BUILDING CAPACITY WORLDWIDE
Pact

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The Honorable Hillary Clinton
Secretary of State
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

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

Dear Secretary Clinton and Chairman Schapiro,

In my capacity as President and CEO of Pact, I write to you concerning the implementation of Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, file number S7-40-10. Pact is an independent, non-profit international development organization that has worked in the DRC, Rwanda, and Tanzania for the past decade. We believe that legal, regulated mineral trade can be a fundamentally important contributor to economic and social development, as well as increased security, in the Great Lakes Region. With support from USAID, DFID, and the EU we implement programs on the ground, every day, to improve the conditions of mining communities and the performance and practices at mine sites. We work directly with artisanal miners and traders, and always in partnership with the Governments of the DRC and Rwanda, as well as with industry at every point in the supply chain.

I'm concerned that, in response to the Act, end-user electronic companies will cease sourcing from the Great Lakes Region as early as the beginning of April 2011. The potential impact of this decision—a *de facto* embargo on minerals from the region—could be nothing short of devastating. Not only would an embargo serve to fundamentally damage a critical opportunity for development in the DRC, but it would push the mineral trade into the black market, the consequences of which would likely be greater corruption and a perpetuation of the conflict the Act intends to address.

I recognize and applaud the efforts made by advocacy NGOs and the Government of the United States to address the conflict in the Great Lakes Region through Section 1502 of the Dodd-Frank Act. Having achieved the historic step of embodying social concern into law to govern industry, I respectfully request the following:

1) Please consider a realistic timeline for implementation of the law, thereby enabling responsible industry actors to remain engaged. We are not asking for any dilution of the Act's measures, implementation, or penalties. Rather we urgently request your consideration of a timeline to enable industry to remain engaged and to safeguard the livelihoods on which some two million people depend. The revised timeline should be punctuated with critical evaluation points to

ensure that the agreed targets are being achieved and that the delay is being genuinely used to effect change, not as a license to continue business as usual. Failure to meet these targets could then be considered as reasonable grounds to trigger the embargo.

2) Please consider making an appropriate, extraordinary budget available to implement the necessary changes to enable mineral traceability in the region. Funding is necessary to rapidly build the capacity of local civil society and government agencies in the DRC and Rwanda to implement and maintain the necessary infrastructure to ensure that the countries of the Great Lakes region maintain access to legal world markets and that companies sourcing for the region can have the confidence that their business decisions are not contributing to the perpetuation of conflict in the region.

Achieving the necessary tasks will be neither easy nor swift, and the message to be communicated is complex. However, Pact believes that these are not reasons to shy away from the challenge. We are available at any time to discuss in detail the points raised in this letter.

In an attached document, I've provided details on our work on mineral traceability which has been a recent focus of our efforts in the region and further describe what we see as the potential impacts of a *de facto* embargo on minerals from the region.

I sincerely thank you for your time and consideration of this letter.

Sincerely,

Mark Viso
President and CEO
Pact

Enclosures: Mineral Traceability and Potential Impacts of an Embargo

Mineral Traceability and Potential Impacts of an Embargo

Mineral Traceability – A precondition to responsible sourcing in the Great Lakes Region

Over the last year, Pact formed a partnership with the Governments of the DRC, Rwanda and the international tin industry, through their trade association, the International Tin Research Institute (ITRI) as well as the tantalum industry group, TIC. The focus of this partnership is the implementation of the ITRI Tin Supply Chain Initiative (iTSCi), a pragmatic scheme designed to track tin, tungsten and tantalum ('the 3Ts') produced and traded in the DRC and Rwanda from the point of extraction to export. Mineral traceability is fundamental to establish a verifiable chain of custody from mine to smelter which in turn facilitates conformance with the Dodd-Frank Act and upcoming SEC regulations in relation to carrying out due diligence in mineral sources. We believe that this scheme can make a profound contribution to the efforts of all partners to eliminate conflict minerals from the Great Lakes Region and from the international mineral supply chain.

ITSCi is supported by members of the Electronic Industry Citizenship Coalition (EICC) and the Global e-Sustainability Initiative (GeSI) and other trading and processing businesses along the tin and tungsten supply chain. The system operates under Memoranda of Understanding with the Governments of the DRC and Rwanda, has been accepted as a viable tracking methodology by the International Conference of the Great Lakes Region (ICGLR), and as a pilot project for the implementation of the OECD Guidelines.

The scheme has developed comprehensive selection criteria to determine which mines and minerals are 'conflict free' based on harmonization of the criteria and definitions in the Dodd-Frank Wall Street Reform and Consumer Protection Act; the Guidelines of the Organization for Economic Cooperation and Development (OECD) for 'the 3Ts'; and the guidance of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC.

Over the last six months, we carried out and evaluated pilot projects in the DRC and Rwanda and key findings are:

- The iTSCi system is practical and straightforward. After participating in a short training session, government agents are able to carry out their role of tagging minerals. The use of plastic tags and handwritten log books may be low-tech but is appropriate for the current state of infrastructure in the region at the mine level.
- The data is input into a sophisticated database. The system is extremely effective as this data collection enables: a comprehensive tracking of minerals from mines to smelters; prevention of theft; detection of fraud; increased accuracy in recording of production and trade statistics; and increase revenue to government.
- The iTSCi system works because it is based on simple market drivers: the buyers demand it. This does not depend on enforcement. Right through the supply chain, to the artisanal miners themselves, everyone understands the basic principle: *"no tag, no sale"*.

Potential Impacts of a de facto embargo: economic malaise and continued conflict

Major mineral buyers have stated that they will cease to purchase materials from the DRC and its surrounding countries on 1 April 2011 in order to comply with the requirements of 'end-user' electronic companies' who, in turn, are responding to the impending SEC Regulations to report a 'clean' supply chain in early 2012. Although electronics companies support the iTSCi traceability scheme and agree that it would enable them to meet SEC requirements, it is impossible for the scheme to be up and running in time to meet the expectations of these companies and to prevent a *de facto* embargo on materials mined in the region.

If legitimate buyers leave the region, we believe it will be extremely difficult to persuade them to return as the external barriers to re-entry into the market will be high. They will, understandably, find new sources of minerals and investors are likely to support new production elsewhere through multi-year contracts in order to capture a return on their investment. Certainly, some buyers may develop independent due diligence systems which can pass audit but these will be costly, constantly under pressure, and will benefit only a small minority of producers. The majority of the remaining trade will be left to the illegal traders and warlords who will pay rock-bottom prices and will contribute nothing to improving the conditions in which artisanal miners work.

This potential loss of participation of legally-compliant and willing industry will cause a significant deterioration in the enabling environment which NGOs, donors, and agencies need to implement projects to strengthen security and mineral governance. Just last week, the US Ambassador in Kinshasa made a statement regarding the US Government's commitment to supporting the DRC Government in various aspects of mining sector reform including regulated and transparent mineral supply chains, traceability, and improved tax revenues. Achieving any of these will be markedly more difficult, in some cases impossible, in the absence of a legal mineral market. The MONUSCO trading centers in the Kivus (the *Centres de Negoce*), designed to strengthen legal trading mechanisms, will have no function as there will be no legal outlet for the minerals. The World Bank and DFID supported project for mining governance, PROMINES, will face increased challenges as it will have to re-establish legal markets for any projects concerning the 3Ts. All of these commitments and initiatives are designed to strengthen legal trade, not to operate in an illegal vacuum.

Below, I've summarized some of the potential impacts of an embargo on provinces and countries in the region.

The Kivus and Maniema: The Government of the DRC imposed a temporary suspension on mining in North Kivu, South Kivu and Maniema in September 2010 in order to address security in the mines. This effectively halted all implementation of the iTSCi scheme and therefore roll-out of mineral tagging in the eastern provinces has been impossible. The impacts of this suspension have given an insight into the likely impacts of a trade embargo. The loss of income from mining has caused profound economic hardship for the provinces with hundreds of thousands of people unemployed, businesses closed down, trade of essential goods halted, and even basic services such as telecoms networks suspended. When the suspension is lifted, which is expected this week, the miners and traders will recommence work with vigor, but without realizing that they have only one month before they are unable to legitimately sell their minerals. The potential impacts of this include:

- A return to the economic malaise such as has been seen in the last six months;
- Possible closure of the main mineral trading businesses with concomitant loss of jobs;

- Potential public demonstrations and social conflicts arising when the miners lose their market;
- Probable migration away from mines producing the 3Ts towards the unregulated gold mines, increasing pressure on illegal gold mining and trading with related local resource conflicts;
- A massive loss of revenue to the Congolese State which could increase both official and predatory taxation on other activities and goods to compensate;
- Possible sale of minerals to 'non-compliant' buyers who ignore the ban but who will continue to introduce DRC conflict minerals into the international supply chain. This is likely to occur in militarized mines connected to the illegal elite described by the UN Group of Experts.

Katanga: In partnership with the Provincial Government, Pact has carried out a scoping study for implementation of the iTSCi scheme in the southern province of Katanga. The Provincial Government is fully supportive of the scheme, as are local producers. An embargo is likely to have the same impacts as those cited for the Kivus and Maniema, as well as potentially creating new pressure within the province. If the tens of thousands of artisanal miners currently working in the tin and coltan mines can no longer trade, it is likely that they may migrate to the copper and cobalt mines in the south of the province (we saw this, in reverse, during the 2008 copper crisis), exacerbating conflicts between artisanal miners and the large-scale mining companies who are investing in the region.

Rwanda: iTSCi implementation started in Rwanda in December 2010 and Pact and ITRI are currently carrying out an evaluation and adaptation of the system with the Rwandan Government. Any trade embargo will have profound impacts here too:

- Rwanda anticipates that mineral trade should deliver in excess of US$100m in revenue in the coming year, most of which could be lost;
- The 40,000 artisanal miners in the country risk losing their livelihoods with related social and economic hardship;
- If an embargo is placed on the DRC but not Rwanda, the pressure to find ways to access markets by introducing Congolese minerals into Rwandan markets will be enormous. The unequal balance created by vast quantities of unsellable material in the DRC whilst there is a potential market in Rwanda, separated only by a porous border, is a dynamic which is sure to increase pressure for smuggling. Production in the DRC vastly outweighs that of Rwanda and it could be uneconomical for the iTSCi system to be implemented in Rwanda alone.

Burundi and Uganda: Producers and government representatives in Burundi have contacted ITRI about implementation. However, we have not yet started any work in either Burundi or Uganda due to lack of funds. Yet the Act applies equally to both of these countries, and potential impacts outlined above could be equally felt.