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BEFORE THE SUBCOMMITTEE ON INTERNATIONAL MONETARY POLICY AND TRADE OF THE HOUSE FINANCIAL SERVICES COMMITTEE

"The Costs and Consequences of Dodd-Frank Section 1502: Impacts on America and the Congo"

May 10, 2012 10:00AM in Room 2128 Rayburn HOB, Washington, DC

Mr. Chairman, thank you for holding this important hearing today. I only wish we had a similar legislative hearing on this topic prior to Section 1502 becoming law.

As a Member who also serves on the House Foreign Affairs Committee, I am well aware that there is no doubt that the situation in eastern region of the Democratic Republic of the Congo (DRC) is horrendous. Human rights abuses are rampant; militias operate with impunity; and the international community seems powerless to affect change.

But I also know that oftentimes, unilateral trade sanctions backfire on the very people we are trying to help. In addition, because legislative language wasn't fully vetted and included at the last minute into an unrelated bill dealing with preventing another 2008 financial crisis, Congress passed the buck to the Securities and Exchange Commission (SEC) to resolve complex issues through rulemaking. This is unlike the Iran sanctions provision we included in the Ex-Im Bank reauthorization bill yesterday in which all interested parties were at the table to develop a set of workable provisions that accomplishes the goal of the sanctions without harming the global competitiveness of U.S. companies.

This reminds me of two previous examples of flawed policy. First, Congress passed comprehensive sanctions against Sudan without realizing that the primary source of the world supply of gum arabic is Sudan. Gum arabic is used in a wide variety of industrial applications, from soda and candy to pharmaceuticals and newspaper print. So, if Congress had done its homework in advance, there could have been some modifications made to the sanctions against Sudan. Instead, Congress had to spend enormous effort after the fact to enact an exemption for gum arabic.

Second, in 1990, Congress passed into law the *Fastener Quality Act* in response a collapsed pedestrian walkway in a Kansas City hotel atrium. The blame was initially incorrectly placed on fasteners that did not bear the load. Nonetheless, this law was quickly passed prior to understanding all the facts about the walkway collapse and required the testing of every fastener greater than ¼ of an inch in diameter used in a "critical application" at labs certified by the National Institutes of Standard and Technology (NIST). When the draft rule came out for public comment, NIST wasn't going to say that that certain applications weren't "critical" (because what would you say

if your child became injured on a playground set because of a flawed fastener?), so NIST required every fastener greater than ¼ of an inch to be tested. This proposed rule would have devastated the U.S. fastener industry, particularly when imported products that included fasteners would not be subject to the same testing requirements. It took several years of work but we finally got the law changed that allowed sample batch testing of fasteners.

Just like the *Fastener Quality Act*, we need flexibility in this new law so that it becomes practical to implement but still maintains the goal of the legislation. It is also in the interest of the advocacy groups who pushed for the adoption of this new law because U.S. small businesses will have legal standing to challenge the SEC rule, if it does not change, in court because the rule violates another U.S. law – the Regulatory Flexibility Act. The independent Office of Advocacy at the Small Business Administration (SBA) informed the SEC last October that their Initial Regulatory Flexibility Analysis (IRFA) was flawed because it "underestimated the number of small businesses that would be impacted by the proposed rule." A properly researched Regulatory Flexibility Analysis is a prerequisite prior to finalizing any proposed rule. The Office of Advocacy recommended that the SEC start again and publish a new IRFA that would more accurately describe the costs and burdens of the proposed rule. With a more accurate IRFA, then the SEC would be able to consider less burdensome alternatives to the proposed rule. But if the SEC does not follow this advice, then affected small businesses in a wide range of industries would be able to come together to challenge this rule in federal court and would most likely prevail.

We all share the same goal of ending the conflict in the eastern region of the DRC and crippling the militias. We all share the goal of the legislation to end the trade in the minerals that benefit the militias. The key is how to do it in the most effective manner possible that does not penalize Congolese and neighboring African miners who are not involved in the conflict. We also must make sure that the rule does not unintentionally benefit our foreign competitors, particularly in China, and harm our small businesses. I look forward to listening to the statements of the witnesses on how to accomplish these important goals.