

August 4, 2004

VIA US MAIL and FACSIMILE: (202) 647-0320

Mr. Wesley Scholz
Director, Office of Investment Affairs and National Contact Point
for the OECD Guidelines for Multinational Enterprises
Department of State
2201 C Street, NW
Washington, DC 20520

Dear Mr. Scholz:

With this letter, Friends of the Earth-US (FoE) and Rights and Accountability in Development (RAID) are raising specific instances against Cabot Corporation, Trinitech Holdings and OM Group Inc. due to the lack of adequate investigation by the State Department into allegations raised by the United Nations (UN) Panel of Experts' concerning the direct or indirect complicity of these companies in fueling the natural-resource driven war in the Democratic Republic of the Congo (DRC).

Despite the assurance of Ambassador Richard S. Williamson (US Alternative Representative for Special Political Affairs to the UN), who stated to the UN Security Council on Nov. 5, 2002 that "the United States Government will look into the allegations against these companies and take appropriate measures [and] not turn a blind eye to these activities,"¹ the State Department, to date, has refrained from undertaking any independent examination of the linkages between the DRC's resource-driven conflict and the role US companies might have played in fueling it.

The unsatisfactory and inconclusive nature of the Panel's final, October 2003 report leaves many unanswered questions concerning violations of the Organization for Economic Cooperation and Development's "Guidelines for Multinational Enterprises" (Guidelines) by the US companies named in the Panel's third, October 2002 report. Although all US companies were placed in the "resolved" category (i.e. requiring no further action), the grounds for this determination were left publicly unspecified.

We must emphasize that the Panel made clear in its final report that "resolution should not be seen as invalidating the Panel's earlier findings with regard to the activities of these actors."² It follows, therefore, that some of the US companies named by the Panel *might* have indeed breached the Guidelines, notwithstanding the US National Contact Point's (NCP) view

¹ Ambassador Williamson's statement can be found at: http://www.un.int/usa/02_180.htm

² UN Panel Report, October 2003, Paragraph 15

that all questions raised by the Panel with respect to American companies have been satisfactorily resolved and that there is no need for further action.³

We believe that such a determination can only be properly made after scrutiny of the cases under the implementation mechanism of the Guidelines. By means of this letter, we are therefore formally requesting the US NCP to initiate specific instances to examine whether the following companies listed in the Panel's third, October 2002 report have breached the Guidelines: Cabot Corporation, Trinitech Holdings and OM Group Inc.

Cabot Corporation

Cabot Corporation is headquartered in Boston, Massachusetts. Although no detailed allegations are made in the Panel's reports concerning Cabot, it appears from published sources⁴ and from the third annex of the Panel's October 2002 report⁵ that concern centers on Cabot's purchasing, trading and processing of coltan originating from the DRC during the war. Indeed, the Panel's final, October 2003 report states that companies listed in Annex III of the October 2002 report were "parties that, while having only indirect commercial ties to the DRC, still bore a responsibility to ensure that these links did not, albeit inadvertently, contribute to funding and perpetuating the conflict." The Panel highlights the "coltan boom"⁶ in 2000 to illustrate this point:

A specific example is that of the export of mineral columbo tantalite (coltan) from which the metal tantalum is extracted...In 1999 and 2000 a sharp increase in the world prices of tantalum occurred, leading to a large increase in coltan production in eastern DRC...While the processors of coltan and other Congolese minerals in Asia, Europe and North America may not have been aware of what was happening in the DRC, the Panel's investigations uncovered such serious concerns that it was decided to raise the international business community's awareness of these issues through Annex III in the context of the OECD Guidelines for Multinational Enterprises. The purpose was to bring to the attention of the companies listed in Annex III their responsibilities vis-à-vis the source of their raw materials.⁷

³ Letter from the US NCP to Dr. Brent Blackwelder, Friends of the Earth, December 4, 2003: <http://www.foe.org/camps/intl/letterbrent12.4.pdf>

⁴ For example, see 1) Jeremy Kahn. "Congo's Civil War Rings Up Trouble on the Line." *Fortune Magazine*, February 4, 2002) Robert Hunziker, "Tantalum Embroiled in World Affairs." *Engineering & Mining Journal*, November 1, 2002; "The Tantalum Supply Chain: A Detailed Analysis." *Passive Component Industry*, March/April 2002.

⁵ UN Panel Report, October 2003, Annex III, Page. 8.

⁶ Eighty-percent of the world's reserves of colombo-tantalite ore, or coltan, are found in the DRC. Refined coltan, or tantalum, is used to make capacitors – a critical component of virtually all electronic devices from cell phones and computers to defense-related applications. In 2000, the combination of optimistic economic forecasts and an apparent shortage of tantalum, the price coltan went from approximately \$40/lb in January to \$380/lb by December. (BBC News. "Congo's Coltan Rush." Aug. 1, 2001: <http://news.bbc.co.uk/1/hi/world/africa/1468772.stm>)

⁷ UN Panel Report, October 2003, Paragraph 10.

Cabot either did not respond in writing to the Panel or else submitted a reply and requested that it be kept confidential. In a January 2002 article in *Fortune*, Cabot is described as saying that “to the best of its knowledge none [of its coltan came] from environmentally sensitive areas in Africa, but it can’t be sure.”⁸ Cabot has also stated that it has undertaken measures to ensure it is not purchasing coltan from the DRC.⁹

Despite the listing of Cabot as “resolved” in the Panel’s final, October 2003 report, the origin of the coltan the company purchased prior to 2001 requires an independent investigation by the State Department before compliance with the Guidelines can be publicly established over the entire period. As noted above, Cabot is on record expressing uncertainty over the company’s ability to establish provenance. According to a report by the Belgian Senate’s “Great Lakes Commission of Inquiry,” Eagle Wings Resources International had a *long-term* contract (emphasis added) to supply Cabot with coltan. We also note the Panel’s assertion in its October 2002 report that “no coltan exists from the eastern [DRC] without benefiting either the rebel group or foreign armies.”¹⁰

We request that the US NCP ascertain Cabot Corporation’s compliance with the following guidelines:

- Provision II.9 on encouraging business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines;
- Provisions III.1 on disclosure, including high quality standards for social reporting under Provision III.2; and
- Provision III.5.a on performance in relation to value statements on social and ethical conduct.

Trinitech Holdings

Trinitech Holdings is the holding company for the Ohio-based mining and distribution companies Trinitech International, Inc. and Eagle Wings Resources LLC. **Eagle Wings Resources International** (EWRI) is described in the report of the Belgian Senate’s “Great Lakes Commission of Inquiry” as a joint venture between the Dutch company, Chemie Pharmacie Holland BV (CPH) and Trinitech Holdings. The complainants maintain that the role of Trinitech Holdings, as the parent company of Eagle Wings Resources LLC and Trinitech International, is an appropriate enterprise for the US NCP to examine.

The Panel alleged that “[t]he manager of Eagle Wings in Kigali has close ties to the Rwandan regime” and that the company “operates in the [DRC] as a Rwanda-controlled

⁸ Jeremy Kahn. “Congo’s Civil War Rings Up Trouble on the Line.” *Fortune Magazine*, February 4, 2002.

⁹ Karen Morrissey, Letter to Chemical Week entitled, “Clearing Cabot’s Name.” December 11, 2002.

¹⁰ UN Panel Report, October 2002, Paragraph 80.

comptoir with all the privileges derived from this connection.”¹¹ The Rwandan regime has been severely criticized by the Panel for mass-scale looting, systemic exploitation, and the organization of an elite network centrally located in the Rwandan Defense Department with the express intent to capture revenues through the exploitation of the DRC’s natural resources.¹² In so doing, it has intentionally perpetuated the conflict in the DRC. According to the Panel, “Eagle Wings collaborates with RPA [Rwandan Patriotic Army, the official Rwandan army] to receive privileged access to coltan sites and captive labour” and is named with other *comptoirs* who “have obtained their own mining sites and conscript their own workers to exploit the sites under severe conditions.”¹³

It is important to note that there has been a detailed examination in the Netherlands concerning the allegations against Trinitech’s Dutch business partner, CPH, which may provide a helpful starting point for the US NCP’s inquiry. In June 2004, the Dutch NCP issued a statement about CPH in response to a specific instance submitted in July 2003 by Friends of the Earth-Netherlands, Oxfam Netherlands, Pax Christi and the Netherlands Institute for Southern Africa. The Dutch NCP took the view that there was no “investment nexus” and that, therefore, the OECD Guidelines were not applicable.

However, the Dutch NCP decided to formulate a statement “on the basis of the common values for responsible business conduct that are reflected in the Guidelines.”¹⁴ The Dutch NCP stated that according to CPH, EWRI owned offices in Bakavu (eastern DRC), Bujumbura (Burundi), and Kigali (Rwanda). Suppliers brought small shipments of ore to EWRI’s offices to be inspected by a controller, after which the suppliers were paid accordingly. EWRI sent the shipments of ore to the office in Kigali for the attention of CPH. CPH was responsible for transporting ore from Kigali via Rotterdam to the final destination, and was responsible for financing individual transactions by wiring money to financial institutions in Kigali and Bujumbura by order of EWRI. EWRI subsequently paid the suppliers. EWRI retained sole ownership as well as the entrepreneurial risk over the commodities. CPH hired the controller agency, Alex Stewart, by order of EWRI. The relationship between CPH and EWRI lasted from October 1999 until March 2002. The Dutch NCP concluded that CPH could have conducted more inquiries to find out the origin of the ore and the circumstances that surrounded ore mining: “Companies should be proactive in asking these questions, particularly in conflict zones.”

Given the seriousness of the Panel’s allegations and the findings of the Dutch NCP, we believe it is entirely unsatisfactory that the cases of EWRI and by extension, Trinitech Holdings, should be regarded as “resolved” when the factual issues raised in the Panel’s third report were never independently investigated by the State Department.

¹¹ UN Panel Report, October 2002, Paragraph 79.

¹² UN Panel Report, April 2001, especially Paragraphs 5 –6 and Paragraphs 32 ff., 46 ff. and 71 ff.

¹³ UN Panel Report, October 2002, Paragraph 79; also Paragraph 76.

¹⁴ http://www.oesorichtlijnen.nl/documenten/NCP_verklaring_NIZA_CPH.pdf (accessed 2 August 2004); see also a statement by Oxfam Netherlands and NIZA “Dutch NGOs disappointed with the outcome of case against traders in Congolese coltan” which was presented at the annual meeting of the OECD/CIME meeting 15 June 2004 (available on <http://www.oecdwatch.org>)

We request that the US NCP examine Trinitech Holdings' compliance with the following guidelines:

- Provision I.1 on contributing to economic, social and environmental progress;
- Provision II.2 on respecting human rights;
- Provision II.5 on refraining from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues;
- Provisions III.1 on disclosure, including high quality standards for social reporting under Provision III.2;
- Provision III.5.a on performance in relation to value statements on social and ethical conduct;
- Provision IV.1c on contributing to the elimination of all forms of forced or compulsory labour; and
- Provision X on contributing to the public finances of host countries by making timely payment of their tax liabilities.

Neither Trinitech, EWRI nor CPH responded publicly to the Panel. While CPH is listed by the Panel as not having responded in Category V of the final, October 2003 report, Trinitech and EWRI are listed as "resolved" (Category I). Therefore, we ask that the US NCP also establish whether Trinitech and EWRI replied confidentially to the Panel or whether there is another reason as to why they are not categorized alongside CPH.

Eagle Wings Resources LLC and Trinitech International issued a press release after the final, October 2003 report was published that stated that the Panel vindicated both companies and the affiliates of EWRI. The companies cited the listing of EWRI and three employees in Category I and referred to the refutation of allegations in a meeting with the Panel and the constructive resolution of "the erroneous misconceptions of the company's activity."¹⁵

OM Group Inc.

OM Group, Inc. is headquartered in Cleveland, Ohio. In 1997, OM Group formed a joint venture, *Groupement pour le Traitement des Scories du Terril de Lumbumbashi, Ltd. (GTL)* with the Forrest Group and the Congolese state owned mining company, Gécamines, to retrieve copper and cobalt from *Scories du Terril de Lumbumbashi*, also known as the "Big Hill" project. The stockpile also contains the rare metal germanium.

¹⁵ Eagle Wings LLC and Trinitech International, "New UN report vindicates Eagles Wings Resources and Trinitech International of all accusations," November 4, 2003, <<http://www.trinitechholdings.com/eagleswings/news.cfm>> (visited December 17, 2003).

According to the Panel, GTL deliberately ignored technical agreements that provide for the construction of two electrical refineries and a converter for germanium processing in the DRC. Instead, semi-processed ore from the mine is being shipped to OM Group's processing facility in Finland, thereby robbing the state mining company, Gécamines, of millions of dollars in revenue.¹⁶

In its written response to the Panel, OM Group asserted that the “[g]ermanium is a commercial matter that shall be agreed in a normal level. While OMG and OMG/KCO consider they have no contractual obligation to pay for the germanium contained in the Big Hill slag, they recognize the fundamental right of the Congolese people to share the profits of any minerals originating from the DRC and the concerns of the DRC Panel of Experts in that respect.”¹⁷ While the company has committed to retroactively applying a royalty payment to Gécamines, at issue is whether the complex corporate structure was intended to deny Gécamines the benefits of the future sales of minerals with significant commercial potential at a time when the country was at war and there was no functioning government or mining ministry to protect the interests of Gécamines and by extension, the Congolese people.

Separate to the allegations pertaining to the Big Hill project, *Societe pour le Traitement des Scories du Terril de Lubumbashi* (STL) – a company created by **GTL** in 1997 – has admitted in public statements in the Belgian press that it processed cobalt from radioactive minerals (possibly obtained from the Shinkolobwe uranium mine) in the company's plant in Lubumbashi, which is situated close to a hospital. The Belgian Senate's “Great Lakes Commission of Inquiry” concluded that the environmental consequences of the processing (not only the radioactive heterogenite but also the copper/cobalt processing) at Lubumbashi had not been independently monitored and that airborne and waterborne pollution could not be discounted. OMG states “all OMG's subsidiaries have throughout the joint venture project in DRC, followed good ethical rules and standards as well as respected and followed the *OECD Guidelines*.”¹⁸

We request that the US NCP determine OM Group's compliance with the following guidelines:

- Provision II.1 on contributing to economic, social and environmental progress;
- Provisions IV.4a, IV.4b, V.2a, V.3, V.4, V.5, and V.7 concerning endangering public health and exposing workers to unacceptable radioactive hazards;
- Provision II.9 on supply chain responsibilities;
- Provisions IX.1 and IX.2 on anti-competitive activities.

¹⁶ UN Panel Report, October 2002, Paragraph 44.

¹⁷ OM Group Letter to Mr. Mahmoud Kassem, June 6, 2003, Reaction No. 7, S/2002/1146/Add.1

¹⁸ Reaction No 7, op. cit.

Conclusion

While your office has suggested that the Guidelines are only applicable on a limited basis, we believe the State Department has an obligation to undertake an independent inquiry into whether Cabot, Trinitech, and OM Group have breached the Guidelines. Otherwise, the State Department would be setting a harmful precedent: US companies would not be expected to ensure that their affiliate organizations, subsidiaries, sub-contractors or suppliers do not assist in financing violent conflict and human rights abuses. We believe it is imperative that companies based in OECD countries ensure that they are not indirectly financing violent conflict and human rights abuses by purchasing natural resources or other goods when the resulting revenues are used to buy arms and sustain conflict.

So far, we have been disappointed with the State Department's reluctance to conduct an independent inquiry into the Panel's allegations. The State Department's inaction stands in stark contrast to the efforts undertaken in Belgium, where criminal investigations based on the Panel's information has led to the indictment of four directors of Belgolaise Bank on charges related to the allegation that money from the state-owned diamond company, MIBA, was laundered through Belgolaise bank accounts, some of which was then used to purchase weapons. The South African courts have also started to uncover assets held in the names of senior Congolese political figures as a result of breach of contract lawsuits brought by businessmen against the DRC Government. One of the businessmen, Frans Rootman, was, according to a June 22 article in the South African newspaper *Beeld*, hired by Laurent Kabila to trace cobalt allegedly exported illegally from the DRC by Zimbabwean Billy Rautenbach. The Chief Prosecutor of the International Criminal Court, Luis Moreno-Ocampo, has stated that his office will investigate the way businesses have contributed to the prevalence of war crimes and crimes against humanity in the DRC.

We do recognize that the State Department attempted to obtain additional information from the Panel, but was unsuccessful.¹⁹ We are also aware that the Chairman of the OECD's Committee on International Investment and Multinational Enterprises (recently renamed "Investment Committee") also sought to facilitate information exchange between the Expert Panel and the NCPs with only minimal success. However, in May 2004, the British Government received substantial additional information about the Panel's allegations against UK registered companies from the UN's Department of Legal Affairs. A Belgian investigating magistrate has also had access to the Panel's archive, which has assisted his criminal investigation into the role of Belgian companies in the DRC. It should also be possible for the Department of State to undertake such a course of action.

We ask that the State Department respond swiftly to FoE and RAID's request to initiate specific instances. We draw your attention to detailed material contained in RAID's report about the companies, "*Unanswered Questions: Companies, Conflict and the Democratic Republic of Congo*", that has already been submitted to the US NCP. We believe that the information contained in the report should provide a sufficient basis to initiate an independent inquiry.

¹⁹ Statements made by Wesley Scholz to Friends of the Earth and Amnesty International in an October 6, 2003 meeting.

In closing, we believe that a prosperous and peaceful future for the DRC cannot be based on a culture of corporate misconduct and impunity. Governments, for their part, cannot turn a blind eye when allegations of corporate misconduct are raised. It is imperative that natural resource exploitation in the DRC gives way to conduct that promotes transparency, respect for human rights, and sustainable development rather than financing the continuation of more conflict. This can only be achieved if the United States Government and other OECD governments show the determination to make a public distinction between those companies that have behaved in compliance with agreed international standards of corporate conduct and those that have not.

We look forward to the State Department providing much needed leadership by examining the role American companies may have played in fueling the war in the DRC. We respectfully request a written response indicating how your office intends to proceed in this regard. In addition, we look forward to meeting with you to discuss these specific instances and related concerns. Please send all correspondence to both Colleen Freeman and Patricia Feeney.

Yours sincerely,

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Cc: The Honorable Lamar Alexander, Chair, African Affairs Subcommittee, Senate Foreign Relations Committee

The Honorable Russ Feingold, Ranking, African Affairs Subcommittee, Senate Foreign Relations Committee

The Honorable Ed Royce, Chair, Africa Subcommittee, House International Relations Committee

The Honorable Donald Payne, Ranking, Africa Subcommittee, House International Relations Committee

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