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The Honorable Mary L. Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
USA

By email to: rule-comments@sec.gov

22nd November 2010

Dear Chairman Schapiro,

COMMENTS RELATING TO DODD FRANK SECTION 1502 CONFLICT MINERAL LEGISLATION

I am writing on behalf of ITRI (formerly the International Tin Research Institute¹), the organisation representing the global tin industry, in order to provide comments on Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

ITRI and its tin producing member companies fully recognise concerns relating to trade in cassiterite from the DRC and in October 2009 were the first sector to pledge to source from the region only if part of an appropriate due diligence scheme²; the ITRI Tin Supply Chain Initiative (iTSCi). Further information on iTSCi has been provided to SEC at a previous meeting but the general phased approach of this system is described in Annex 3. Phase 1 was implemented from July 2009 and further actions have progressively and rapidly been taken since that date.

Tin is unusual among base metals in the high proportion of the ore (cassiterite) that is mined by artisanal and small scale operators³. It is therefore important to consider expectations on industry in the appropriate context; all tin mined in the DRC and adjoining countries is produced and traded by small operators and there are no large scale producers of cassiterite in the central African region.

ITRI has the full support for the iTSCi system from the Governments of the DRC and Rwanda as well as the ICGLR (International Conference of the Great Lakes Region), local and international upstream operators, as well as downstream companies and their relevant associations.

The iTSCi scheme is also the only system designed to satisfy both the anticipated smelter verification audit scheme of the electronics industry and the forthcoming OECD guidance on due diligence. It has three aspects;

- Chain of custody
- On the ground risk assessment and mitigation
- Independent verification and audit

Unfortunately the iTSCi Phase 2 pilot project and associated plans regarding development of audit methodology is suspended under the general mining suspension in eastern DRC however, it has already been possible to demonstrate successful implementation of traceability for the 3 months of pilot operation.

¹ See Annex 1 for information on ITRI

² See Annex 2 ITRI Member Declaration on Artisanal and Small Scale Mining October 2009

³ See Annex 4 ITRI Artisanal and Small Scale Mining (ASM) Policy October 2008

ITRI would like to submit the following comments to SEC for consideration and hope that the extensive experience of the tin industry can be taken into full account during the development of the draft SEC rules;

1. *All supply chains are highly complex*

ITRI would like to emphasise our agreement with comments made in many other submissions that all supply chains are highly complex. This is relevant both for the upstream (mine to smelter) end of the chain) as well as the downstream (smelter to end product) part of the chain. All metal supply chains are also complicated by the introduction of secondary materials at various points as described in other submissions and these concerns are relevant to the tin sector.

Also note that apart from the main use sectors, tin has a huge range of widely dispersed uses, not necessarily well known within general industry and difficult to identify. A proportion of tin use is classified as 'unknown' in ITRI statistics and should be considered completely untraceable in end use products in the short term.

While ITRI considers that it is possible to control the entry of DRC conflict material into the supply chain, this is only achievable through methods already being put in place by industry. A number of suggestions from other parties for exact tracking through the entire chain are not workable, are unnecessary and would create an unacceptable burden of reporting that is disproportionate to possible beneficial effects. SEC need to reflect a suitable balance of risk versus reporting in order to ensure that rules are practical and enforceable. Please refer to points 2-5 below.

2. *Material mixing occurs at all stages of the upstream supply chain*

In order to reach sufficiently high metal grades within concentrate in the upstream supply chain, or to account for different levels of impurities that may remain in smelted metal prior to refining, or to make use of secondary inputs, mixing of mineral or metal from a range of sources is carried out at every conceivable point of treatment of the upstream supply chain. Material, even at the very first stage of production, may be mixed from one pit of a mine with another pit, before leaving site.

It is important for SEC to understand what can and cannot be achieved in terms of tracking of minerals. The iTSCi system, even though operating for a short time, has demonstrated that bags of mineral concentrate can be tracked from certain sources, and mixing at certain trading points can be accounted for, up to the point of input into a smelter. However, smelting of concentrate sourced from one single mine is not economic, technical or economically possible unless such a mine represents a very significant production area. Smelters will utilise a range of primary and secondary inputs in their continuous production process. Refining of material from a smelter also requires mixing to blend metal from a variety of sources in order to account for higher or lower levels of impurities in those materials.

It is therefore generally impossible to identify a single ingot of metal produced from a single mine source of mineral and it is important that SEC take into consideration this practical limitation to precise tracking of material when rulemaking.

3. *No direct link can be made between mine and end user product*

As outlined in point 2, while tracking from mine to smelter is generally possible and has been demonstrated by the iTSCi process, precise tracking through a smelter and refinery converting many input materials to metal ingot is generally not possible. Therefore, since the 'trackability' of metal is already lost at the point of the smelter, no additional purpose is served by requiring end users to track exact batches of metal through their supply chain to end product.

Tracking of specific batches of metal, or other compounds produced from them, into products is not workable due to the high level of complexity of the downstream supply chain described by other submissions, and would achieve no added benefit to the objective of controlling conflict materials.

4. *End user influence can be exerted through purchasing influence and supplier declaration*

As outlined in points 1, 2 and 3 above, tracking of a specific piece of material from a specific mine into a commercial end product is impossible and SEC should not consider that to be an achievable aim. That does not mean to say that end users cannot influence circumstances within the DRC and adjoining countries as that can be achieved through purchasing influence and

setting supplier requirements for sourcing from specific approved smelting and refining facilities. Supplier contracts and declarations in the downstream supply chain can play a key part to the success of the conflict mineral legislation.

5. *Allowance for recycled metal and suitable definition essential*

All metals are recyclable and the resulting product can be indistinguishable from any metal produced from primary mine sources. Recycling is an essential requirement for the future sustainable use of natural resources and must be encouraged. It is clear that recycled metal, perhaps even that containing already mined conflict mineral, must be continued to be allowed to circulate. An exemption for recycled metal is therefore required and would make no difference to the future contribution of metal production to the conflict in the DRC; the metal already exists and is an integral part of the supply chain.

For information, current ITRI estimates show that of the total refined metal produced (334,000 tonnes) in 2009 around 16% (55,000t's) was from secondary sources. In addition, another 70,500t's of tin is estimated to be reused in secondary alloys each year. This represents an overall recycling rate of around 37% and significant quantities of material.

While allowing recycling, SEC should, at the same time, ensure that crudely refined concentrate from uncertain sources does not enter the market as 'recycled' metal and the definitions and scope of any exemption must therefore be very carefully considered. The definition below utilised in the OECD guidance may benefit from further clarification;

“Recycled” tin, tantalum, tungsten and/or gold that is reclaimed end-user or post-consumer products, or scrap metals should be exempt from this rule. Minerals partially processed, unprocessed or a bi-product from another ore are not considered recycled [note: Facilities using recycled materials may also be smelters of unprocessed ore (no matter how small the quantity) and therefore subject to due diligence requirements outlined in this document.]

A more precise definition for exemption might be;

“Recycled tin, tantalum, tungsten and/or gold is that which can reasonably be considered to have been reclaimed from material arising from:

- *the manufacture of downstream products which incorporate those metals or their compounds, or*
- *processes utilising those metals or their compounds, or*
- *end-user or post-consumer products.*

Minerals partially processed, material arising therefrom, and materials from intermediate stages of the smelting and refining process are not considered recycled.”

6. *Allowance for existing above ground stocks essential*

There is a great deal of material already in existence which cannot retrospectively be traced back to any particular source and may or may not have arisen from the DRC or adjoining countries. This includes but may not be limited to;

- Ore and concentrate in process through the upstream supply chain, potentially stored for several months or even years awaiting appropriate circumstances for treatment.
- Smelted and refined metal above ground stocks held by smelters, traders, metal markets, financial institutions, metal users, in downstream components and indeed Governments. The US stockpile may for example contain recently produced tin or may contain tin produced in the 1940's when DRC was a key supplier.

It is impossible to retrospectively trace or verify the mine source of this already existing metal. Tin is an elemental metal impossible to destroy. Such above ground stocks must therefore be considered in a similar manner to recycled metal i.e. if it is clear that it was mined and produced before the date of enactment of the SEC rules then it should not be subject to those new requirements but exempt as existing stock material. As with recycled metal, the application of SEC rules to newly mined material only would make no difference to the future contribution of metal production to the conflict in the DRC; the metal already exists and is in circulation.

Failure to take this into account would cause severe and widespread business disruption, financial losses, and chaos in the tin commodity market. That would severely and negatively affect all businesses connected in any way to the tin sector on a global basis.

7. *All metals may be present as an impurity in other materials and must be allowed for*

A 'de-minimis' rule should be applied in a balanced way in order to account for the presence of the metals in question as impurity elements in a wide range of other existing substances while discouraging the use of conflict minerals in products.

SEC may refer to a variety of enacted chemical regulations in the US and EU to consider appropriate wording to make allowance for these impurities. For example guidance to the EU REACH regulation 1907/2006 defines "impurity" as "(a) *unintended constituent present in a substance as produced. It may originate from the starting materials or be the result of secondary or incomplete reactions during the production process. While it is present in the final substance it was not intentionally added*".

8. *Allocation of conflict status at point of mine/risk, not later in time*

Material already produced and in process through the supply chain cannot become conflict mineral once already purchased. For example if material has arisen from a mine during a period of time that it was accepted as non-conflict that specific batch of material must remain non-conflict and acceptable even if the same mine is redefined as a conflict source for future production. The allocation of the conflict status of material must be considered to be at the mine site, or point of identified risk in the trading chain, and at a specific time. The purpose of due diligence would be to prevent conflict mineral from a conflict mine or area from entering the supply chain although some short reasonable period of time to implement such control must also be expected and allowed for through some flexibility in the SEC rules.

9. *Reconsideration of definition of all cassiterite as conflict mineral required*

Even when sourced from completely different regions of the world it appears that all cassiterite is 'conflict' related as defined under section e) 4. This has severe business and reputational issues for all tin producers who are not connected in any way with the conflict region. This must be revised so that the term 'conflict mineral' applies only to mineral actually obtained from conflict sources.

This definition is also key when considering the possibilities of labelling under b) 1.D. Under the current interpretation the huge majority of metal produced globally, and all products manufactured from it, would qualify for the label 'DRC conflict free' simply by being 'DRC free' i.e. purchased from other regions of the world. The quantity of mineral produced in the region is not so significant that this option will not be the preferred route of end users. Through this definition the US legislation is encouraging disengagement from the DRC and adjoining countries in contradiction to c) 1. i. II which has the objective of promoting regional development.

The label could also be misleading to consumers who might logically expect a 'DRC conflict free' product to contain metal from a non-conflict region of the DRC, and may not expect a 'DRC conflict free' product to be manufactured from minerals produced entirely outside the African region.

10. *Phased approach needed to allow for flexibility during further alignment of international standards*

While industry has been supporting through its own efforts and the iTSCi scheme increased due diligence in the supply chain, it has also been fully supportive of the efforts of the OECD to develop internationally accepted guidance on the issue. Since agreement appears to have been achieved with a wide range of stakeholders, including the UN Group of Experts, the SEC is encouraged to fully adopt the exact requirements of that guidance; differing requirements from SEC would generate huge and unnecessary industry burden.

Some flexibility in the SEC rules is also required in order to take account of any subsequent changes in industry schemes or OECD recommendations during the coming 1-2 years. Although much work has been carried out on the iTSCi process the exact risk assessment and auditing methods are not yet defined, and implementation in other countries of the region may also require flexibility in the chain of custody tagging system. The OECD is also expected to carry out a year long road test.

The SEC should therefore either delay disclosure requirements for 1 year after enactment of the rules to allow for fuller development and finalisation of those systems, or, should anticipate a review of the rules to be completed within an 18 month timescale to align with any changes that have occurred.

11. *Need for acceptance of joint industry schemes to avoid undue regulatory burden*

SEC should fully recognise the acceptability of, and company reliance on joint industry actions, schemes and auditing on best efforts basis in order to avoid disproportionate burden on industry within Africa, internationally and within the USA. This will allow for minimised burden while achieving the same objectives.

12. *Need for 'best efforts' basis for due diligence*

SEC should also allow for the fact that perfection cannot be achieved and if it is requested will lead to complete withdrawal of all responsible operators from the region. We are sure that such an embargo is not the intent of the legislation and rules should therefore recognise the concepts of 'reasonable care', or 'good faith' efforts. One hundred percent certainty in such a complex supply chain and complex operating environments cannot be achieved. Limitations of influence of smaller companies should be recognised, as should the generally difficult business environment in the central African region. Implementation and improvements can take some considerable time in areas lacking in even the basic infrastructure such as roads or electricity.

13. *Consideration of commercial confidentiality and competition aspects*

There is a need for SEC rules to reflect an effective balance of risk versus need in relation to any requirement to publicly disclose available information on individual trades or operators. As outlined in the OECD guidance document full details of information can be made available to auditors and operators further downstream in the supply chain but a great deal of such information will not be publicly available for reasons of commercial confidentiality or competition aspects.

In summary, the publication of the findings of independent audit reports outlining risks and responses is sufficient to reassure stakeholders that due diligence is being performed and this must be the requirement reflected in SEC rules. Any expectation for publication of actual supply chain data will not be acceptable due to competition aspects. Such action is also not practical due to the huge amount of data to be collected and must be considered unnecessary when the independent auditor inspects, reports on, and has full access to such information.

Items of data sometimes listed in respect to the conflict mineral issue will be collected as part of a joint scheme but will not be published. Examples from the OECD guidance include;

- a. *all taxes, fees or royalties paid to government for the purposes of extraction, trade, transport and export of minerals;*
- b. *any other payments made to governmental officials for the purposes of extraction, trade, transport and export of minerals;*
- c. *all taxes and other payments made to military or other armed groups;*
- d. *the ownership (including beneficial ownership) and corporate structure of the exporter, including the names of corporate officers and directors; the business, government, political or military affiliations of the company and officers.*
- e. *the mine of mineral origin;*
- f. *quantity, dates and method of extraction (artisanal and small-scale or large-scale mining);*
- g. *locations where minerals are consolidated, traded, processed or upgraded;*
- h. *the identification of all upstream intermediaries, consolidators or other actors in the upstream supply chain;*
- i. *transportation routes.*

Such information will be collected and accessible to auditors and downstream users. However the public release of un-aggregated information on value (based on taxes), dates, quantities, supplier relationships and transport routes would be anti-competitive, may raise security/theft issues, and will not be detailed in public audit reports. As noted in the OECD guidance business confidential data includes "price information and supplier relationships."

Certain stakeholders appear to have begun adaptation of the OECD specified publication requirements, going against the need for harmonisation of rules, and potentially increasing burden on industry.

14. *Reporting must only be required to the point of exit of DRC/adjoining countries only*

Various stakeholders appear to suggest declaration to international trade points or further up the supply chain to international smelters, while e) 5 B and C clearly notes that the conflict concern logically only exists to the point of exit from the DRC or adjoining country. Any rules that may require the publication of commercial information relating to trades in the international markets is not acceptable and may be considered anti-competitive.

15. *Many questions surround the map of conflict areas to be produced by the State Dept*

Section c) 2 requires a map of conflict areas and conflict mine zones to be developed based on information from Governments, NGO's and other parties. There is no industry input foreseen in the development of such a map although the OECD has contrary requirements - that companies must assess their own risk areas and respond appropriately. How will this be dealt with under the SEC rules? Does the State Dept have liability to companies using such a map? Does use of the US map automatically mean a company is complying and does not need to take further action of its own as recommended by OECD? What if that map contains errors, how often is it updated? Will SEC rules refer to and require use of the State Dept map by companies within the US and/or globally?

Clause c) 2. A. iii notes that an explanation must be provided by State describing the sources of information on which the map is based and the identification "where possible" of the armed forces in control. It is not clear how State will be able to produce such a map if it is only "where possible" identifying which armed groups are indeed present?

16. *Re-definition of armed groups and allowance for mitigation required*

According to e)3. an armed group is defined as any such group perpetrating serious human rights abuses in the annual Country Reports on Human Rights Practices. However, there is a serious concern that such a report does not provide sufficient detail, nor is sufficiently frequently updated to properly contribute to such a pivotal part of the US legislation.

For example, it appears that US diplomatic missions in the relevant country are requested to provide submission of draft reports in September and October of each year. The Secretary of State must then submit the Country Reports to Congress by February 25; however the most recent report for the DRC was not available until March 11th 2010. This implies that the Country Report may already be 3-6 months out of date by the time it is made available. This is hardly satisfactory for on-going due diligence and mitigation planning purposes. SEC should consider how this issue may be addressed during rulemaking.

In addition, the Country Report does not appear to be sufficiently specific to certain commanders, brigades, regions or mines but is quite generic and does not contribute to full understanding of the security situation in the region. For example, there may be human rights abuses carried out by one or other part of the DRC national army (FARDC) from time to time. That would imply the entire FARDC should be excluded from assisting in providing security around any mine site, not just in eastern DRC but the entire country, not for a short time but for around a year until the next Country Report may be published. Such an interpretation does not match up with international expectations on mitigation (engagement and improvement) of areas controlled by FARDC.

Various unacceptable or mitigable activities and definitions of armed groups have already been fully discussed, and agreed, by multiple stakeholders during the development of the OECD guidance document. *It is essential that SEC adopt the understanding of armed groups and acceptable reactions to their presence already developed within that framework.*

It is expected that both the OECD and the UN will allow for mitigation of certain mine sites i.e. will allow time for improvements on site under an agreed improvement plan before purchasing should stop. This allowance is the only way to achieve positive progress in the region through continuing engagement and the SEC rules must also allow for such mitigation of armed group influence; otherwise an embargo is sure to follow.

17. *Recognise difficulty of auditing in such high risk zones*

Auditing requirements must be carefully considered. Standard expectations of operators in developed countries relating to quality and experience of audit firms may not be applicable in high risk areas where it is almost impossible to appoint a recognised audit company; such companies are generally unwilling to travel to conflict areas as a result of company security restrictions. Sufficient time will therefore need to be allowed within the SEC rules for the progressive training and development of auditing expertise for the upstream supply chain within the African region itself.

18. *Risk of trade restrictions or embargo*

SEC must be mindful of the impact of the rules on international trade patterns. There is already evidence of market led trade restrictions resulting from the US legislation and widespread nervousness in the international tin commodity market impacting price due to the level of uncertainty that exists over correct sourcing policy, above ground stocks, recycled metal and other aspects (see points 5 and 6).

Minerals from Africa are unlikely to have access to international markets after April 2011 unless an extensive due diligence plan is in place due to negative end user reactions. Please refer to point 9 and the impact of 'DRC (conflict) free' labelling.

Remembering that the key stakeholders that the legislation is designed to address are those within eastern DRC there is a need for pragmatism in rulemaking in order to avoid the potential serious negative impacts of a trade embargo resulting from the US legislation. It is unfortunate that there is no requirement to report on negative impacts under section d) 2. It would therefore be responsible to consider adding an earlier risk-benefit analysis to the rules to allow flexibility if serious impacts are seen to have been created.

Much work has been done within the DRC and adjoining countries over the last few years by industry members and Governments alike. SEC is encouraged to fully take these processes and systems into account when considering the rulemaking and is also encouraged to allow sufficient time for these initiatives to continue to a successful ending by allowing for phase-in periods, mitigation and other important factors where ever possible.

19. *Need to communicate and consult with the upstream tin sector outside the US*

SEC will receive numerous submissions from US companies, but it would be useful to bear in mind that no tin is produced within North America. Apart from local agents representing non-US tin production companies, US companies cannot, and do not, represent the interests of any part of the upstream tin supply chain. It would be useful for SEC to ensure they communicate and consult widely on an international basis in order to achieve a balanced level of consultation with downstream and upstream industries alike.

20. *Concern of Congress regarding 'black market mineral' – preference for encouraging engagement*

In a submission to the SEC, Congressman McDermott and Senator Durbin note that 'when the price of blackmarket natural resources in the DRC goes down, the rate of violence drops with it' and they state a desire to 'reduce the demand for (and therefore price of) blackmarket conflict minerals'. We are not clear to what they are referring; the price of cassiterite fluctuates in legal and illegal markets in the same manner linked to the international commodity price. In fact, a seller of 'unofficial' material may receive a higher price taking into account that there is no need to pay taxes or other official fees.

It is more common that lower prices, and therefore greater financial hardship, leads to greater rather than reduced violence for many reasons. This is currently being observed during the DRC mining suspension.

We believe that the Congressional call for greater transparency in the mineral market in fact refers to greater due diligence and risk assessment which is already being undertaken by responsible parties within the region. Unfortunately, a request for too great a level of transparency will reduce responsible company involvement and discourage engagement leaving the region subject to less responsible 'blackmarket' operators. The rules developed by SEC need to encourage continued engagement and incentive for progress, not, as may well be the case, rules that are so strict that the opposite will occur.

The Congressmen also claim that 'relying on the word of processing facilities is not sufficient' implying that such companies are unreliable. Processing facilities outside the US have already demonstrated their concerns over conflict minerals and in the case of the tin industry have led the proactive reaction to such concerns. The companies have developed efficient and effective due diligence systems and have already begun the process of independent auditing. We cannot agree with the Congressmen's assessment of leading tin industry members in this regard.

21. *Specific concerns over requirement b) 1.A.ii.*

- Specific reporting of mine source within any particular end product is not technically possible (see point 3)
- Declaration of facilities used to process minerals should only be required if the material utilised by them is indeed from a conflict area. (This relates to both the need for commercial confidence and issues noted in point 9).
- There is need for further clarification or revision of armed group definitions and the relation to other definitions such as from the UN SC (see points 15 and 16).

22. *Need for clarification b) 2.B*

Does this include products manufactured under contract even though not specified in this clause but only earlier in the b) 1.A.ii ?

23. *What are the possibilities for waiver in the interests of the DRC and adjoining countries?*

Does waiver under b) 3 only apply in the national interest of the US ?

24. *Will the SEC rules take into account the Sec of State and USAID plan once developed?*

For example, if the State Dept recognise need for phase in approach and mitigation as a part of the plan for peace and security will that also be allowed under the SEC rules? See for example c) 1.B.ii,II to promote regional and local development.

25. *How is it foreseen that persons not requiring to report will be affected by the rules?*

Under section d) 2.c.

26. *The listing of all known conflict minerals processing facilities needs limitation*

Section d) 3 c mentions a listing of all conflict mineral processing facilities worldwide. The purpose is not clear, presumably this is a list of facilities known to process minerals from mines specified under the conflict zone map not the processing facilities known to deal in non-conflict cassiterite (see point 9).

I hope that you find these points useful. Please let me know if you require further details.

Yours sincerely,



Kay Nimmo
Manager of Sustainability and Regulatory Affairs, ITRI Ltd

ANNEX 1: Further information on ITRI

ITRI is the world's foremost authority on tin with over 75 years' experience in tin related technologies. It is a membership based organisation representing major tin producers and smelters and is the premier source of tin related information. ITRI has specialist knowledge of tin use in all the major sectors as well as groups responsible for technology, statistical and market information, regulatory affairs and sustainability. It provides links to the main tin consuming sectors through a substantial network of industry contacts. The organisation hosts seminars, conferences and industry-specific group meetings. It also provides marketing and technical support to its members and the tin industry in general.

ANNEX 2: ITRI Member Declaration on Artisanal and Small Scale Mining October 2009

As a leading tin [*mining, smelting, refining, recycling as appropriate*] company we recognise the need to develop a sustainable industry and note that the prudent and responsible use of natural resources is an important driver of economic growth, sustainable development and poverty reduction.

We also recognise that the tin mining industry has certain unique characteristics, such as the significant contribution of artisanal and small scale miners (ASM) to production, which raise specific issues that must be considered as an important influence on our industry as a whole.

We support the ITRI Policy Relating to ASM, and, if purchasing material from ASM producers, recognise and follow the ITRI Member Principles relating to ASM, both of which are described in the Artisanal and Small Scale Mining Policy document published by ITRI. We believe that this will assist with the industry's aim of seeking an improvement in the human rights, health and safety, and environmental performance of ASM operators in order to build a sustainable industry.

In addition, we recognise specific concerns regarding tin supply from the Democratic Republic of the Congo (DRC) and confirm that we do not, and will not, purchase cassiterite known or suspected to have originated in that country unless participating in, and complying with, the current requirements of the ITRI Tin Supply Chain Initiative (iTSCi).

It should also be noted that [*company name*] endeavours to conduct all its activities in a manner contributing to the wider goal of sustainable development, taking account of established local policies, and acting within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards.

ANNEX 3: Further information on iTSCi (ITRI Tin Supply Chain Initiative)



The ITRI Tin Supply Chain Initiative 'iTSCi' is a due diligence system aimed at inclusivity and encouraging improvement in a series of manageable and practical stages bearing in mind that the DRC and adjoining countries are developing economies in which standards can differ from those applied in more established States. This phased system for improved due diligence, governance and traceability includes the following steps:

- PHASE 1: implementing traceability from exporters to international traders and smelters by establishing harmonised document requirements for export shipments including written declarations confirming the lack of involvement of illegal armed groups in the upstream supply chain.
- PHASE 2: developing and implementing a system to ensure mineral traceability from mine site to the exporter, to develop chain of custody data and collate information on risks from an 'on-the-ground' assessment team.
- PHASE 3: implementing basic performance standard measurement of social, health and safety and environmental factors at mine sites and to consider incentives and methods for improvements.

Phase 1 has been in operation since 1st July 2009, with smelters within the scheme collecting all relevant export documents and declarations on each shipment made since that date. Independent

audit of that documentation has been carried out by SGS covering the first year of operation. Phase 1 is self funded by ITRI members and participants in iTSCi. It has led to improved focus on the provenance of materials and awareness of all parties for the need for legal/formalised trading and therefore supports Government and other local industry initiatives active in the DRC.

ITRI is now implementing Phase 2 of the system which will provide definitive information on the provenance of minerals. Due to the many challenges that exist in relation to implementation of traceability to remote and widespread mine sites the intention was to trial the system in a 6 month pilot project before rolling out to other areas later in 2010. Phase 2 had been successfully operating at Kalimbi mine in South Kivu from mid-June up until the mining suspension announced by President Kabila in mid-September 2010. Implementation at Bisie mine in North Kivu was also planned for September but both operations currently remain under suspension and the project is halted.

The Kalimbi mine was chosen as a pilot site in order to promote co-operation between iTSCi and the BGR certification project which should be able to provide expertise on Phase 3 related standards.

ITRI co-operates with the tantalum association (T.I.C.) and plans to apply the system to tantalum containing minerals as soon as mining is resumed in the Kivu's. Work may also be expanded to cover both cassiterite and coltan in Katanga.

The project in DRC is carried out with the assistance of officials from various Ministry of Mines services such as SAESSCAM and the Division of Mines as agreed in a Memorandum of Understanding between ITRI and the Ministry in Kinshasa. A similar agreement also exists between ITRI and the OGMR of Rwanda who intend to implement the iTSCi system to cover all Rwandese 'conflict minerals' by April 2011.

ANNEX 4: ITRI Artisanal and Small Scale Mining Policy

A number of ITRI members process minerals which have arisen through Artisanal and Small Scale Mining (ASM) in for example, the Democratic Republic of Congo (DRC)⁴, Myanmar and Indonesia. This document sets out the policies, principles and actions of ITRI, as the global tin industry association and ITRI members, as leading large scale tin production operations. These policies outline how the industry seeks to positively influence supply chains and policymakers towards a step-by-step improvement of the standards of ASM operators.

Key Information and Policy Summary

Tin is produced from the mineral cassiterite (SnO₂), a tin ore containing various impurities which are removed during concentration, smelting or refining. Cassiterite occurs in deep hard rock mines and in near surface deposits (alluvial and eluvial). Extraction of the mineral can often be carried out effectively with simple tools and low investment thus providing opportunities for production via ASM. Such artisanal operations have always made an important contribution to the tin industry and are expected to continue to do so in the future.

A large number of cassiterite deposits are alluvial, with a low overall tin content and randomly scattered across wide areas. These resources are often not exploitable by mechanised methods but are well suited to small scale, largely manual mining techniques. As a result, and unlike many other metals, mining of cassiterite is carried out by ASM's as well as by larger scale producers. Almost all (~97%) of the world's primary refined tin arises and is mined in emerging and developing countries⁵ and in a typical year around half of that has its origins in ASM⁶.

Where care is taken, artisanal mining can be carried out efficiently, safely, with very low energy expenditure and a low environmental impact. The income available to artisanal miners can be many times the income available to the general population of their region and ASM can provide a relatively attractive livelihood option. This economic activity also provides opportunities for sub-contractors, indirect employees and suppliers contributing to growth through the economic multiplier effect.

⁴ Please refer to ITRI document 'BACKGROUND INFORMATION SHEET: Cassiterite Production and Trade in the Democratic Republic of Congo' August 2008 for further information.

⁵ Country definition of [International Monetary Fund](#), World Economic Outlook, April 2008

⁶ In 2007, 51.2% of mine production arose from small operations (ITRI estimate)

With appropriate regulation ASM can be a major contributor to macro-economic growth and an important step in the development of a community or an entire country. For example it has been a strong platform for the early stage growth of the economies of Malaysia, Thailand and Indonesia. The major tin production region of Indonesia (Bangka Belitung) has received significant economic benefit from mining activities which currently contribute around 30% of the regions' GRDP⁷.

However, it is recognised that all ASM operations may not work to demanding internationally accepted standards. This may be due to any number of complex socio-economic or political factors prevalent in the local region such as a lack of formalisation or inadequate legal frameworks or regulatory enforcement for the ASM sector. For example, environmental concerns arising from illegal small-scale mining on Bangka are widely reported.

ITRI members would prefer that all cassiterite is extracted under the same high standards that they themselves employ although it is recognised that this is not yet uniformly the case. However, neither ITRI nor its members consider that disengagement from the artisanal mining sector is a practical or ethical option since this would deprive those who are dependent on ASM cassiterite production of their current livelihoods and/or increase their dependence on less ethical or regulated trade and reduce the potential for influence of the international community.

This policy document is a step in the process towards industry self regulation. It is recognised that there are limitations to its scope as well as issues regarding any standards or possible verification processes which would require further development. It represents a significant step forward for the tin industry with the aim of promoting the adoption of good practice throughout the supply chain.

ITRI Policy Relating to ASM

1. ITRI believes that the potential long term economic benefits arising from ASM are significant and, as such, that a progressive and measured approach is required by all stakeholders to improve operating practices where they are deficient.
2. ASM activity can only become formalised when a body of regulations are developed specifying the objectives of the local region, and are applied by strong controlling government. Effecting an improvement in governance can only be achieved with the commitment of local regulators. ITRI will support, by actions that are within its sphere of influence, any stakeholders who are acting to achieve reform of mining codes and/or formalisation, legitimisation or responsible control of the ASM sector.
3. ITRI recognises that in areas of weak governance entitlement to exploitation is often uncertain or disputed. Revenues from cassiterite production may be routed through informal channels, potentially diverting income from revenue authorities, communities or holders of mineral rights. ITRI will co-operate with relevant stakeholders⁸ seeking to increase the transparency of mineral trade and the distribution of wealth arising.
4. ITRI will seek to take a positive approach to improving conditions in the supply chain for cassiterite produced by ASM's. ITRI will encourage members to take voluntary measures to influence their upstream supply chains and thus provide incentive for other parties to support improvement while providing continued access to market for all ASM operators. Progressive improvement in due diligence within the supply chain is seen as the most practical option available to ITRI members to achieve this objective.
5. ITRI will consider the feasibility of mineral tracking or tracing technologies and evaluate their possible application within a certification scheme if technically reliable, economically sound and relevant for both large and small scale operators.
6. ITRI recognises that downstream tin user groups have a growing interest in the concept of sustainable commodities and in particular the origins of material used in their final consumer products. ITRI will work with, and provide relevant information to, those stakeholders within the bounds of commercial confidentiality.

⁷ Eko Maulana Ali (Governor of the Province of Bangka-Belitung, Indonesia) International Tin Conference 2008

⁸ For example the Extractive Industries Transparency Initiative (EITI) when considered operational in relevant countries

7. ITRI does not generally support the imposition of trade restrictions on minerals produced by ASM. Such restrictions are unlikely to modify the practices that are of concern and are likely to disadvantage those who the actions seek to protect. Promotion of trade and economic opportunity is seen as a more effective tool for encouraging the development of good governance across the supply chain, leading to the fair exploitation of resources by the ASM sector and consequent long term economic benefit.
8. ITRI will consider working with appropriate directly-involved stakeholders who may be expected to contribute to our overall aim of seeking an improvement in the human rights, health and safety, and environmental performance of ASM operators in order to build a sustainable industry.
9. All activities will be context sensitive and considered on a case-by-case basis dependent on local socio-economic and political conditions and within the framework of commercial confidentiality, contracts and laws.

ITRI Member Principles Relating to ASM

1. Members recognise that the prudent and responsible use of natural resources is an important driver of economic growth which contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic, political and social impacts⁹.
2. Members will endeavour to conduct their activities in a manner contributing to the wider goal of sustainable development, taking account of established local policies, and acting within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards¹⁰.
3. Members will observe appropriate environmental and health and safety standards during their own mining operations, will respect all local legislation and aim to properly rehabilitate mining tenements at the end of their life.
4. Members will aim to encourage better practices in the ASM sector whenever practicable and believe that formalisation would raise awareness of health and safety standards and encourage respect for regulations and the environment¹¹
5. Members will seek, where feasible, opportunities to provide support for education and welfare programmes which assist local communities to improve their economic and social circumstances.
6. Members will respect human rights at their own operations in a manner consistent with host government obligations and commitments and through supply chain influence will aim to encourage ASM to be performed in conditions of freedom, equality, safety, and human dignity.¹²
7. Members aim to pay fair and competitive international market prices for cassiterite produced by ASM methods and will seek to achieve an acceptable economic outcome for the host mining country and community and the whole mineral supply chain. By providing access to international markets, the opportunity for maximum economic benefit is available to the country of origin of the materials and the communities involved in their extraction.
8. Members will seek to influence their supply chains in a step towards measuring, and where possible improving, ASM standards and conditions. Members will consider the development of systems and procedures which could encourage, where practicable, business partners to apply principles of corporate responsibility compatible with local guidelines.
9. Supply chain influence may be achieved through due diligence procedures to be applied to purchased cassiterite or concentrate. ITRI members will aim to take steps to confirm that all suppliers are officially recognised and licensed organisations who are fully authorised in their own trade and adopt similar policy approaches as the purchasing company. The application of similar procedures throughout the supply chain will be encouraged.

⁹ Principles of the Extractive Industries Transparency Initiative (EITI)

¹⁰ As recommended by the OECD Guidelines for Multinational Enterprises, Revision 2000

¹¹ As stated in Natural Resources And Trade Flows In The Great Lakes Region, Inica, December 2007

¹² Standard Zero For Fair Trade Artisanal Gold And Associated Silver And Platinum 2007