



Written Testimony of

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Introduction

Chairman Flake, Ranking Member Booker, and members of the subcommittee – thank you for the opportunity to testify at today’s hearing regarding the Democratic Republic of the Congo, conflict minerals, and Section 1502 of the Wall Street Reform & Consumer Protection Act, commonly referred to as the “Dodd-Frank Act.”

My name is Rick Goss, and I am the Senior Vice President of Environment and Sustainability for the Information Technology Industry Council, or ITI. ITI is a global trade association representing nearly 60 of the world’s most innovative companies in the broad technology sector.

ITI has been centrally involved in the conflict minerals dialogue for years, and I have led ITI’s engagement on this priority since 2007. This includes representing the tech sector during congressional negotiations; meeting with Securities and Exchange Commission (SEC) commissioners and staff throughout the Section 1502 rulemaking process; testifying before the U.S. House of Representatives; and advising the European Union and other jurisdictions as they seek to develop their own conflict minerals regulations.

The tech sector is committed to contributing to peace and stability in the Congo, and our companies have made strong commitments to ethical sourcing throughout our supply chains. As Congress considers replacing or modifying section 1502, we urge you to ensure that the U.S. remains centrally engaged in driving diplomatic efforts in Central Africa and in supporting private sector initiatives to advance responsible sourcing. Should the U.S. fail to remain engaged, we could experience additional volatility on the ground in Central Africa, and inconsistent regulatory efforts arising in other jurisdictions.

Along with governments and civil society, ITI and our members share a commitment to the fundamental principles of peace and security for the Congo, and we are dedicated to being responsible actors within the context of



comprehensive, government-led strategies for Central Africa. First, we are committed to ethical sourcing throughout our global supply chains. We do not want to conduct business, either directly or indirectly, with any supplier that supports, prolongs, or perpetuates armed conflict or human rights abuses. Second, we want to source responsibly from Central Africa to help provide critical economic benefits to the hundreds of thousands of people who depend on mining and mining-related activities as their sole source of livelihood. With these twin objectives in mind, our sector has made a conscious choice to remain engaged in the region.

With that depth of experience in mind, my testimony today will share our perspectives on three key points for lawmakers to consider:

- Expand existing diplomatic efforts to drive peace, security, and governance in Central Africa;
- Maintain U.S. leadership on sourcing transparency to support private sector progress in Central Africa and avoid unintended economic and political outcomes; and
- Consider removing the requirements of Section 1502 that have increased costs and burdens while failing to promote progress in the region.

In support of these outcomes, I would like to note three major themes:

First, ITI members recognize that the private sector has a defined role to play in helping drive transparency and responsible sourcing efforts throughout global supply chains, and we have embraced that responsibility through our public commitments and concrete actions. These include our role in developing the Conflict-Free Sourcing Initiative, our participation in the Public-Private Alliance for Responsible Minerals Trade, and our efforts in support of the Organization for Economic Co-operation and Development (OECD) Due Diligence Guidance.



Second, during congressional negotiations on this issue in 2009 and 2010, there was strong bipartisan support for the United States to take a more active role to confront the ongoing humanitarian crisis in Central Africa.

Third, the geo-political challenges in the Democratic Republic of the Congo (DRC) and throughout Central Africa are so severe, enduring and complex that only concerted actions by regional governments, coupled with ongoing support from the international community, will resolve them. Governments must take the lead to bring about peace, security, and governance reform and to create the necessary preconditions to allow private sector and civil society initiatives to thrive.

I will now turn to the three specific issues that the subcommittee has asked this panel of witnesses invited to testify to address:

Section 1502 of the Dodd-Frank Act has had mixed success in cutting off funding to armed groups in the DRC and reducing violence in the region. The eastern DRC is plagued with countless militias, local criminal groups, and corrupt military and government officials, all of whom prey on vulnerable civilian populations. While Section 1502 has clearly helped deprive armed groups in Central Africa from exploiting *certain* illicit sources of funding, its ultimate record of reducing *overall* illicit income flowing to these actors is notoriously difficult to determine. This challenge is in part due to continued smuggling of gold; the ongoing presence at mines of non-state militias, corrupt government officials, and criminal networks within the Congolese Army (the Armed Forces of the Democratic Republic of Congo – FARDC); and, the ready availability of numerous other sources of illegal revenue.

Following a rapid decline in 2010, artisanal mining jobs have been returning to the region, and the DRC is recording increased production and export of tin, tantalum and tungsten – the so-called “3Ts” – from validated mines.



Numerous governments and credible independent observers report recent positive trends on breaking the links between armed groups and mining for 3T minerals. These officials note a significant reduction in the presence of armed groups – including Congolese armed forces – at 3T mining sites, largely due to increased transparency, monitoring, and control measures. Importantly, the DRC government has increased its involvement by imposing greater controls, taxes, legal enforcement, and oversight. According to the OECD, non-traceable exports of 3T trade at a discount of almost 30% compared to traceable materials.

Increasing governance over 3T mines is partially attributable to the effects of Section 1502. To be clear, this progress is not tied to the paperwork and reporting requirements of the provision, but to the commitment of leading companies – in coordination with governments and civil society – to implement programs and systems that enable responsible sourcing from the impacted region. Altogether, more than 40 smelters now source from the region via validated programs. Responsible in-region sourcing programs still only generate modest global volumes of 3T, but overall conditions are improving.

Unfortunately, this progress on 3T minerals does not extend to gold. Given its high value concentrated in low volumes, gold remains subject to rampant smuggling and chronic interference from armed groups. In fact, dominion over gold mining and trading has become the preferred source of illicit income for armed groups across the spectrum. In a December 2016 report, the United Nations Group of Experts reported that, “gold exploitation and trade remain poorly regulated, and the mineral is by far the one most often used to finance armed elements and criminal networks in the Democratic Republic of the Congo.”¹

¹ See “Letter dated 23 December 2016 from the Group of Experts on the Democratic Republic of the Congo addressed to the President of the Security Council,” December 2016, available at <http://www.undocs.org/S/2016/1102>



In conjunction with the OECD, and with support from the DRC government, the International Peace Information Service (IPIS) is conducting a multi-year study of security conditions at over 1,100 mining sites in the eastern DRC.² IPIS estimates that up to 80% of artisanal miners in the troubled eastern provinces work in the gold sector and adds that, while only 21% of artisanal miners of 3T minerals work under the influence of armed actors, that number jumps to 64% for gold. In 2016, the U.N. Group of Experts also reported that, “Foreign armed groups from Burundi, Rwanda and Uganda continued to operate in eastern Democratic Republic of the Congo.” The United Nations identified these same countries as being routes for non-certified gold smuggled out of the DRC and into global markets.³

Some of the worst and most chronic offenders include criminal networks within the FARDC. In fact, FARDC units and other non-state armed groups alike have become more sophisticated in raising revenue from miners and mine sites. In addition to interfering directly in mining operations, they often set up illegal road blocks and levy unlawful taxes on mineral shipments. They extract recurring payments from miners and mine owners, or impose monopolies over basic consumer goods in and around mine sites. Through these and other tactics, they nonetheless raise revenues from mines that are deemed “green” sites.

Meanwhile, control over mining and minerals distribution is only one of many sources of illicit income for militias, roving criminal groups and corrupt officials. These elements exploit other sources of income, through the sale of products such as timber, charcoal, cannabis and wildlife parts, and through practices

² See OECD “Mineral Supply Chains and Conflict Links in Eastern Democratic Republic of Congo: Five Years of Implementing Supply Chain Due Diligence,” 2015, available at <http://mneguidelines.oecd.org/Mineral-Supply-Chains-DRC-Due-Diligence-Report.pdf>

³ See “Letter dated 23 May 2016 from the Group of Experts on the Democratic Republic of the Congo addressed to the President of the Security Council,” May 2016, available at: <http://www.undocs.org/S/2016/466>



such as human trafficking, forced labor and extortion. Illicit actors routinely raid villages, run black markets for goods, and operate protection schemes. Armed groups have also established operations in the national parks and wildlife preserves, where they profit from illegal charcoal production and the rampant slaughter of threatened and endangered animals.

Overall, Section 1502 has generated real progress in bringing increased transparency to 3T mines and supply chains in the region, and in raising global awareness across the public and private sectors. These advances are fragile and need to be encouraged. However, as controls have increased on 3T minerals, militias, corrupt officials, and criminal networks have increasingly turned to gold and other lucrative methods to generate illicit income.

Section 1502 has generated unintended consequences that have detracted from the provision’s effectiveness. While Section 1502 has yielded some positive impacts – many of which we noted in our 2013 House testimony⁴ – it has also caused some negative unintended consequences. First, along with the 2010 mining ban instituted by the DRC government, the Dodd-Frank Act provision contributed to the *de facto* embargo that governments and independent observers documented in the region beginning in 2010. In brief, many companies abandoned the region to avoid the onerous and potentially severe legal, financial, and reputational risks associated with Section 1502. This caused significant hardship for hundreds of thousands of people who rely on artisanal mining for their sole subsistence in what has been termed the “survival economy”.

Second, Section 1502 has had an inordinate impact on small- and medium-sized enterprises here in the United States and elsewhere. While many of these businesses are not themselves obligated to report to the SEC, they are indirectly subject to the requirements if they are present in the supply chain of a regulated company or companies.

⁴ <http://financialservices.house.gov/uploadedfiles/hhrg-113-ba19-wstate-rgoss-20130521.pdf>



Finally, Section 1502, by focusing almost exclusively on the role of the private sector, has diverted critical attention away from the indispensable role of governments in addressing the endemic political, security, and humanitarian crises in the region. Private sector initiatives alone cannot succeed in a region beset by rampant conflict and corruption, and destabilized by chronic interference and intrusions from neighboring countries. The underlying causes of this regional conflict are political, not economic, and are linked to entrenched ethnic enmities and disputes over political power, land rights, and citizenship. While control over natural resources is in part responsible for fueling violence in eastern Congo, it is striking to note that adjacent areas that are equally rich in resources are not plagued by conflict.

Recommendations to maintain sourcing transparency, promote peace and security in Central Africa, and improve Section 1502 deficiencies. We have several specific recommendations to share, although not all of them are necessarily within the Security and Exchange Commission’s purview to implement absent statutory changes.

Overall, ITI and our members urge Congress to consider ways to overcome the deterrent effects of Section 1502 and provide incentives to companies that responsibly source from Central Africa. These efforts could include lowering the regulatory burden and providing public recognition to those companies that source through approved, in-region programs. The United States and other governments can also support in-region transparency and governance initiatives, place collective pressure on foreign smelters to participate in audit programs, and increase sanctions on those groups and individuals that continue to trade in illicit resources.



Our specific recommendations are as follows:

Expand existing diplomatic efforts to drive peace, security, and governance in Central Africa.

Intensify U.S. Diplomatic Efforts. The United States should increase its support for political and diplomatic solutions that advance regional security, including security sector reform for the Congolese military and police forces, and efforts to protect civilian populations. This could include targeted sanctions, as well as continued support for the United Nations Stabilization Mission in the DRC, for the Public-Private Alliance for Responsible Minerals Trade, and for related regional governance and transparency initiatives.

Provide Targeted Development Aid. The biggest advances in responsibly sourcing in the region have come from bringing the mining sector – including artisanal miners – into a more formalized process. The mining sector in the DRC desperately needs infrastructure development in the form of roads and electricity, and access to basic financial and banking resources for legitimate operators.

Maintain U.S. leadership on sourcing transparency to support continued progress in Central Africa and avoid unintended outcomes.

Maintain U.S. Leadership. By enacting Section 1502, the United States set the stage for global conflict minerals approaches. U.S. action sends a strong signal to global markets about the need to break the link between armed groups and natural resources, and the European Union and other jurisdictions have acted to complement the U.S. approach. Should the federal government cease its engagement altogether, we may collectively suffer two major unintended consequences:



First, we may lose the tenuous progress we have achieved in the region through collective industry pressure on global supply chains. While many tech companies have publicly committed to continuing their due diligence efforts regardless of the fate of Section 1502, our influence will become significantly diluted should other sectors not remain at the table. This is especially true given that our sector is only a minor consumer of gold – the primary source of illicit mineral income in the region. Moreover, should the demand for conflict free minerals diminish, we could see detrimental impacts on the roughly 1,000 3T mines that are validated as responsible, potentially increasing regional volatility and armed group activity.

Late last month, here in Washington, I had the pleasure of meeting a government delegation from the Democratic Republic of the Congo, including the Congolese Ambassador to the United States and representatives from the Ministry of Mines. The DRC government reiterated its strong support for the proper application of the OECD Due Diligence Guidance in the region, and raised concerns that a contraction of U.S. engagement on natural resources could have several unwelcome consequences. The DRC delegation identified these potential consequences to include:

- Escalating in the activities of non-state armed groups;
- Weakening policies to promote good business practices around the responsible supply of minerals in the DRC and throughout the region; and,
- Discouraging regional governments from implementing the tools to combat the illegal exploitation of resources.

Second, other geographies will almost certainly impose regulations on U.S. companies, causing a potential disruption in programs and systems due to inconsistent or conflicting requirements. ITI represents global companies, and the importance of private sector due diligence related to conflict minerals will not recede if Section 1502 is stayed or repealed.



Advance the OECD Due Diligence Guidance. The OECD Due Diligence Guidance forms the backbone of Section 1502 compliance. It has also become the international norm as the European Union, the International Conference on the Great Lakes Region, and China now reference it. Where the U.S. approach is prescriptive, top-down and outcome-based, the OECD Guidance is process-based and risk-based, and assigns roles and responsibilities based on each actor’s relative position within the supply chain.

Consider removing the requirements of Section 1502 that have increased costs and burdens while failing to promote progress in the region.

Remove the Provisions that Discourage Legitimate Businesses from Sourcing from the Region. Certain requirements of Section 1502 dissuade companies from remaining economically engaged in the region. While some of these obligations have been partially set aside by the recent federal court ruling, the most punitive provisions include the independent private sector audit, the preparation and formal submittal of the Conflict Minerals Report to the SEC, and the need to characterize products. These obligations result in costly paperwork and duplicative due diligence exercises that generate little or no benefit in the impacted region.

Move Any Requirements from Securities Law. Section 1502 creates competitive disadvantages between publicly-traded and privately-held companies, and between U.S. and foreign companies. Any federal efforts on conflict minerals should apply evenly to avoid these competitive disruptions.

Conclusion

While imperfect, Section 1502 has brought concerted industry pressure on global supply chains to responsibly source these minerals, and has helped bring desperately needed international attention to the ongoing conflict in Central



Africa. Our member tech companies have established a strong record of dedication and achievement in driving transparency throughout our global supply chains to meet our public commitments even in the absence of legal requirements. Ultimately, though, our sector's commitment to sustainability and corporate social responsibility alone cannot bring peace and security to the Congo, and in the absence of concerted government and civil society engagement, the status quo will reign in Central Africa.

Thank you again for the invitation to testify today. I would be pleased to answer any questions.