

**To** Chairman Schapiro, United States Securities and Exchange Commission  
**From** Assheton Carter, Senior Vice President Global Engagement, Pact  
**Date** 13 October 2011  
**Re** Comments from Pact on the Application of Section 1502 of the Wall Street Financial Reform and Consumer Protection Act as it Relates to Mineral Traceability in the Great Lakes Region

Dear Chairman Schapiro,

In order to provide the status of the iTSCi implementation in the Great Lakes Region, I submit the following summary of recent developments and our observations.

Pact is working with ITRI, TIC, Governments and local partner to implement the iTSCi mineral traceability system in the region. The system involves several components including:

- A 'bag and tag' system and database which guarantees the source of minerals right back to the individual miner;
- A mine baseline assessment process which identifies a mine's status in terms of security, productivity, taxation and other key issues as outlined in the OECD guidelines coupled with an ongoing incident reporting and resolution system;
- Risk analysis and audit.

The system is operational in two areas: the southern Katanga Province of the DRC and in Rwanda. The system is not yet operational in rest of the DRC nor any of the other countries of the Great Lakes Region.

In both of the areas where implementation is underway we are seeing the significant contribution that Section 1502 can make to governance and stability. Pact's opinion is that when the law is used appropriately as a tool for security, transparency and development, it is incredibly powerful. What makes it uniquely helpful is that it is a market mechanism and incentive for change which is a different dynamic from that of 'enforcement.'

There is a huge appetite for traceability to be expanded into other areas. With adequate resources, time for implementation, and the re-engagement of international buyers, the potential for Section 1502 to fulfill this role can be realized.

Assuming appropriate funding levels, we anticipate 75% of production at known sites of tin, tungsten, tantalum (the 3Ts) to be covered in participating countries by the iTSCi mineral traceability system by 2013 and 100% coverage by 2015, if not sooner.

**Update from Katanga:**

- The project started in March 2011 and, in 10 months, has expanded to cover around 85-90% of the minerals of the Province.
- Around 550 tonnes per month of cassiterite and coltan are tagged and traded.

- We are operational in 123 mine sub-sectors, each sub-sector having anything from one to several hundred pits. There are around 14,000 artisanal miners in the project.
- The project has had a significant impact on transparency of mineral production and trade as daily production from every site, and every transaction, as well as all actors involved, are registered by the government.
- Full profiles of all sites in terms of their location, security status, tax status, etc. is recorded.
- Feedback from miners, transporters and traders is that the system works for them - bags cannot be opened and so there is reduced stealing along the trade routes. Of course there are still challenges, however these are being corrected through an ongoing learning and revision process.
- Feedback from government agents involved in traceability shows reinforcement of their role (now the diggers come to them every day to get their product registered) which has enabled census of diggers, monitoring of pits, transparency in production, reduction in fraud, increase in legal tax revenues.
- Local consultation and monitoring committees have been set up in all Districts as well as one at Provincial level.

#### **Update from Rwanda:**

- The project started in December 2010 and now over 95% of the country's minerals are traceable within the system.
- The iTSCi program is now being carried out in 289 mines which are owned/operated by 100 companies, cooperatives or individuals.
- The Rwandan government has been very proactive and supportive. As in Katanga, the actual tagging and data recording is done by the government with technical and capacity support from Pact and local NGO partners.
- Traceability has increased transparency and reduced fraud within Rwanda's mining sector. However there is still smuggling of minerals through Rwanda as there is a huge build-up of minerals and pressure on the Kivus side of the border where legal trade has stopped.

#### **Update from North and South Kivu (where iTSCi currently is not operational):**

- The de-facto embargo came into effect in April 2011 and since then the local mining sector and minerals markets for the 3Ts (tin, tungsten, tantalum) have collapsed.
- There is now only one buyer still operational and the prices offered to miners are extremely low.
- Severe economic hardship has hit the area as mining and minerals constituted a huge proportion of the economy. It is estimated that some 250,000 jobs may have been lost (with each miner supporting around 5 dependents).
- There has been a major loss of tax revenue to the Government.
- Many miners have left the 3Ts sector and moved to gold which was always more of an issue with regard to non-state armed groups. As such tensions in gold mines are rising with related increase in insecurity.

- The iTSCi mineral traceability system was halted during the DRC Government mining suspension (September 2010 to March 2011) and could not re-start due to the trade embargo (April 2011).
- The DRC Government is working with MONUSCO, the German Government and others to 'validate' mines to ensure that they are not under the control of armed groups. The recommendations from the validation process will assist in identifying mines where traceability could re-start. Pact and these other partners have recently made visits to several mining areas to determine if/when mining could potentially re-start there as part of the iTSCi system.

#### **Update on other areas:**

- There may be industry funding to enable work to start in the DRC Province of Maniema in the near future however this is not yet confirmed.
- A scoping study has been carried out in Uganda and efforts are underway to try to secure funding to start work there.
- A scoping study will be carried out in Burundi before the end of the year with funding from the South African Government (through the Development Bank of Southern Africa's Regional Spatial Development Initiative Program).
- Preliminary discussions have started with actors in Tanzania and Zambia however no resources are available as yet.

#### **Key issues to consider:**

- There are major stockpiles in many areas of minerals which were mined before the embargo, but are not traceable. These cause problems as many people have money tied up in them and they are under constant pressure to sell these stocks which risks contaminating the traceability system. Pact recommends that this stock is carefully inventoried, tagged as 'stock', and sold under an 'amnesty.'
- We recommend that the OECD definition for 'armed groups' is appropriate and should be adopted by the SEC, i.e.:
  - *The OECD Due Diligence Guidance recommends disengagement whenever risks of serious human rights abuses by any party and where risks of benefiting or financing non-state armed groups are identified in the supply chain. The OECD Due Diligence Guidance allows trade to continue where risks of benefiting or financing public or private security forces that are not involved in serious human rights abuses are identified, provided that a risk management plan is immediately adopted and implemented by upstream suppliers and that significant measurable improvement is demonstrated within six months from the adoption of the risk management plan.*
- There are instances where the presence of the DRC national army (FARDC) is essential to guarantee security and removing troops from the site would result in a security hiatus that would leave the mining communities vulnerable to other armed groups. The issue in these mines is about controlling the behavior of the army (by addressing issues with training, discipline, pay, etc.) whilst ensuring that their legitimate security mandate can be implemented.
- Lack of funding continues to be a major obstacle to progress. Some funds have been committed from the South African Government and negotiations are underway for funds from USAID and the Netherlands Ministry of Foreign Affairs. Funds for supporting activities such as community security and OECD implementation have been provided by the US State Department.

- Government capacity is still a major issue as few resources are available to support the expansion and embedding of their new workload.

The newly announced Public-Private Alliance for Responsible Minerals Trade (PPA) in which the U.S. government, private sector companies and trade associations from a range of industry sectors, non-governmental organizations, including Pact, and the International Conference on the Great Lakes Region (ICGLR)—more than twenty in total at the moment— join hands shows widespread support for the development of a conflict-free minerals supply chain. Currently, the areas where resources for traceability are lacking are the ones that are suffering, and hurting the very people Section 1502 sought to protect and assist. Artisanal and small scale mining provides a livelihood for hundreds of thousands of people in Eastern DRC and we must have a program in place to ensure it can continue responsibly.

Sincerely,

Assheton Carter