MSC Malaysia Smelting Corporation Berhad

26 January, 2011

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

Transmitted by email to: rule-comments@sec.gov

Dear Chairman Schapiro,

COMMENTS RELATING TO DODD FRANK SECTION 1502 CONFLICT MINERAL LEGISLATION

We are a major producer of refined tin metal and a pivotal part of the African tin supply chain and are pleased to provide our comments on Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Background (Operational & Corporate)

Malaysia Smelting Corporation (MSC) operates a custom tin smelting facility in Malaysia. The company's origin dates back to 1887 when it commenced smelting operation and for many decades the facility's main source of tin concentrates was from the Malaysian and regional South East Asia mines. After the tin market collapse in 1985 the country's mine production declined significantly and MSC started to source significant quantity of tin bearing materials from all over the world.

Today MSC smelter is one of the largest custom smelters in the world and a major recipient of tin concentrates produced from the Democratic Republic of Congo (DRC). Its other principal supply sources of primary concentrates are from Australia, South America, Malaysia and regional South East Asian countries. The smelter also sources secondary tin bearing materials from U.S., Europe and Japan. The U.S. sources are from 3 tin recycling facilities based in Chicago, Illinois and Arizona that source tin bearing waste streams from various U.S. industries that consume tin in their processes.

MALAYSIA SMELTING CORPORATION BERHAD (43072-A)
B-15-11, Block B, 15th Floor, Unit 11, Megan Avenue II, 12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur, Malaysia.
Tel: (+60-3) 2166 9258, 2166 9259, 2166 9260, 2166 9261 Fax: (+60-3) 2166 9245 E-mail: msckl@po.jaring.my

The smelting facility essentially provides a conversion (from concentrates to refined metal) service to the tin industry and, in return, earns a gross smelting margin which equates to less than 4% of tin price. Therefore, custom smelters, unlike the mining industry, do not benefit from high tin prices and operates in a low margin environment where volume throughput, cost control and technical factors are essential for the smelter's profitability.

MSC is a public company listed on the Kuala Lumpur Stock Exchange and its principal tin product is the MSC Straits Refined Tin brand which is listed on the London Metal Exchange (LME) as well as the Kuala Lumpur Tin Market (KLTM). MSC is a founding Board member of ITRI Limited and sits on the ITRI's DRC Working Group which provides overall direction in the development and implementation of the International Tin Supply Chain Initiative (iTSCi) due diligence process in DRC.

Background (DRC)

Since the 80s, MSC has been receiving tin concentrates from various countries in the African continent principally from Nigeria in the early years and, more recently, in the new millennium, from DRC and Rwanda.

MSC does not trade directly with the artisanal small scale miners in DRC but rely on international and local (comptoirs) trading intermediaries. In 2009, and as a result of persistent NGO pressures, one of our main European trading partners in DRC and a major smelting competitor based in Thailand withdrew from the trade in DRC to avoid collateral damages. This resulted in MSC becoming the main smelting outlet for DRC tin production.

The decision to continue providing a smelting outlet for DRC concentrates has not been easy as MSC faces the same risks of collateral damage as the above mentioned organizations that have withdrawn from the trade. As smelting margin is thin and DRC material constituted only less than 15% of MSC total tin production in 2009 it would be sound business acumen to walk away from the DRC trade. This would have severe ramifications for the trade in that it will either collapse and/or be driven underground which will make traceability almost impossible. This will also lead to the deprivation of revenue to the already impoverished thousands who depended on the trade and the Congolese economy which collects significant amount of taxes from the trade.

In line with UN Security Council resolution 1857 (2008), which essentially ask that the supply chain practices proper due diligence to ensure that material is only sourced from non-conflict regions, MSC decided to continue engagement and at the same initiated, through ITRI Limited, a collective industry approach to set up a due diligence process (iTSCi) which is already implemented on a stage by stage basis.

Malaysia Smelting Corporation Berhad

Comments on Dodd Frank Legislation

MSC has ongoing discussions and dialogues either directly and/or through the DRC Working Group with ITRI with regards to current issues on conflict minerals and due diligence process. The ITRI letter to SEC dated 22nd November 2010 contains very extensive views and comments on various aspects of the Dodd Frank Legislation and they would necessary represent ours as well as the industry views. While it is not necessary for MSC to reiterate those already covered in the ITRI letter we would like to provide additional and/or emphasis on some of the, from our opinion, more critical issues of the legislation.

1. Time Scale

The iTSCi due diligence process was conceived and developed for implementation on a phase by phase basis and, having due regard to the complexity of the DRC supply chain as well as the socio-economic, political and infrastructure difficulties of the country, the entire process was designed on a time scale of 3-5 years for effective completion.

The Dodd Frank Legislation effectively reduces that time scale and may create insurmountable barriers for the iTSCi due diligence to be effective and therefore will, in effect, leave smelters like MSC with no option but to withdraw from the trade or face been declared a "conflict smelter".

The iTSCi due diligence process is the only process in place today in DRC and should be given a chance to work.

2. All cassiterite to be declared as conflict minerals

There has been some confusion in the industry under Section e) 4 of the Legislation with regards to the definition of conflict mineral and whether it applies to all cassiterite even if produced elsewhere other than DRC. We believe the intention of the Act 1502 is not to define tin, coltan, tungsten and gold as 'conflict minerals'. To do so would lead to an upheaval of the industries concerned. We agree that consumers using the minerals, metals, or products arising from these minerals should be fully aware of the origin of their feed in order that the conflict in the DRC is not fuelled. It is the responsibility of supply chain to put in place measures to prove the source of materials they use in their process. To label the 4 metals or any other metal that the Secretary later include as being potentially tainted would not be in the spirit of the Act.

Total DRC production currently accounts for only 5% of the world's trade in tin; and it is also likely that the quantity of tin benefiting the armed groups would be significantly lower. To draw up regulations which will impact the rest of the trade will have onerous implications and be severely disruptive to the industry.

3. Waiver for secondary tin bearing material and recycled tin

In many of the views expressed on the above topic and as contained in the many industry letters to SEC there is widespread consensus and support for the waiver. MSC would like to endorse the view and add that its smelting facility currently provides an outlet for many of the secondary tin bearing material arising from major industrialized countries including U.S. A lot of this secondary material emanates from waste streams of industries that use tin which would otherwise be disposed off and the value lost forever. Recycling of metals is an essential part of the sustainability concept and we do not see why the Legislation should not endorse this call for waiver.

We hope the background to our organization and the views provided will assist in your rule making process for the Dodd Frank Legislation section on conflict minerals. We stand ready to assist in anyway we can if you need further information and/or clarification from us.

Yours sincerely,

Chua Cheong Yong
Group Chief Operating Officer, Smelting
Malaysia Smelting Corporation Berhad