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Michael S. Piwowar
Acting Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
USA

Submitted online 16th March 2017

Dear Acting Chairman Piwowar,

Comments on January 31, 2017, statement on the Commission's Conflict Minerals Rule

I am writing on behalf of ITRI (formerly the International Tin Research Institute), the non-profit association of the global tin mining and production industry. Under Section 1502 of the Dodd Frank Act tin mineral (cassiterite) is considered one of the 3T metals potentially funding conflict and human rights abuses in the Democratic Republic of Congo and our industry has been impacted in multiple positive and negative ways by the influence of the SEC Rule.

In recent times the central African region has not been a significant producer of tin, supplying just 5.3% of the global market demand in the peak year of 2008. This had already fallen at the time of enactment of the Dodd Frank Act as a result of aggressive NGO and UN reporting, and continued to drop to only 2.8% of world mined supply in 2015. Nevertheless, despite a limited business case to intervene, ITRI and its tin producing member companies recognised and wished to contribute to resolving conflict related risks.

At an early stage, in October 2009 tin was the first sector to pledge to source from the region only if part of an appropriate due diligence scheme. ITRI contributed to the drafting of the OECD Due Diligence guidance in 2010 and had by then already voluntarily established a joint industry mechanism to provide practical assistance to mineral producers and traders to meet those US and international expectations. This mechanism, our ITRI Tin Supply Chain Initiative (iTSCi), has continually grown and progressed since that time, and, during 2016 enabled the regional export of 17,873 tonnes of 3T concentrate; including 12,868 tonnes of cassiterite equalling an increased 3.1% of the world mined production in 2016. The period of de-facto embargo has passed, and a period of growth of conflict-free supply is now underway.

I would like to directly address various points made in your statement on the conflict minerals rule drawing on our directly relevant expertise and knowledge of trade, conflict and risk management on the ground.

"While visiting Africa last year, I heard first-hand from the people affected by this misguided rule. The disclosure requirements have caused a de facto boycott of minerals from portions of Africa, with effects far beyond the Congo-adjacent region."

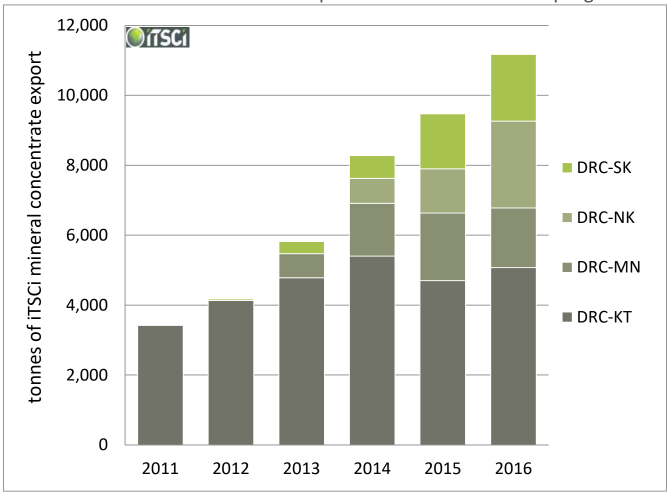
> As acknowledged above, the Rule did indeed create the circumstances for a de-facto embargo on certain areas and the reasons and timescales for this are covered in more detail in the attached Annex 1 '*iTSCi Implementation 2011-2016*'. In summary, the understandable desire of companies to avoid public disclosure of

risks, and the absence of appropriate phase-in time or US financial support for the required structural changes across a global industry and at the local level in Africa.

I understand that you visited Rwanda in mid-February 2016 in order to follow up on the visit of the then Rwandan Minister of Mines to the US House of Representatives in November 2015, but may not have visited the DRC or other adjoining areas. It would therefore be useful to gather and take into account the annexed information on the timelines of local embargo effects and consider the wider view in your evaluations.

In order to avoid embargo, credible information to allow companies to reduce conflict risks through appropriate due diligence to a level where trade could continue was required, and this information was and still is provided for African 3T minerals via the iTSCi programme. Where iTSCi was put in place 3T mineral trade continued, while, where iTSCi was not in place mineral production slowed, remained affected by conflict, or suffered from illegal activity and fraud. In recent years, best estimates indicate that iTSCi includes and helps to monitor the trade of approaching 100% of all legally exported 3T minerals from the region. Examination of official export data would show the clear correlation between iTSCi implementation, continued trade and lack of embargo at local level, as well as the opposite.

Tonnes of 3T mineral concentrate exports enabled via the iTSCi programme in the period 2011-2016



iTSCi traceability and due diligence was put in place in Rwanda and the Katanga province of DRC in early 2011 and there was no de-facto embargo on these areas at any time. Other parts of the DRC, including South and North Kivu remained under embargo until iTSCi was introduced step-by step from 2013 onwards. At the current time, with the presence of iTSCi in almost all important 3T mining and trading areas, there is no longer widespread embargo despite the continuation of the 'conflict mineral' provisions of the Rule. As noted above, the percentage of tin produced by the region is recovering from the embargo and is continuing to increase.

While we agree that the Rule has had impacts beyond the African region, these are positive impacts such as encouraging transparency of supply chain actors and implementation of the OECD due diligence guidance. We do not observe negative impacts stretching beyond the African region and remain unsure as to what these impacts may be. Further comment is therefore not possible.

Each of the 3TG minerals are suppling to different markets with differing dynamics and demands. Of the 3T minerals, the marketing of wolframite (tungsten) from Africa has been the most challenging even when traceable, from monitored supply chains and conflict-free. Nevertheless, recent changes in supply patterns have encouraged improvement in this sector as well and, again, the start of a recovery from previous embargo.

"Legitimate mining operators are facing such onerous costs to comply with the rule that they are being put out of business."

As noted above, your visit to Rwanda was made in mid-February 2016. This time coincided with a deep trough in <u>all</u> commodity prices not just 3TG, and in particular the international tin price at that time which was the lowest for many years. Operators would indeed have been struggling to cover all business costs at the metal prices available in the open market, in the same way and that all mining operators, of all types, globally were similarly struggling under the same circumstances. Information on mining company closures and losses for all minerals and in all locations around this time are readily and easily available with minimal research, even the oil and other commodity industries were similarly impacted. The business environment has been improving since that time which was an exceptional, and not typical, period.

There are of course costs associated with due diligence, traceability, improving governance and other progressive improvements but these actions certainly lead to better working and living environments for many thousands of individuals and it would surely be impossible to argue against these benefits of formalisation of the artisanal mining sector. Larger scale mining companies also incur comparable costs for corporate social responsibility programmes expected by consumers and it would be wrong to view the artisanal sector in a lessor way and undeserving of basic human rights protection.

Formalisation in itself therefore increases costs to operators who are expected to work in a more systematic way, and for example, pay taxes which they may not have previously paid. Taking the example of Rwanda, in 2010 there was no list of mine sites, no government field agents, and poor export statistics, mining was not entirely licenced, and miners worked with limited protective equipment or regard to environmental controls. The majority of exports were from legally reprocessed minerals mined elsewhere and not from Rwandan mines. The mining authority collected no taxes or fees and this significantly limited their activity. Now in 2017, the progress made across the sector has resolved all these drawbacks and Rwandan mining has grown significantly, but, licences, protective equipment and government controls all have a cost. Operators may tend to confuse costs of general and essential improvements and formalisation with costs for responsible conflict free trade required by the Rule.

The roadblock to pushing back the de-facto embargo in areas where no due diligence programme was in place and production had dipped does relate to the cost of setting up, equipment purchase, training and similar costs. Any donor programmes directed to the region tended to be for support of piece-meal interventions and no US support was directed to the industry favoured iTSCi programme that were directly pushing back the embargo. This unfortunate situation slowed progress but has now been in the main overcome although some areas are yet to be added to iTSCi scope.

The number of companies engaged locally and internationally in the iTSCi programme and in 3T mineral trade from the region has continually grown year on year. Companies looking to invest and provide finance for development of the sector are regular visitors to the region whereas in earlier years there were none. The very fact that the trade and businesses continue to operate in itself is evidence that legitimate operators are not being put out of business. The very opposite is the case as less reputable operators are now finding it more challenging to work. (*Please refer to information in the 'iTSCi incident and outcomes' attachment*).

Further information on the complex interaction of metal prices, due diligence costs and business can also be found in an open letter of late 2015 issued around the time of your Rwandan visit;
https://www.itri.co.uk/index.php?option=com_mtree&task=att_download&link_id=55397&cf_id=24

It may also be useful to compare past information on predicted upstream cost, to current actual costs. In a submission to SEC of 27 January 2011 from ITRI we noted that;

> "The cost quoted to set up a mineral source validation scheme (page 74) of $8-10 million represents one year of operation in some areas of the DRC, it does not represent a cost to cover mineral production in all DRC countries, nor all of the conflict minerals. It also only represents upstream costs, not downstream company costs."

In fact, through various efficiencies and commitment of all operational partners to minimise costs, iTSCi is currently operating at the lower end of this cost scale while including almost all relevant areas of the DRC as well as three other countries.

"It is also unclear that the rule has in fact resulted in any reduction in the power and control of armed gangs or eased the human suffering of many innocent men, women, and children in the Congo and surrounding areas."

While the introduction of the Rule was too rapid, with little support provided to those who needed to comply, it certainly galvanised action, incentivising progress and improvement in circumstances on the ground. The very fact that traceable minerals can sell at twice the price of untraceable minerals provides a powerful reason for everyone along the supply chain to carefully consider their actions. Through the systems in place as part of iTSCi, communities can report wrongdoing and know that issues will be followed up, and operators also know that serious conflict or human rights abuses will lead to suspension of mining activity or trade.

Annex 2 attached is our recent '*iTSCi incident and outcomes*' document which provides a range of data that explains what risks exist, how successfully they have been addressed, and what the positive outcomes have been for the men, women and children of the DRC and other adjoining countries.

From 2011 to 2016 iTSCi recorded and monitored 3,063 individual incidents relating to due diligence, traceability, security, human rights, corruption, child labour and other issues such as health and safety and environmental issues. As a result of this monitoring process, as well as awareness-raising and training activities of iTSCi at up to 1,341 mine sites, conflict and human rights abuses were minimised. In six years;

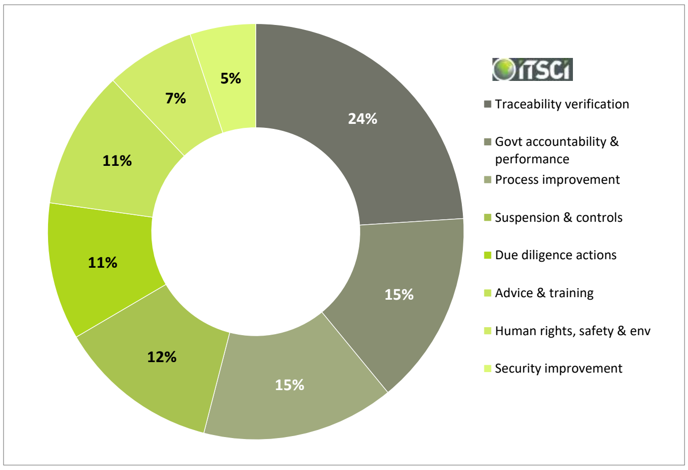
- Instances of serious human rights abuses were very low, averaging 2 per year;
- Potential risks from non-state armed groups or unidentified bandits totalled just 22, or 0.7% of incidents;
- Potential or actual interference, including taxation, by state security services was recorded 62 times, representing only 2% of incidents.

From all the recorded incidents there were 2,081 positive, notable and verified outcomes achieved by companies (improved due diligence), government (better control), iTSCi (improved systems) and civil society. Progress via these outcomes was observed in the following proportions;

- Traceability verification (24%)
- Government accountability and improved performance (15%)
- Process improvements in due diligence and systems (15%)
- Suspension and controls of mines or companies (12%)
- Due diligence actions on specific supplies (11%)
- Advice and training by iTSCi or others (11%)
- Human rights, safety and environmental improvements (7%)
- Security improvements by state and private services (5%)

All data and general local experience and understanding points to demonstrated progressive improvement in the 3T mineral sector. It would not be credible to conclude that no improvement or benefit has been brought about through the various activities driven by the Rule.

Positive outcomes achieved through resolved iTSCi incidents in the period 2011-2016



While there have been enormous improvements in the 3T sector, the same cannot be said of the 'G', gold sector. There has been no joint industry driven programme to address gold in the same way that iTSCi addresses 3T, and as a result of that, as well as other factors, gold remains the major contributor to conflict financing. There has been no de-facto embargo on gold since there has been no industry wide control across the upstream gold supply chain. There has been no large scale formalisation of the gold sector and as a result no increase in tax revenues or improved security of human rights. Indeed, the presence of gold mines close to 3T mines continues to represent a risk to iTSCi operations and the 3T supply chain. While regional standards and mechanisms also apply to gold this suggests that support from industry wide programmes is also key to progress.

Our objective is to work in a positive way with all local and international partners, whether companies, governments, NGO's, civil society or other groups. The availability of iTSCi traceability information at the point of export enables local government agents to issue their export certificate which is a part of the International Conference of the Great Lakes (ICGLR) regional expectation.

Further background and informative videos can be found here; http://www.pactworld.org/node/1157/media

Stories of other positive benefits are available here; https://www.itri.co.uk/information/itsci/news-bulletins-success-stories

"Moreover, the withdrawal from the region may undermine U.S. national security interests by creating a vacuum filled by those with less benign interests."

The basis for this statement is not entirely clear. Presuming that there is a continued embargo (which is not the case) this statement indicates that mineral operators prior to any embargo were 'benign' and therefore that their leaving has in some way caused harm and opened an opportunity for 'worse' actors.

Our experience, figures and audits on more than 340 companies participating in iTSCi demonstrates the opposite. As part of the iTSCi programme we collate data on company ownership and this is independently verified through a third party. We are well aware of the beneficial interests of all participating companies. As a result, we can state that most mining and exporting companies were, and still are locally owned. There has never been a significant US interest in the 3T minerals trade in the DRC or adjoining countries. Between 2011 to 2016 there were around four US based companies as members of iTSCi, while in 2017 we are processing applications for an additional three – which, while still at a low level, would almost double US interest in the 3T sector.

Some, but not all, significant mineral buyers left the region for a period of time, but those same buyers have now returned to buy minerals within the scope of the iTSCi programme. There is no observable significant change in interests between 2010 and 2017 and as far as we are aware, the Rule has had no effect whatsoever on the extent of US or other foreign non-local interests in the sector.

This submission describes very briefly the causes of impacts and concerns regarding the Rule, as well as the current situation, taking into account our knowledge and experience over time. There are many complex and interacting factors to consider and a more in depth understanding would be necessary before reaching any determination on the future of the Rule. Other data and documentation is available from ITRI to support any of the above points and can be provided on request in order to assist evaluation of the SEC. ITRI has previously commented on Dodd Frank and the Rule. Almost all comments made in those earlier submissions remain relevant and should also be referred to as part of this consultation. In particular, you will find in these previous submissions explanations around why the embargo would occur, and how financial support and time could have been provided to prevent the harm that occurred to businesses and local communities. The documents also describe how the requirement to disclose 'not conflict free' was a major driver to the embargo. The partial stay of May 2014 is therefore a positive action that should be supported.

Previous relevant submissions can be referenced online;

- July 2010 upon release of Dodd Frank when the consequences that have since come to pass were already predictable; https://www.itri.co.uk/index.php?option=com_mtree&task=att_download&link_id=49715&cf_id=24
- Comments to SEC, 22 November 2010; https://www.itri.co.uk/index.php?option=com_mtree&task=att_download&link_id=49717&cf_id=24
- Comments to SEC, 27 January 2011; https://www.itri.co.uk/index.php?option=com_mtree&task=att_download&link_id=52970&cf_id=24
- Comments to SEC, 25 February 2011; https://www.itri.co.uk/index.php?option=com_mtree&task=att_download&link_id=52971&cf_id=24
- Comments to SEC, 31 October 2011; https://www.itri.co.uk/index.php?option=com_mtree&task=att_download&link_id=52973&cf_id=24
- Presentation at the SEC roundtable held on 18th October 2011; https://www.itri.co.uk/index.php?option=com_mtree&task=att_download&link_id=52972&cf_id=24

In summary;

- While a de-facto embargo did occur on 3T's in some areas of DRC and the adjoining countries, after six years of hard work by stakeholders to ensure the availability of credible supply chain traceability and important risk information via the iTSCi programme, there is no longer any widespread embargo;

- All legitimate mineral businesses both in Africa and around the world will incur some costs associated with their responsibilities to avoid human rights abuses and conflict financing, however, there is no evidence to suggest that this cost has put operators out of business. From data on iTSCi membership it would appear the opposite is true as the less legitimate operators are those now less likely to remain in the 3T supply chain;

- Through the evaluation of iTSCi incidents detailed data is available on the extent of armed group control and human rights abuses in the 3T sector, as well as on a range of other important risks. This data shows the low level of serious human rights and conflict issues around iTSCi monitored areas, and also shows that many positive outcomes on improved security, governance and responsible company actions have been achieved;

- The vast majority of interests in the 3T sector, are, and have always been local or foreign interests with a long history of association with the region. There is no evidence of any increase in any 'less benign' interests in the mineral trade, while there is evidence on the increasing engagement of US based companies;

- While Section 1502 of Dodd Frank was not well conceived and did create significant harm, the situation in the 3T sector has overcome these various hurdles and is now on a positive trend. On balance, repeal of the Rule would now have further negative, rather than positive effects.

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

Attachment regarding *'iTSCi implementation 2011-2016'*

Also available online https://www.itri.co.uk/index.php?option=com_mtree&task=att_download&link_id=55647&cf_id=24

ANNEX 2

Attachment regarding *'iTSCi Incidents and Outcomes 2011-2016'*

Also available online https://www.itri.co.uk/index.php?option=com_mtree&task=att_download&link_id=55669&cf_id=24