DEMOCRATIC REPUBLIC OF THE CONGO

TRADE SUMMARY

The U.S. goods trade deficit with the Democratic Republic of Congo (DRC) was $439 million in 2011, up $5 million from 2010. U.S. goods exports in 2011 were $166 million, up 78.3 percent from the previous year. Corresponding U.S. imports from the DRC were $606 million, up 14.8 percent. The DRC is currently the 136th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in the DRC was $129 million in 2010 (latest data available), down from $169 million in 2009.

IMPORT POLICIES

Tariffs

The DRC is a member of the WTO, the Central African Economic Community (CEEAC), the Great Lakes Economic Community, the Common Market for Eastern and Southern Africa (COMESA), and the Southern African Development Community (SADC). Because the DRC government is strongly dependent on tariff revenue, the DRC does not currently participate in the COMESA or the SADC free trade areas. However, as of January 2012, the DRC is preparing to join the free trade areas of the COMESA, the SADC, and the CEEAC.

The DRC has liberalized its importation regime since the beginning of the 1990s. According to the WTO, the DRC's average applied tariff rate was 12 percent in 2008. All DRC's tariffs are *ad valorem* and charged on a cost, insurance and freight (CIF) basis. The tariff structure consists of three bands: 5 percent for equipment goods, raw materials, agricultural and veterinary supplies and unassembled equipment; 10 percent for large consumable food items, industrial inputs, spare parts, and items for social services, such as hospitals and disabled persons; and 20 percent for clothing, furniture, cigarettes, and other finished products.

A new value-added tax (VAT) ratio of 16 percent came into effect on January 1, 2012. The VAT replaces the previous consumption tax (ICA). The adoption of the VAT should increase collection of fiscal revenues and appears to be more transparent than the ICA, however, businesses fear that it could lead to price inflation. Certain products are exempted from the VAT, including wheat, flour, oil, milk, pharmaceuticals, and agricultural inputs. The Directorate General of Taxes (DGI) has published on its website a list of those goods and services subject to, and exempt from, the VAT.

In addition to tariffs, there are several taxes collected on imported goods by different government agencies. These additional taxes that importers pay on goods and services average between 10 percent and 40 percent. The primary DRC agencies that collect taxes on imports include the following: the customs authority (DGDA), tax authority (DGI), General Direction of Administrative Incomes, Industrial Promotion Fund, Office of Maritime Freight Management, National Office of Transportation, and the Import-Export Control Agency (OCC).

The DGDA assesses and collects tariffs and duties based on established rates under the DRC's tariff schedule. The OCC charges a 2 percent tax (*ad valorem*) on the CIF value of all imports exceeding

$2,500, plus an additional charge of $5 per ton of goods, and uses a sliding scale for imports valued less than $2,500. Importers of duty-free goods must pay an *ad valorem* administrative fee of five percent.

Customs Procedures

The DRC's expensive, slow, and burdensome customs procedures impede the country's integration into the global marketplace. To streamline customs procedures as well as improve the DRC's investment climate, President Kabila promulgated a new customs code in August 2010. The new customs code provides numerous potential improvements, such as simplified customs procedures, intellectual property rights protection, verification of goods before payment, payment facilities, established special economic areas, and a customs decision appeals process.

Since June 2006, a French-owned company has been the DRC's authorized agent for pre-shipment inspection (PSI) of imports valued at $2,500 or more. Firms exporting to the DRC must provide the PSI agent with an invoice containing a detailed description of the goods that will be shipped and a statement accepting inspection. Imports that arrive in country without a PSI certificate are charged 40 percent of the free-on-board value. Other required shipment documents are a commercial invoice, packing lists, bills of lading/airway bill, import license, *pro forma* invoice, the U.S. shipper's export declaration, an insurance certificate, and often a certificate of origin.

A U.S. company is currently experiencing a third occurrence of extreme retroactive taxation for an unsubstantiated customs infraction by the DRC Customs office in the amount of $969 million. The taxation issue was resolved during the mining contract revisitation process of 2009 and subsequently raised and resolved again in 2010. The DRC Customs office is currently threatening to stop the U.S. company from exporting or to automatically deduct the amount from the company if it is not paid.

GOVERNMENT PROCUREMENT

The DRC's public administration reforms implemented since 2002 have allowed foreign suppliers to bid on government contracts. However, contracts on public procurement have sometimes been carried out without complying with international standards, thus reducing transparency.

With sponsorship and technical assistance from the World Bank, a tender board now operates under the supervision of the Ministry of Budget. In April 2010, President Kabila promulgated a new public procurement law which, according to analysts, should facilitate transparency and competitiveness among local and international companies. The World Bank provided financial and technical assistance for development of the new procurement law. The law should facilitate participation in procurement by both foreigners and national suppliers. The DRC has also adopted key implementing steps, institutions, and a manual of procedures to implement the new procurement law.

The DRC is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In theory, intellectual property receives full legal protection in the DRC under the 2006 Constitution, but the DRC's enforcement of its intellectual property rights (IPR) regulations is weak. Pirated books, sound recordings, and visual media are readily available. Privately-owned television stations in Kinshasa routinely broadcast U.S. films apparently without securing exhibition rights from the owners. The DRC is also unable to prevent most pirated goods from being imported into the country or their subsequent distribution and sale. However, the DRC is working to improve IPR related legislation and build its capacity for implementation and enforcement. Additionally, DRC officials have participated in several U.S. Government-sponsored training programs organized by the U.S. Patent and Trademark Office.

INVESTMENT BARRIERS

The DRC remains a highly challenging environment in which to do business. Underdeveloped infrastructure, inadequate contract enforcement, limited access to credit, continued insecurity in the eastern part of the country, lack of adequate intellectual property rights protection, administrative and bureaucratic delay, corruption, and ineffective enforcement of laws and regulations continue to constrain private sector development. Despite these challenges, there are few formal impediments to foreign investment in the DRC.

The one-stop shop or "*guichet unique*," established in 2005 within the National Agency for the Promotion of Investment, aims to simplify the process of registering a company by unifying under one roof the required procedures of various government ministries. However, the "*guichet unique*" lacks sufficient authority to approve licenses, permits and other requirements, and therefore has had limited success in expediting company registration. The most time-consuming step to establish a company is securing a presidential decree.

In October 2010, the government completed a lengthy review of 61 mining contracts between DRC public enterprises and private companies dating from 1997-2002. The review, which was initiated in 2007, led to the renegotiation or cancellation of many contracts, faced numerous delays and attracted criticism over its lack of transparency. In October 2011, the IMF and World Bank criticized two August 2011 mining contracts that the state-owned copper mining company, GECAMINES, concluded without proper adherence to transparency principles. As a result, the IMF has refused to conclude its fourth review of the DRC under the PEG 2 (the DRC government's Economic Program) until the DRC addresses these issues. According to a November 2011 British Parliamentarian's report, questionable sales of mines and oil assets owned by public enterprises have cost the DRC treasury more than $5.5 billion over the past four years.

In 2008, the DRC became a candidate for membership in the Extractive Industries Transparency Initiative (EITI), an effort to increase transparency in transactions between governments and companies in the extractive industries organized by foreign assistance agencies from multiple countries. Though the government has taken some positive steps under EITI, including establishment of a National EITI Committee, publication of the first report on EITI in the DRC, and the hiring of an independent auditor to carry out the validation of the EITI process, the DRC did not meet its March 9, 2010 validation deadline. The EITI Secretariat granted the DRC a six month extension to complete validation. The report was subsequently validated by the independent auditor, approved by the National EITI Committee and transmitted to the President of the International EITI Secretariat in Berlin on September 8, 2010. The validation of the first EITI report was hailed as an important step towards improving transparency and accountability in DRC's management of natural resources. On December 14, 2010, the EITI Board designated the DRC as an EITI Candidate Country that is "close to compliant" and gave the DRC six months (until June 12, 2011) to complete the remaining steps in order to achieve "compliant" status. However, the DRC did not meet the Board's requirements. The EITI Secretariat has given the DRC an 18 month extension until March 2013 by which time it must become compliant or withdraw from EITI consideration for membership.

OTHER BARRIERS

Corruption

U.S. businesses often complain about corruption in the DRC, citing it as a principal constraint to doing business in the country. Protracted negotiations with numerous officials are mandatory in commercial matters.

In principle, there are legal provisions for fighting corruption. The DRC is a member of the UN Anti-Corruption Convention and passed its own anticorruption law in 2003. Additional legislation includes the 2004 Money Laundering Act, under which the DRC cooperates with African and European crime fighting organizations. Despite these reform efforts, bribery is still common in business transactions, especially in the area of government procurement, dispute settlement, and taxation.

Bribery is illegal in the DRC and, in principle, is investigated and prosecuted. While current law calls for imprisonment and fines of both parties involved in bribery no matter the circumstances, enforcement remains a challenge.

Bureaucracy

As is the case in much of the DRC's business environment, many of the country's trade barriers result from complex regulations, a multiplicity of overlapping administrative agencies and a frequent lack of professionalism and control by officials responsible for the regulatory environment. The DRC has numerous agencies with legal authority in trade matters. Required signatures are often difficult to obtain, and regulations are complex and poorly codified. Enforcement of regulations varies widely across the country. Many local traders run their own private networks for expediting the movement of goods.

To ensure a secure legal and judicial environment in the DRC, Parliament approved a law in December 2009 authorizing the DRC's accession to the Organization for the Harmonization of Business Law in Africa (OHADA), and President Kabila promulgated this law in February 2010. The core purpose of OHADA is to promote economic development and integration between its members, as well as to ensure a secure legal and judicial environment in Africa. The government officially launched the National OHADA Commission in April 2010. The DRC had expected to complete OHADA accession by November 2010, and the OHADA treaty was to have taken effect on January 1, 2011. However, President Kabila ordered that judges be trained in the OHADA law prior to signing and depositing the instrument of OHADA accession. As of January 2012, the government had not completed OHADA accession.

Deficient Infrastructure

The DRC is slowly emerging from more than three decades of mismanagement, pillaging and war. All of these factors have negatively affected the country's physical infrastructure, especially the condition and security of transportation links. President's Kabila's five year national development plan, known as the "Five Pillars," is currently focusing on five priority areas: infrastructure, employment, education, water/electricity, and health. Numerous road, rail, and hydroelectric projects are underway, but progress is slow and the government continues to seek financing for its extremely long list of needs.