Telephone
+44 (0)1727 875 544

Fax
+44 (0)1727 871 341

Internet
http://www.itri.co.uk

ITRI Ltd
Unit 3, Curo Park, Frogmore,
St. Albans, Herts AL2 2DD, UK

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

31st October 2011

Dear Chairman Schapiro,

(FOURTH) COMMENTS RELATING TO DODD FRANK SECTION 1502 CONFLICT MINERAL LEGISLATION **Proposed Rule Release No. 34-63547; File No. S7-40-10**

ITRI has previously provided comments to SEC on 22 November 2010, 27 January 2011 and 25 February 2011. ITRI also participated in the SEC roundtable held on 18th October 2011 in Washington and the ITRI statement from the meeting is included in Annex 1.

This letter follows up on some issues raised at the roundtable discussion and key essential actions recommended to encourage the existing de-facto embargo to be reversed, production of conflict-free minerals to increase in central Africa, and to finally allow the aims of Dodd Frank, for increased stability and development, to be realised.

Key points that will support the intent of the law, are the following;

- The concept of 'reasonableness' must be incorporated clearly in all aspects of the rules so that excessively strict interpretations of requirements are avoided
- Recycled material should be treated in a manner analogous to non-DRC mined material, through reasonable enquiry and no need for conflict mineral reporting or audit
- A 1 year stock clearance period from the effective date of the rules should be adopted with only ingot produced after that date considered under the rules
- A staged introductory period of 3 years is essential in order to allow development of suitable and reliable infrastructure for traceability and due diligence in the upstream supply chain
- The lack of clarity on audits will also require some time to resolve, and can only be achieved after the SEC requirements have been published; this also supports a staged introductory period
- For the upstream industry, SEC must recognise and support the use of the OECD guidance
- The definitions of 'not DRC conflict free' and 'DRC conflict free' in the rules must relate to, and reflect the interpretations provided by the OECD of the equivalent categories associated with their internationally agreed guidance; this will allow mitigation and progressive improvement as also supported by the UN

- Companies or joint initiatives, carrying out on the ground research and monitoring of conflict risks according to OECD guidance, must be able to use this information to determine the presence of, or risk from, armed groups, i.e. this option must supplement the current DF reliance on unfocused and outdated human rights reports

- SEC must also utilize whatever options are possible to incentivise companies to remain engaged in purchasing from Africa, in particular through clarification of the 'DRC conflict free' label.

Further details on these, and other points is below;

1. *Section 1502 defines conflict minerals as cassiterite, wolframite, columbite-tantalite, gold or their derivatives. In addition to the 3Ts and gold, niobium, iron, uranium and other metals are refined from these minerals. Many commenters have asked the SEC to specify the 3Ts and gold as the focus of the regulation. Would this be workable?*

Section 1502 already defines the term 'conflict mineral', which includes derivatives. This definition has two limitations, firstly that it implies all such minerals from any location in the world are 'conflicted', whether or not bearing any relation to the conflict in the DRC, and secondly, that any possible metal, oxides or other materials generated from smelting or refining of these minerals would be considered under the scope of the law.

Neither aspects of this definition are workable and it should be made clear that, practically, conflict minerals are solely those associated with conflict, and derivatives are only considered to be the primary and most valued ore constituent (tin, tantalum, tungsten) and gold.

Without this clarification the costs and complexity of the rule would multiply several times and the cost-benefit evaluations would require review.

Please also refer to point 9 of ITRI comments of Nov 2010.

2. *Section 1502 does not define manufacturing. Should mining be included in a definition of manufacturing?*

Mining is the act of extracting a naturally occurring substance that can be processed into a raw material required, in a later step, for manufacturing. It specifically relates to the extraction of minerals, or, other similar substances, from the earth. It is an act of discovery, carried out in the location of ore reserves and cannot be carried out in a manufacturing plant.

Manufacturing relates to the conversion of raw materials, components, or parts into large numbers of identical finished goods to a particular design or specification, particularly with the assistance of industrial machinery. It is an act of design and production that can be carried out in any location.

Not all manufactured products utilise raw materials that result from mining. Example, a wooden bowl is manufactured from a tree. The tree is a naturally occurring raw material but is not extracted from the earth and has not been mined, yet the process of manufacturing an object has occurred.

Conversely, coal is a substance that is mined, but is something that does not go through any manufacturing steps to create final end use products. Mining has taken place but no manufacturing has occurred.

Mining is not manufacturing and cannot be included under that term.

Please also refer to Q14-15 of ITRI comments of Jan 2011.

3. *How should the SEC define/explain the requirements that the 3Ts or gold are "necessary to the functionality" of covered products? Should manufacturing tools be included? What about ornamentation?*

Ornamentation may not be an essential function, but it is part of the finished product which uses materials. The intention of the law is to monitor which materials, from where, are used in a product and therefore, whether or not the 'function' of the material is active or passive is not relevant. Dodd Frank aims to control tiny percentages of the worlds metal production and even small waivers for what may be assumed to be small quantities of material could easily render the law totally ineffective.

Discussion around this question at the roundtable also considered whether the conflict minerals had been intentionally added to a product. The 'intent' of addition is difficult to prove in law and such a phrase has been debated in relation to development of the EU End of Life Vehicles (ELV) and Restrictions of Hazardous Substances in electronic and electronic materials (RoHS) Directives, as well as the REACH Regulation. The need for the use of some definition of intentional addition also relates to the question of de-minimis; in the following question.

4. *The proposed rules do not include de-minimis. Commenters suggested two types of de-minimis, one based on de-minimis levels of conflict minerals in products, and an alternative based on companies using only small amounts of conflict minerals. Should there be a de-minimis?*

Impurities of natural substances such as metals will be present in many items, in particular in commonly related metals and items manufactured from them. A certain level of tin impurity may be found in copper, lead, steel, zinc and many other metals and their alloys. Therefore, to prevent a huge cost burden on product manufacturers who may otherwise need to monitor and account for 'conflict minerals' in countless additional parts, the SEC rules must recognise that such impurities may be present.

The idea of 'intentional addition' implies any amount of conflict mineral added to provide a function does need to be accounted for, while impurities that are not 'intentionally added' do not need to be accounted for. This avoids the need to specifically track exact minimal impurity levels in each and every component of every product. As such it would seem to be the most cost effective approach.

If the 'intentional addition' concept is not adopted then a de-minimis would be required instead.

Laws defining content of specific substances in total products are invariably ineffective and should not be considered. While a conflict mineral is likely to be concentrated at high percentage in one or two components within an end product, and is a likely intentional addition to provide a function, this amount of the substance is unlikely to be significant as a percent of the total weight of the product in which the components are used. With the exact same product, evaluation of (higher) weight percent in any individual component would likely need to be reported, while (lower) weight percent of a larger heavier product would likely not need to be reported.

Please refer to Point 7 of ITRI comments of Nov 2010.

5. *Should the rule apply to companies that do not have control over the product? Should the rule apply if a company's name is on the product or only if they have control over materials and material sources?*

No comment.

6. *Should the Commission define or further specify what constitutes a "reasonable country of origin inquiry?*

It is **essential**, in order to make the implementation of 1502 practical and cost effective, that the concept of reasonableness, and good faith efforts, already accepted within the OECD[1] and UN[2] due diligence guidance, should also be recognised within the SEC rules.

As Congressman McDermott noted in his video presentation at the roundtable, the intent of the law was to be practical and affordable, to recognise that due diligence is not perfect or exact, and that not every molecule of material can be guaranteed to be conflict-free.

[1] '...companies should take reasonable steps and make good faith efforts to conduct due diligence...'
[2] '…to enable a reasonable inference of relevant individuals' and entities' compliance or non-compliance with due diligence…'

Confirmation of such concepts of effort, not absolute result, should be generally recognised in the SEC rules in order to provide relief from the major driver for the current de-facto embargo operating in central Africa. Promoting practical, affordable and reasonable standards is essential in all areas of the final rules; examples or other illustrations or definition of 'reasonableness' in terms of country of origin enquiry would provide greater certainty to issuers and other parts of industry striving to meet the requirements of DF.

Please refer to Point 12 of ITRI comments of Nov 2010.

7. How much transition time is needed for industry to develop needed infrastructure?

All of our previous comments warned of, and predicted, the current de-facto embargo situation. Unfortunately the circumstances that have created the embargo remain.

Please refer to the discussions in Point 10 and 18 of ITRI comments of Nov 2010, and the second part of Q61 of ITRI comments of Jan 2011.

In order to reverse the current exodus of companies buying from the DRC, and adjoining countries, a suitable, practical and flexible transition period is absolutely **essential**.

Unfortunately, the uncertainty resulting from the lack of clear rules, in combination with other issues, has meant that no progress on developing infrastructures on the ground has been possible since the mining suspension in North and South Kivu and Maniema was lifted in the middle of March.

It has been impossible to find industry partners willing to invest in developing due diligence systems in those regions when the lack of buyers for the processed metal from the downstream manufacturing sector becomes ever more apparent.

Therefore, while we indicated in comments back in February 2011 that it would take 3 years from that point (2011-2013) to fully implement traceability and due diligence, the lack of SEC rules, and lack of consensus on mitigation, and labelling of conflict-free (described in point 18 below) have presented a roadblock to implementation for the past 6 months in the key provinces of the DRC that the law intended to help.

Considering the election in the DRC at the end of November and likely associated disruption, it is practically speaking not possible to begin work until Jan 2012. The 3 year period of upstream due diligence infrastructure development therefore now runs from 2012 to end of 2014; no longer from 2011 to end of 2013.

As indicated elsewhere, transport of minerals from a mine in the DRC to overseas processors or smelters can take a minimum of 4 months and maximum of a year. Therefore mineral exported from the region at the end of 2014 would not be smelted until some point during 2015.

Full requirements of complete conflict mineral reporting, including audit of those reports, cannot therefore be applied by SEC to metal produced before some point in 2015.

While some limited form of disclosure can be required up to that point, the development of auditing systems is unlikely to be complete immediately and should be phased-in (see point 10 below).

In any case a 1 year period for stock clearance is already required following release of the rules (see point 13 below).

YEAR	Stocks	Mine-Smelter Due Diligence	Smelter-Product Due Diligence	Audit Preparation
Assuming 1st January 2012 as effective date of the SEC rules				
2012	Stock clearance of existing minerals	Upstream implementation in major mining areas	Downstream disclosure process development	Audit development
2013	All mineral stocks smelted by 1st Jan 2013. Start of trial	Implementation in smaller and remote mining areas	Downstream disclosure trials	Auditing trials

	disclosures.			
2014		Finalising and improving the process; some data gaps may be expected for mineral mined in 2014 but smelted in 2015	Finalising and improving the process	Finalising and improving the audit systems
2015		Fully implemented	Implemented for material smelted in 2015; accepting data gaps from minerals produced in 2014	Implemented for material smelted in 2015; accepting data gaps from minerals produced in 2014
2016			Fully implemented	Fully implemented

The above table does not represent a 'delay' or a 'watering down' of the law, but is a practical reflection of what is, and is not possible within a short timescale. It is designed to reduce the embargo effect of the law, allow and encourage buyers to remain engaged in Africa while progressive improvements are put in place; emphasising that progressive improvement and mitigation is the basis of the OECD and UN due diligence recommendations.

8. *What is appropriate due diligence? Should the SEC specify required due diligence? Should the SEC reference the OECD guidance?*

There may be some difference regarding the need for due diligence recommendations between the upstream and the downstream parts of the supply chain.

For the upstream (mine to smelter) industry sector, attempting to apply due diligence in difficult and complex circumstances in DRC and adjoining countries, it is **essential** that all stakeholders are clear on the expected responses to human rights or conflict related risks that may be identified. All 3T industry, NGO's and Governments agreed, as part of the OECD Working Group, on the risk responses outlined in Annex II of the OECD guidance. Those expectations are clear, and must be adopted by the SEC in order for issuers further upstream in the US to also understand the standards of mineral trade provided by OECD related systems and be confident that they are sufficient for their disclosure under the SEC rules.

The OECD guidance has already been adopted by the Government of the DRC who have instructed all operators to comply with the recommendations. Therefore, as a minimum, OECD conformance should be a recognised acceptable standard of due diligence for the upstream supply chain from the DRC, even if remaining a primary recommendation, rather than a mandatory expectation, for the adjoining countries.

On the other hand, for the downstream industry who may have varied types of supply chain and management processes already in place, it may be more appropriate to allow more flexibility in due diligence approaches between smelter and end product. As long as the downstream company is able to recognise that material has been obtained from upstream industry through an OECD related system this should provide a suitable, and reasonable, level of assurance.

Please refer to Q55 of ITRI comments of Jan 2011.

9. *Should the rule for gold be delayed due to the delay in OECD guidance and further complexity of the supply chains?*

If any such delay were to be considered we would expect to see a detailed and complete analysis of each of the 3T and gold supply chains in order to establish where differences and similarities lie, and, to provide a clear basis for any differential treatment.

For example, artisanal and small scale (ASM) production, more difficult to track than large scale mining operations, generally contributes between 40-50% of tin mine production globally, while the level of ASM in the gold sector is reported as approximately 15%[3]. The recycling rate of both tin and gold is considered to be in the region of 40%. Tin is also used in an enormous number of diverse and widely dispersed industrial uses.

[3] See Artisanal and Small Scale Gold Council http://artisanalgold.blogspot.com/2011_06_01_archive.html

While the gold supplement to the OECD due diligence framework is still under development, the framework document which outlines the 5 key steps of due diligence as applicable to 3T's and gold, has existed in final form since December 2010.

The iTSCi programme for tin, tantalum and tungsten due diligence was planned prior to the start of the activities of the OECD working group, and has developed in a flexible manner concurrently with the OECD supplement on those metals. Similar activity could be possible for gold production in central Africa.

It is important to note than in the Kivu's artisanal miners have already moved away from 3T mines, towards gold mining areas; SEC rules must avoid displacing the conflict mineral issue from a more regulated industry to one that as yet, is less regulated or controlled.

Please refer to Q51, Q66 of ITRI comments of Jan 2011.

10. What would make auditing more cost effective?

What is the appropriate scope of the private sector audit? Would conformity to the OECD management processes be an appropriate scope?

There is significant concern about the cost of audits. The GAO audit standards allow two types of audits, "test audits" must be performed by CPAs, while "performance" audits can be performed by others. Would allowing non-CPAs to perform audits increase the number of available auditors and lower the price? Would non-CPA auditors need a standard to audit too?

While the SEC may only be directly considering the audit of issuers, those audits may also rely on information on due diligence that has been audited by others further upstream. All audit requirements should be harmonised and made clear before any audits can take place, and, indeed, even before any audit procedures can be finalised. None of this can be done until the SEC releases the rules with guidance on the auditing required of issuers reports.

It is therefore impossible to begin the auditing process until a certain time, perhaps 1 year, after the rules are released. This is another significant issue that supports a phase-in time where some disclosure and gathering of information begins but reporting and auditing of reports cannot be immediately required.

In terms of who can perform the audit, it would seem in this particular situation that expertise in the issue is of more significance than accountancy or similar 'technical' qualifications. In order to maximise the number of auditors, and therefore minimise possible audit costs, performance audits would seem to be the most appropriate way forward. The qualifications of auditors should be properly considered since availability of expertise in conflict and high risk areas of central Africa is not commonly found.

As mentioned at the roundtable, auditing can only occur if there is a standard against which the audit can take place. While upstream industry already intends to use the OECD due diligence guidelines to provide an auditing standard guide, it is not yet clear if the same standards will be used or accepted by downstream industry, and the SEC.

In addition, although the OECD guidance indicates the use of ISO 19011 and the type of information to be checked, it does not provide any precision on how that may be done; therefore, adopting OECD guidance as part of SEC rules will still only provide an indication on auditing processes, it will not provide agreed and specific auditing standards which would still need to be developed.

However, reduced cost of auditing can be achieved if the audit is limited to the design and application of a suitable due diligence system, rather than an audit of all data contained in or obtained as part of that system. Auditing to check that a system is in place to operate due diligence to meet the OECD guidance should be sufficient and reasonable, once, as above, precise audit methods and auditor expertise are agreed.

The current number of audits considered within the supply chain as a result of Dodd Frank is excessive;

- The audit of the issuers CMR (which may refer to audits below)
- The EICC-GeSI Conflict Free Smelter audit (audits material balance in and out of a smelter)
- The iTSCi smelter audit (audits material input to a smelter and the upstream supply to the mine in the DRC or other participating countries; as per Step 4 of the OECD guidance)
- The Government audits of the DRC or other adjoining country operators.

Each may rely to some extent on the other, finally leading up to the CMR audit, which again makes it essential to have certainty on audit standards and auditor qualifications.

As a general point, the focus on, and cost of, auditing of 'conflict minerals' is out of all proportion to the efforts to implement activities, to generate the required information, which can be audited on the ground, at the mines. This excessive level of auditing is driving the embargo, since the infrastructure and operations on the ground cannot meet the (current) timescales and expectations of many of the varied audit steps listed above.

It is **essential** to allow sufficient time to resolve confusion over responsibilities and standards for audits and auditors before the requirement is applied by the SEC.

11. Should an audit and/or Conflict Minerals Report be required for recycled and scrap materials? What should be in the report?

As discussed at the roundtable, recycling of materials should be encouraged and roadblocks to their use, such as excessive reporting and auditing requirements, would create the wrong incentive, going against the need for efficient use of natural resources for future sustainability.

Please refer to Point 5 of ITRI comments of Nov 2010, and Q63 of ITRI comments of Jan 2011.

The users of recycled metal should make a reasonable enquiry in order to satisfy, according to due diligence expectations, that material the material is from a secondary and not a primary (ore) source. This must rely on supplier declarations, since tracking of all secondary materials would require involvement of every ferrous and non-ferrous supply chain across the globe; it is clearly not a reasonable or affordable approach to require substantive evidence to the source of each molecule of material.

Secondary materials not only arise from end of life consumer products but from industrial process recycling, 'wastes', non-'waste' and by-products. Definition of the variety of possible sources is complex and the subject of extensive discussion in relation to other regulations. If SEC felt the need to define recycling, then any definition developed would need to relate to other existing industry activities[4]. This would be a complex discussion that would take a substantial time to reach a conclusion.

The same standard of expectation should be applied by SEC for secondary materials as for primary (mined) material reasonably found not to arise from the DRC; it should not require submission of a conflict minerals report, nor an audit, since there should be no report to audit.

It is not necessary to label recycled material as 'conflict' or 'non-conflict' but simply to account for its presence in products as 'recycled'.

12. Would a synchronized calendar year end cause any problem as it may be separate from other reporting?

Synchronised reporting for all issuers, and all suppliers, will assist in managing the costs of the SEC requirements by ensuring that all operators apply the same standards, and have to meet the same requirements at the same time. This will maximise efficiency in the joint due diligence processes.

13. Should there be a transition rule for stockpiled materials?

[4] For example http://www.pwbrc.org/members/recyclenew.cfm; or http://www.greenspec.co.uk/recycled-content.php

Yes, it is **essential** that SEC carefully consider and apply waivers for stocks in order to minimise the financial implications of the rule.

Please refer to Point 6 of ITRI comments of Nov 2010, and Q61 of ITRI comments of Jan 2011 which discusses stocks in some depth.

Existing stock may be classified into various types of holding;

As minerals

- Mineral produced and held in the conflict provinces of the DRC from before the mining suspension introduced in Sept 2010. Not acceptable to the CFS audit programme after 1st April 2011.
- Mineral from other parts of the DRC and adjoining countries not acceptable to the CFS audit programme after 1st April 2011.
- Minerals in other countries, stocked at the mines or in the supply chain for technical or financial purposes, such as awaiting metal price recovery.
- Minerals generally in normal transit from the mine to the smelter, potentially taking several months

As metal ingot

- Metal in production at the smelter at any point in time such as effective date of the rules
- Metal held by producers in stock for technical or financial reasons, such as awaiting demand recovery
- Metal in transit to customers, potentially taking several months
- Metal held by consumers in anticipation, for example, of supply disruption
- Metal held in LME or other warehouses, by industry, traders or investors, which may have been produced at any point in the past

As components

- Material already incorporated into components in transit to end product manufacturers
- Material in components stored for various periods of time in order to ensure supply of specialised components in the future for repair of complex equipment, such as in the aerospace sector

In the first case, for minerals, all stock held in the DRC and adjoining countries needs to be removed to allow a 'clean start' for traceability and due diligence from that point. Minerals also stocked in other countries or locations also require a waiver under the SEC rules.

If date of mining was known for all this material, the effective date of SEC rules could be the effective date for the start of disclosure rules on newly mined material. However, since almost half the tin minerals in the world are produced by artisanal miners it is unlikely that the exact mining date will be known or verifiable. Therefore date of smelting/refining is a more appropriate indicator.

As we know it can take a significant time for minerals to be collected and transported significant distances to the final smelter, we have proposed that the effective date of disclosure requirement on metal should be for ingot produced 1 year after the effective date of the rules. This allows sufficient time for all stock minerals to be transported and smelted and refined.

We propose that the date of the metal ingot analysis certificate is used as the reference date for the disclosure requirements since that closely represents the final production date of refined ingot. Such a document is available to every batch of material; example is shown in Annex 2. All types of metal stock mentioned in the bullet points above could be referenced to the analysis certificate date to determine whether or not the material falls under the start date of the new rules or not.

Although a metal buyer should receive such a document with every delivery, whether purchasing direct or through other traders, if it is not present it can be obtained directly from the producer by quoting the relevant batch number.

As proposed in the ITRI comment letter of Jan 2011, metal with a certificate of analysis dated 1 year after SEC rule adoption, would be considered 'new' material subject to SEC disclosure, but any material with a date of production at the smelter before that 1 year cut-off date would be provided with a waiver.

Unbranded stock, present in metal warehouse or other storage location before a certain date should be treated as recycled material.

Issues relating to stocks of components should be discussed with the downstream industries affected. Component obsolescence is already a subject of extensive discussion[5], and SEC should work to minimise disruption of components markets. Similarly, date of production may be the appropriate measure of whether an item is within the scope of the disclosure rules, or not.

14. A related question on minerals seized by authorities in the DRC or adjoining countries

Minerals of unknown origin, and potentially arising from conflict areas, are increasingly being seized by authorities, in particular in the DRC and in Rwanda. Currently this is unsaleable, as it is not permitted under a CFS audit, and the question of its disposal is becoming an increasing and significant problem.

SEC should provide some special guidance on the appropriate method of considering and disposing of this seized mineral.

Along the lines described in point 18 below, it would be useful to allow this mineral to be considered neither 'DRC conflict free', since that cannot be proved, but also not to be considered 'not DRC conflict free' since the mineral disposal would then remain a significant problem for an infinite time.

The enforcement of due diligence, and associated mineral seizures, should be allowed and encouraged and this can only be done if material can be disposed of in a practical manner.

15. The importance of labelling as an incentive

Please refer to Point 9 of ITRI comments of Nov 2010, and Q37 of ITRI comments of Jan 2011.

There is currently no incentive for issuers to purchase minerals originating in the DRC, even if conflict free, since according to the text of Dodd Frank they are able to consider products as 'DRC conflict free' if the mineral is purchased from any other production country in the world.

For example, under current circumstances of tin production, the following illustrative/approximate percentages of material may be considered to be conflict or conflict-free;

98.4% of world production DRC conflict-free from other production countries
0.8% of world production DRC conflict–free from Katanga province, DRC
0.5% of world production DRC conflict-free from adjoining country Rwanda
0.3% of world production not DRC conflict-free from other provinces of the DRC

A purchaser can easily choose to make a DRC conflict-free purchasing choice of the 98.4% of supply, still able to label product as such, yet avoid submission of a conflict minerals report and save costs.

It is **essential** that, in order to achieve the intent of the law, SEC finds ways to provide incentive to metal buyers to purchase the conflict-free material from the DRC and the adjoining countries.

16. The possibility of an interim category of indeterminate country of origin

As explained above, issuers purchasing conflict-free material from the DRC/adjoining countries should not be placed at a disadvantage to those who are not.

SEC should carefully consider the introduction of any other labelling options that could increase the driver for continuing embargo in central Africa.

If disclosure of 'indeterminate origin', and no need for conflict mineral reporting, is seen as an easier option than disclosure of 'DRC conflict free' and conflict mineral reporting then the market for

[5] For example, http://www.electronicsweekly.com/Articles/08/06/2010/48799/component-obsolescence-problem-exposed.htm

materials from Africa will continue to shrink, making it impossible to continue development of in-region due diligence systems and ultimately preventing the achievement of the intent of the law.

17. Definition of armed groups and mapping

The issue of labelling also relates to the current confusion over definition of, or decisions on, acceptability of certain circumstances of armed group presence prevailing in Africa.

- The State Dept map[6] is based on data from IPIS studies completed in July 2009 and July 2010. This document contains many varied disclaimers some of which are discussed below. Among other issues, it does not attempt to cover the whole of Katanga province nor map many mines in Maniema.

- The DRC Government map[7] is based on compilation of data in May 2011, and therefore has some differences to the US State map which is based on different information. The mine verification process is underway but results are not available.

- The CFS audit program refers to areas 'under the jurisdiction of' armed groups.

- The Dodd Frank Act refers to perpetrators of serious human rights abuses in annual country reports, and, while requesting for a map to be produced, does not appear to refer to it in terms of defining conflict or non conflict minerals.

  Please refer to Point 16 of ITRI comments of Nov 2010, and Q55 of ITRI comments of Jan 2011, which describe the issues arising when attempting to use these very general, and somewhat out of date human rights reports.

- Annex II of the OECD guidance, and similar sections of the UN guidance, describe the expected ways that companies may be expected to respond to circumstances verified as a risk on the ground.

As mentioned above, the disclaimers on the State Dept map include the comment; "Given the aforementioned limitations on the data available, this map does not provide sufficient information to serve as a substitute for information gathered by companies in order to exercise effective due diligence on their supply chains."

Companies cannot therefore use the map as a guide to purchasing areas. The text of the map also states that "Compiling a more detailed and current map would require closer and continuous monitoring of the situation on the ground in affected areas of the DRC."

This on the ground monitoring is indeed what is carried out and achieved through the joint industry iTSCi project. We therefore request SEC to reflect the difficulties in using the current maps, as well as the human rights reports, which can be somewhat inaccurate and difficult to keep up to date, and accept the possibility of companies using more recent and accurate information from continual ground monitoring of the situation.

Maps, human rights report and other similar tools do not provide a sufficiently focused, practical or reliable approach to defining areas of conflict or non-conflict. This lack of focus is also one of the key drivers for the current embargo situation and it is **essential** that SEC allows use of current and focused ground information established from joint industry programmes to replace or supplement the reference to the human rights reports referred to in the law.

Note also that a number of adjoining countries are also subject to the Dodd Frank law. At least, Rwanda, Uganda, Burundi, Zambia, and Tanzania are known producers of 3T minerals to a greater or lessor extent. Little assistance has been provided to the artisanal miners in those countries who are also impacted by the embargo. It is as important in those countries, as in the DRC, to focus and rely on the best available local information from the ground, and not rely on maps that are infrequently updated, or human rights reports that a released a significant time after the events described therein.

[6] Please see https://hiu.state.gov/Products/DRC_MineralExploitation_2011June14_HIU_U357.pdf
[7] Please see http://mines-rdc.cd/fr/index.php?option=com_content&view=article&id=178

18. What is conflict-free?

The recent leaflet "OECD Work On Conflict-Free Mineral Supply Chains & The U.S. Dodd Frank Act"[8] prepared by the OECD Secretariat describes how the OECD due diligence guidance relates to the Dodd Frank requirements. In particular, on page 3, how issuers may describe products as "not DRC conflict free" and label products as "DRC conflict free".

It is **essential** that this approach is adopted in the SEC rules in order to allow for periods of mitigation, as also supported by the UN Group of Experts in their submission to the SEC of 21st October 2011.

The table below summarises the key points of the OECD leaflet.

If a company finds a risk in its supply chain that it may be supporting any armed groups (non-state, public or private security forces) that commit serious human rights abuses, the recommended response is immediate suspension or disengagement (see paragraphs 1-2 of Annex II).	If the company does not disengage, this material would be considered as 'not DRC conflict-free'
If a company finds a risk in its supply chain that it may be supporting non-state armed groups (even if not involved in serious human rights abuses), the recommended response is immediate suspension or disengagement (see paragraphs 3-4 of Annex II).	If the company does not disengage, this material would be considered as 'not DRC conflict-free'
If a company finds a risk in its supply chain that it may be supporting public or private security forces (i.e. military) *that are not involved in serious human rights abuses*, the recommended response is the immediate adoption and implementation of a risk management plan by upstream suppliers and that significant measurable improvement is demonstrated within six months from the adoption of the risk management plan (see paragraphs 5 and 10 of Annex II).	If the company is applying a risk management plan, this material would not be considered to be 'not DRC conflict-free' since mitigation is in effect, but it would also not be considered 'DRC conflict-free' until mitigation is successful.

It is **essential** that SEC adopts the same understanding as the OECD in terms of defining or labelling conflict or conflict-free material.

In conclusion, we believe that ITRI, all ITRI members and suppliers, together with the relevant Governments, have carried out all possible actions to address the 'conflict mineral' issue through practical steps on the ground and in the upstream supply chain. Please refer to Annex 3 for key facts regarding the iTSCi programme. Significant progress has indeed been made but much more also needs to be done.

It should be abundantly clear from these actions that our intention is to find a realistic and sustainable solution at the mine level, and that we fully support the admirable aims of Dodd Frank to break the link between the minerals trade and conflict, encourage increased conflict-free mining and local development.

However, with our direct links with all parts of the supply chain, in all regions of the world, it is also very obvious that the reaction to Dodd Frank by the majority of actors is disengagement, not engagement, we therefore submit these comments in order to recommend what might be considered for a reasonable approach, with practical activities, required in a feasible timescale. The suggestions are not put forward in order to slow down or reduce progress, but to allow progress to continue.

[8] Please see http://www.oecd.org/dataoecd/56/59/48889405.pdf

We hope that the SEC can find a way forward for the final rules that can contribute to reversal of the de-facto embargo, allowing the required time for infrastructural and due diligence system development.

Please feel free to request any further details or clarification that you may require.

Yours sincerely,

Kay Nimmo
Manager of Sustainability and Regulatory Affairs, ITRI Ltd

ANNEX 1: ITRI STATEMENT AT THE SEC ROUNDTABLE 18th OCTOBER 2011

Panel 2: Supply chain issues, form and timing of CM information, audit of CM report

Kay Nimmo, ITRI

Good afternoon, as you heard I'm here to provide input from the global tin industry, present some concerns from the upstream industry, and particularly our experience of implementing due diligence in africa through the iTSCi supply chain project. I want to raise 3 points about stocks, recycling and the impacts in Africa.

Firstly then, we believe an exemption is essential for both existing unsmelted mineral and refined metal stocks held by industry, metal warehouses, investors and even in US Govt stockpile. The value of current tin stocks is probably around US$7billion, generally with non-specific mine origin. So, to prevent market disruption and financial losses on this potentially unsaleable material, we ask that disclosure rules only apply to mineral mined, and ingot produced at a future date, after release of the rules.

Secondly, recycling should be encouraged not penalised. Requiring auditing and CM reporting for secondary material is a disincentive to the reuse of resources that goes against many other regulatory policies. About 35% of tin is recycled, from by-products, waste and end of life consumer or industry units in a complex international network of consolidators, traders and treatment plants. Its not feasible to track back to the original metal use, let alone the original mine and we consider reasonable enquiry should be sufficient; submission of a CM reporting shouldn't be required, in the same way that its not required for non-DRC mined mineral.

Thirdly I want to talk about Africa. The iTSCi project helps companies and artisanal mine groups to implement OECD due diligence by providing traceability, risk assessment and audit. Miners and upstream industry have contributed ~$4m and worked with hundreds of Govt agents, to make the project a success, now covering ~98% of Rwandan minerals and more than 1000 individual mine pits in Katanga where we've already seen improved governance, increased revenues and retained livelihoods. We should also recognise the commitment and support of the DRC and Rwandan Govt's in this success.

But conversely, the impact of the embargo in areas which DF aimed to help, and where iTSCi is not operating are severe; hundreds of thousands/80% unemployed, lost tax revenue, increasing theft, violence and smuggling, delay in several donor and investor mining projects, less access to schooling, health care and even basic supplies.

A major roadblock to reversing that situation is the growing desire for 'congo free' and 'CM reporting free' material among product manufacturers, so its essential that SEC finds ways to create incentive for continuing buyer engagement, and must also carefully match the start of reporting with feasible timescales for developing due diligence structures. Only a phase-in for reporting for at least 2-3 years will allow the iTSCi project to continue and expand. SEC must also confirm the reliability of the OECD/UN due diligence guidance and converge and clarify understandings of 'armed groups' and 'conflict free' definitions, in particular, ensuring the 'DRC conflict free label' can only be used on minerals actually purchased from the DRC not from elsewhere.

DF aims to control a tiny fraction, maybe only 3%, of global tin supply, to be effective the final rules must be properly focused to avoid a general embargo, while promoting buyer engagement in DRC, and accounting for general upstream issues such as on stocks and recycled metal. We hope the final rules will make the most of the opportunity that DF provides to make a positive difference, support development, and not just drive companies out of africa.

……

To finish, I'd like to quote points from 2 previously submitted letters;

State Dept; "*the regulation should be implemented in a manner that where possible minimises disruption to those members of the local population and the private sector in the region who are not contributing to conflict*"

Gecominski; representing 1m artisanal miners and 5m employed in associated traditional activities, "*We ask for the SEC to delay their requirements to also enable US companies to delay their decision to stop the congo minerals trade*"

ANNEX 2: EXAMPLE CERTFICATE OF ANALYSIS FOR TIN INGOT SHOWING ANALYSIS DATE

Note that most producers will have ISO accredited management systems.

MINSUR

MINSUR S.A.

TIN METAL

ANALYSIS CERTIFICATE LFS-0197

Brand	: MINSUR	Date	: Feb. 14, 2011
Lot N°	: 11F100197		
N° of Ingots	: 800		
N° of Bundles	: 20		
Gross Weight (Kg)	: 20,067.2		
Net Weight (Kg)	: 20,029.2		

CHEMICAL ANALYSIS

Tin	(Sn)	:	99.966 %
Antimony	(Sb)	:	0.0171 %
Copper	(Cu)	:	0.0040 %
Lead	(Pb)	:	0.0033 %
Iron	(Fe)	:	0.0009 %
Bismuth	(Bi)	:	0.0019 %
Arsenic	(As)	:	0.0007 %
Zinc	(Zn)	:	0.0004 %
Aluminium	(Al)	:	0.0004 %
Cadmium	(Cd)	:	0.0002 %
Sulphur	(S)	:	0.0001 %
Nickel	(Ni)	:	0.0001 %
Cobalt	(Co)	:	0.0001 %
Silver	(Ag)	:	0.0001 %

We hereby certify the above analysis and confirm that the Tin metal conforms to the international standards BS EN 610 : 1996 and ASTM - B339 - 00 (2005).

MINSUR S.A. - PISCO

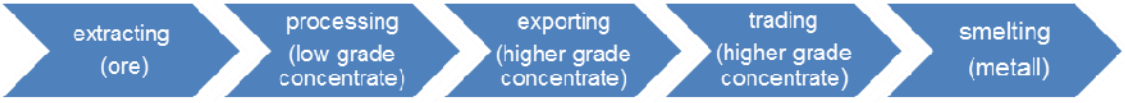
QUALITY CONTROL MANAGER
Angel Jesús Orihuela Solís
INGENIERO QUÍMICO

Laboratory is in compliance with quality management system ISO 9001:2008
Tin Smelter and Refinery Reg. PE10/174470 Certified by SGS since June 1999

ANNEX 3: KEY FACTS ON THE iTSCi PROGRAMME

- The iTSCi project operates under Memoranda of Understanding with the Governments of the DRC, Rwanda, Burundi and the ICGLR.

- The iTSCi system is based around the requirements of the OECD Guidance and references that, and the guidance of the UN, in the projects' own documentation.
- iTSCi therefore implements chain of custody traceability, independent risk assessment and independent audits as recommended by the OECD.
- Companies retain their own responsibilities, in particular for their own management processes, contract arrangements and decisions on purchasing.
- The programme operates as a membership project, currently with around 40 upstream companies and mining co-operatives, in 13 different countries, as applicant members.
- iTSCi members are required to provide information on their conflict minerals policies and company operations for independent risk assessment and approval. This helps to establish a clear responsible supply chain.
- The project covers any operator from the mines, to the smelters.
- Baseline studies at mines establish details of the production rates, location, presence of Government mine agents, security, civil society groups and so on.
- Local staff assist and work with local Government staff to implement traceability.
- An incident reporting system continually alerts management, and therefore the supply chain, of any conflict related, suspect or fraudulent activity.
- Risk management measures are recommended and agreed with actors on sites, and also with local stakeholder committees established as part of the project operations.
- Audits are planned every 6 months initially and will occur no less than every year.
- All costs for the project have to date been borne by upstream industry actors, and as a result, will be passed down to the mine level.
- iTSCi currently operates in Rwanda, and Katanga (DRC) covering not only tin, but also tantalum and tungsten. The project is now jointly managed by ITRI and T.I.C.
- The project will start-up in Maniema as soon as existing stocks can be removed from the area. The project can also start-up in the Kivu's when agreement on the issues of mitigation in point 18 of this letter are resolved.
- iTSCi is also required in other adjoining countries, Uganda, Burundi, Tanzania and Zambia, however it has not been possible to plan activity there with no clear funding sources.



A variety of information and documents relating the iTSCi programme can be found on the website; http://www.itri.co.uk/index.php?option=com_zoo&view=frontpage&app_id=4&Itemid=60

Monthly progress is reported through newsletter which can be found here;
http://www.itri.co.uk/index.php?option=com_mtree&task=listcats&cat_id=183&Itemid=11

We submit all documents on the website for SEC review. The newsletters in particular may help to indicate the possible rate of progress for implementation on the ground, and also the challenges that are faced.

In particular, it is **essential** to take note that data gaps will exist and no system can be 100% perfect. We do not believe that it is the intent of the law to require such unattainable standards.

Copyrighted material redacted. Author cites:

"OECD Work On Conflict-Free Mineral Supply Chains", October 2011, http://www.oecd.org/dataoecd/56/59/48889405.pdf, retrieved 1 November 2011.