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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

25th February 2011

Dear Chairman Schapiro,

(THIRD) 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, and 27 January 2011. We now submit additional remarks on the potential cost and timescale of implementation of due diligence systems in the upstream supply chain (mine to smelter).

The information below relates to, and extrapolates from, an existing implementation plan for the iTSCi system, developed between a number of partners with experience of operating in, and knowledge of the affected areas of the DRC and adjoining countries.

I wish to emphasise, as stated in my previous letter, that much of the cost will fall on the upstream mineral production industry, outside the US, and in some of the least developed and poorest countries of the world where all mining of cassiterite, 'coltan' and wolframite is performed by artisanal or small scale miners.

The legislation and Congress has failed to make any allowance for this burden and in the absence of any State Department plan, we must assume that no new provision for financial assistance has been made.

I provide below some notes regarding potential costs for the upstream production industry, as well as further indications of feasible timescales to achieve introduction of the required infrastructure on the ground.

1. Requirements for due diligence in mining country

1.a) Non-government activities

In any iTSCi implementation location, the project will operate in a similar manner with local consultant organisations running the chain of custody system, with oversight and technical advice from a capacity building NGO, and with another consultancy developing and implementing the audit and risk assessment aspects.

A variety of costs are incurred in set-up and implementation of an on the ground due diligence system in the DRC or adjoining countries. These include costs such as;

1. *Chain of custody tagging;*
 - Set up and operation of tagging
 - Database manager and data inputting
 - Operation of local project committees
 - Involvement of local NGO groups
 - Awareness raising and communication planning
 - Security and admin assistance

2. *Audit and risk assessment;*
 - Collection and assessment of information on illegal taxation and similar
 - Recommending risk response and improvement plans
 - Basic audit of data from tagging and similar information
 - Monitoring of response plan effectiveness

3. *The implementation of mitigation;*
 - While risks will be assessed as part of 2 and partly implemented by general community involvement as part of 1, additional and currently unknown costs are likely to be incurred, especially in the first years in order to implement improvement plans on site. The costs of mitigation are unknown.

4. *Other costs relate to various ancillary requirements such as;*
 - Tags, logbooks and other required materials
 - Re-design of the database and development of reports, hosting, data back up etc
 - General management of the scheme and representatives for Government liaison.

All of the above costs are likely to be borne by industry.

1.b) Government activities

Local Government agencies will perform much of the field operations of tagging and data recording. For example in the DRC, both 1. and 2. will require support and co-operation from the Government and its mining agents in SAESSCAM and other services, as well as local training of additional staff. In Rwanda, OGMR are performing this role. Strengthening the capacity of all such services is required and the implementation of due diligence in Rwanda is already slowed and limited by a lack of an established mining sector field agency. Although OGMR have a plan for development of such a mining sector field governance agency, they have so far been unable to obtain funding for the required expansion.

2. Local costs for mining country

As shown in the table below, an annual minimum cost of **US\$32 million** is likely for both industry and government costs for due diligence in the affected areas.

The costs indicated are for 1 year of operation.

These should be viewed as a *minimum* estimate.

US\$	Non-Government Cost	Government Cost	TOTAL
DRC	9.1m	(12m+)	21.1m
Rwanda	1.2m	1m	2.2m
Burundi	1.2m	1m	2.2m
Uganda	1.2m	1m	2.2m
Others	2m	2m	4m
TOTAL	~15m	~17m	US\$32m

+ The DRC already has several programmes of support for the mining sector, including PROMINES which in part builds capacity of SAESSCAM etc. An amount of \$12m has been assumed.

3. Minerals Coverage

The information here, and the \$32m estimate, relates to cassiterite, 'coltan' and wolframite production only.

The information does not relate to gold; due diligence systems for gold have not been trialled in DRC.

It is likely that control of the gold sector would be more complex and require greater staffing levels. Proportionally, costs of implementing due diligence for gold is likely to be higher and we might estimate at least another \$20m for such an activity, giving a total of **US\$52 million**.

4. International upstream industry costs

Other participants in the upstream supply chain will also incur additional costs in relation to greatly increased levels of administration and auditing. These participants include; trading companies, transporters and concentrate treatment facilities.

For those participants still trading with the DRC countries this may amount to an additional man year, approximately US\$100,000 per year each.

For those participants not treating DRC country minerals, the costs will be less but still of significance, perhaps an additional half a man year.

In addition, smelter and processing facilities may be requested to perform an independent audit on a 6 monthly or yearly basis. Such an audit may have an average cost of \$60,000.

The sum cost of new auditing requirements and increasing burden of documentation in the international supply chain may amount to a total of **US\$7 million** per year.

5. Feasible but challenging timescales

As emphasised in previous comment letters, the conflict minerals legislation will lead to a de-facto embargo on central African minerals unless appropriate phase-in and transition times are incorporated into the SEC rules.

The table below indicates some feasible, yet still challenging, timescales for introduction of the due diligence system in the main affected areas.

The information in the table assumes resourcing is available to perform the work as required; something which under current circumstances, without intervention from donors, seems unlikely.

	2011	2012	2013
DRC (non-conflict Provinces)	All major mines	All major mines and smaller mines	New mines as they become 'eligible'
DRC (conflict affected Provinces)	Scoping study, planning and up to 10 major mines in each Province	All major mines under security	All major mines and smaller mines under security
Rwanda	All major mines	All major mines and smaller mines	New mines as they become 'eligible'
Burundi	Scoping study, planning and up to 10 major mines	All major mines and smaller mines	New mines as they become 'eligible'
Uganda	Scoping study, planning and up to 10 major mines	All major mines and smaller mines	New mines as they become 'eligible'
Other	For discussion	To be determined	To be determined

Please refer to the response to Q61 in the ITRI comment letter of 27th January 2011;

“Even so, experience has already demonstrated the difficulties of working in under resourced and remote environments. Current precise plans for implementation of the iTSCi system in some of those DRC countries show that full coverage of major mine production areas can only gradually be introduced over a period of time that is approximately 3 years.

This would result in a 3 year transition period from April 2011 to April 2014, plus a 1 year stock clearance allowance (to production at the smelter) running from April 2014 to April 2015. Another 9 months may be required to clear stock metal through the supply chain to the end product, and the first disclosure year would then be January-December 2016 – reporting in January 2017. “

Further planning that has been undertaken since the end of January, as shown in the table above, confirms the expectation for the required 3 years for implementation on the ground in Africa. As noted previously, it is appropriate to increase levels of penalties on disclosures only after such a time.

I hope that you find these points useful and that they are taken into full consideration when determining a way forward that will not result in a widespread and indiscriminate embargo on central African minerals.

I repeat here matters of key importance in relation to cost and timing aspects of this rule;

- Literal interpretation of Congress's provisions will shortly lead to an embargo on DRC country minerals causing significant harm to miners and communities in the region.
- A suitable phase-in period of between 1-3 years is essential in order to allow due diligence systems to be implemented within the DRC countries and reduce the effect of the embargo.
- The cost and burden of the proposed rules has been seriously underestimated while the benefits can only be achieved with allowance for appropriate introduction timescales.
- Please note that downstream mineral using companies reporting to SEC may be unlikely to share the burden of cost with those operators in Africa.

Please let me know if you require further details.

Yours sincerely,



Kay Nimmo
Manager of Sustainability and Regulatory Affairs, ITRI Ltd