences based on undisclosed or changing criteria) rather than relying on rules-based systems. Third, when sovereign governments exert their right to regulate by changing key pieces of legislation, they often do so without engaging in prior consultations with concerned parties, which are commonly considered to be an integral part of political and regulatory transparency.

Investors are also concerned about consistency in the implementation of regulations, which raises the issues of regulatory discretion and integrity that further undermine transparency. There is anecdotal evidence from many countries of even 'hard' regulations being applied selectively. Corruption is often cited as a major concern in this respect and so is excessive red tape and slow administrative procedures, which – as documented by the World Bank's Investment Climate Assessments – encourage investors to seek recourse through informal mechanisms (NEPAD'OECD, 2005). And it is unfortunate that the RMI does not talk clearly – and firmly – about genuinely combating corruption.

There is also the issue of accessing existing regulations that poses problems not only for companies but also for citizens who want to be informed. Practices relating to the publication of regulations vary widely among countries. Many States publish material, but few official websites provide full texts of laws and regulations, and the documents are generally difficult to access because they tend to be spread over several websites and lost among unrelated information.

Meanwhile, while certain countries have enacted very progressive laws and regulations, there still exists a gap between policy and implementation. In some cases, while we have laws in place, regulations defining the application of the law have yet to be written or promulgated. This is prevalent in countries with weak institutional capacity, particularly in relation to environmental standards. In this respect, governments should consider applying internationally acceptable environmental standards rather than developing homegrown ones. Foreign firms are also keen to enhance their reputations and respond to stakeholder pressures for more responsible corporate practice. In fact, many firms have adopted voluntary codes of corporate conduct, which typically include commitment to environmental protection. Most companies are members of the International Council on Mining and Metals (ICMM)[14] and are required to apply the ICMM standards. Some companies have also joined the Extractive Industries Transparency Initiative (IETI), and are expected to ensure transparency in areas of revenue. Equally, the World Bank – through the International Finance Corporation (IFC) - has put in place instruments such as Environmental, Health and Safety (EHS) guidelines for mining, land acquisition and involuntary resettlement.

Critiquing the RMI

A project designed to promote the Washington Consensus

Despite the rhetoric of the EU that it is designed to enhance equitable and fair trade, transparency and accountability, the RMI will perpetuate a situation whereby Africa remains an undeveloped provider of cheap raw materials.[15] Friends of the Earth have argued that that the strategy's primary focus is the 'competitiveness' of European companies – helping European companies to better access raw materials and natural resources in Third World markets (and in the EU) on the best possible terms. The RMI will be driven by FDI coming from the EU into South Africa and the rest of the continent. As such the RMI is not new. African countries (including South Africa) have become more accommodating toward FDI over the last two decades.

If properly structured, in addition to supplementing domestic savings and investment, FDI can enhance domestic innovation through the transfer of technology, lead to human capital development through the transfer of management skills and knowledge, enhance productivity through the stimulation of competition in the domestic economy, and reduce costs and improve economies of scale through the integration of the domestic economy with international economic activity.[16] This is why FDI is seen as a means of increasing the capital available for investment and for the economic growth needed to reduce poverty and raise living standards (Boocock, 2002). It is for this reason that most (if not all) African governments have a stated objective to encourage FDI.

All this was codified in John Williamson's (1990) well-known Washington Consensus. The Washington Consensus advised countries to get their macro balances in order, take the state out of business and give markets free rein.[17] In an effort to achieve these objectives, African governments have amended their investment codes and tried to improve

the investment climate to attract FDI. Even countries and political parties that had state-controlled economic policies shifted towards an open market. In South Africa, for example, for the last 17 years under the ANC, the government has adopted measures to attract FDI, including reducing import tariffs and subsidies to local firms, eliminating the discriminatory non-resident shareholders tax, removing certain limits on hard currency repatriation, halving the secondary tax on corporate dividends, lowering the corporate tax rate on earning, and allowing foreign investors 100 per cent ownership.

Unfortunately, taken collectively or individually, African countries have not been able to attract FDI correspondent to the incentives they have given. There can only be one explanation for this discrepancy. Most African governments do not study the motivation of the FDI that they want to attract. The level of economic activity of multinational corporations and the FDI they bring in depends on their primary motivation for undertaking foreign activity, over which the host country might have no control. This is why, despite having improved their investment climate through major policy efforts – by liberalising their investment regulations, privatising state-owned enterprises and offering incentives to foreign investors – the flow of FDI has remained disappointing and well below expectations in Africa.

Where it has come, it has gone to a specific sector – natural resources. Sub-Saharan African countries that have been able to attract any meaningful FDI are those with potentially large domestic markets (South Africa, Nigeria and Egypt) and those that possess large amounts of natural resources, especially oil (South Africa, Angola, Equatorial Guinea, Nigeria, Congo-Brazzaville etc). This is not new. The flow of FDI to sub-Saharan Africa has traditionally been linked to oil and other natural resources (Allaoua and Atkin, 1993). This is why FDI on the continent tends to be concentrated in a few countries that are rich in resources.

For example, between 1995 and 1998, 41 percent of FDI went to four oil-exporting countries –Angola, Congo Brazzaville, Equatorial Guinea and Nigeria (Pigato, 2000). According to Loots (1999), 15.3 percent of FDI in Africa in 1997 was in the primary sector, of which 60 percent went to mining and natural resource extraction, including fossil fuels. Furthermore, economic data points to African economies growing healthily in recent years. However, this has been primarily due to the increase in commodity prices, debt relief measures and inflows of external finance mainly into the

primary minerals sector. The common wisdom has been that FDI will contribute to sustainable development – and it is a potentially important contributor to the development of African countries – but very little attention has been paid to the nature of FDI and the conditions attached to it.

The RMI will not resolve the problem of FDI on the continent. RMI will strengthen the current situation whereby FDI[18] into Africa primarily goes into the mineral resources sector. This means removing 'unnecessary barriers' that make extraction activities more complicated.[19]

Already, the bulk of European FDI in Africa goes to the extractive industries and, despite the increasing presence of China in the sector and the perception that it is becoming dominant, European capital investment remains by far the largest. This is because Chinese investment is coming from a very law base in terms of volume. The market remains dominated by developed countries. However, we need to recognise the speed at which China is moving. The *Wall Street Journal* pointed out that China's investment in the global mining sector has risen by more than 100 percent since 2005 in terms of outbound investment and mining acquisitions, and totalled around US$13 billion in 2009. Dereck Scissors, a Heritage Foundation researcher who has built a database to track those deals, argues that China's hunger for metals and minerals will be a principal driver in boosting its overall outbound investment to more than US$100 billion by 2014. Meanwhile, data tracker Dealogic reckons that China accounted for one-third of the value of all cross-border mining mergers and acquisitions in 2010.[20]

RMI will maintain the distortion of the international trade regime

RMI will perpetuate a situation whereby Africa remains a provider of cheap raw materials without development. The irony is that while the RMI is being promoted, we are seeing increasing protectionism from the EU. For example, the US and the EU are the ones who most frequently impose duties. In December 2008, the EU imposed duties on imports of welded tubes and pipes of iron or non-alloy steel from Belarus, China and Russia.

The EU is worried more about decreasing employment opportunities in Europe if restrictions are imposed on export of raw materials. The EU is not interested in

Africa increasing the employment opportunities for its own people. Friends of the Earth also qualify the initiative as selfish since it is designed to feed the EU's appetite for raw materials while failing to address the externalities of raw material extraction and trade.[21]

RMI will not be environmental friendly

Investment in the mineral sector is always accompanied by social and environmental consequences. Companies that invest in this sector are expected to have a sustainable strategy for addressing the environmental, economic and social problems caused by their activities. This aspect seems to be relegated to second place in the EU's RMI. If this aggressive initiative if not properly managed, it could provoke far worse environmental consequences than any other sector. Friends of the Earth Europe argue that the EU initiative is shortsighted and is solely focussed on making sure that European companies get their share of the world's remaining resources in the short term.

What can African States do?

The problem with FDI that goes into the extractive industries on the continent is that the focus has not been on what the State can – and should – do to draw maximum benefits from it. The State has an important role to play, not only in attracting FDI but also in maximising the benefits and minimising the risks that accompany the extraction of minerals and oil. Not all states have the capacity to achieve this balance. In the absence of regulations governing natural resources extraction (or when they are weak or poorly enforced), increased openness to foreign investment can accelerate unsustainable resource use patterns. This situation exposes not only the dangerous side of the RMI but also the weaknesses of the African state. While states encourage FDI, they have not been able to build their own capacity. This is clearly recognised by a New Partnership for Africa's Development (NEPAD) policy document, which argues that:

> State capacity-building is a critical aspect of creating conditions for development. The state has a major role to play in promoting economic growth and development, and in implementing poverty reduction programmes. However, the reality is that many governments lack the capacity to fulfill this role. As a consequence, many countries lack the necessary policy and regulatory frameworks for private sector-led growth.

In concrete terms, building capacity refers to putting in place regulations and monitoring mechanisms to control companies' activities, and to hold them accountable for any ecological damage and human rights abuses. In most countries, environmental impact assessments are required by law (Justus Inonda Mwanje, Issues in Social Science Research: Social Science, Methodology Series, OSSREA, 2001, p53) but in most countries in Africa, EU companies do not produce them, or when they do produce them they are factually incorrect and of low quality. Weak states should not be

an excuse for companies to stop paying attention to questions of the environment and human rights. In fact, EU companies should abide by the same standards at home and abroad.

Conclusion

The EU must open up the debate and engage African countries on its RMI. The RMI will not succeed without an international consensus on how to deal with export restrictions that serve various objectives of exporting countries. Certainly in the case of South Africa, whatever export restrictions might exist, their application is for a good cause.

Endnotes

1 Communication from the Commission to the European Parliament and Council: The Raw materials Initiative –Meeting our critical needs for the growth and jobs in Europe.
2 Mining and Minerals in South Africa http://www.southafrica.info/business/economu/sectors/mining.htm
3 Platinum and titanium are used in the fuel cells that power hydrogen cars.
4 The Precious Metals Trade- General Information Handbook, the Department of Mineral and Energy, Pretoria, 2006, p14. Platinum is a precious metal and an industrial metal. The main use for platinum, however, is in autocatalysts (The DME, 2006).
5 Department of Mineral and Energy of the Republic of South Africa, 2002, investment in South Africa's mineral sector, Report R39/2002, accessed April 7, 2003 http://www.dme.gov.za/publication/pdf/annual_reports/R39-2002.pdf
6 Interview with David Van Wyk, 2010.
7 See Peter Mandelson speech " The Challenge of Raw material" Presented at the Trade and Raw material Conference, Brussels, 29 September 2008
8 Raw materials, Raw Materials Policy, European Commission Directorate-General for Trade 2009 Annual report.
9 Rob Davies, Deputy Minister of Trade and Industries, input on the occasion of the 5th Anniversary of the International Trade and Administration Commission (ITAC) 16th October 2008.
10 Terence Creamer, SA Should courage to raise tariffs to prevent de-industrialisation. Engineering News, July 2010
11 Summary Report of the raw materials workshop organised by OECD, 27 January 2010
12 Lonmin is one of the world's biggest platinum miners. It is a London-listed miner will all its operations are in South Africa.
13 William MacNamara, Lonmin told by SA to stop selling some metals, Financial Mail, August 5 2010.
14 Sustainable development Framework, Guidelines for HIV and AIDS, Malaria and TB, Mine Closure Toolkit, Community Development toolkit,
15 Claude Kabemba, The EU Raw Material Initiative –meeting our critical needs for growth and job in Europe: A Response from Africa, Paper Presented the Expert Meeting Raw Materials convened by FAIR Politics, 17 November 2009, Brussels.
16 Cleeve, Emmanuel (2004). How effective are Fiscal Incentives to Attract FDI in Sub-Saharan Africa? Paper presented at the IAABD 5th Conference in Atlanta.
17 "Stabilise, privatise, and liberalise" became the mantra of a generation of technocrats who cut their teeth in the developing world and of the political leaders they sponsored. At the core of the Washington consensus also included openness to FID. It inspired a wave of reforms in Sub-Saharan Africa which fundamentally transformed the policy landscape in these developing areas.
18 FDI: Foreign Direct Investment
19 Ibid
20 see Lawrence Williams, China buying the global strategic metals farm, Mineweb , 21 July 2010
21 Friends of the Earth Europe, EU Raw Materials Initiative, Commentary, February 2009

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