

DEMOCRATIC REPUBLIC OF THE CONGO

TRADE SUMMARY

The U.S. goods trade deficit with the Democratic Republic of Congo (DRC) was \$251 million in 2009, up \$115 million from 2008. U.S. goods exports in 2009 were \$80 million, down 38.7 percent from the previous year. Corresponding U.S. imports from the DRC were \$331 million, up 24.2 percent. The DRC is currently the 147th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in the DRC was \$21 million in 2006 (latest data available).

IMPORT POLICIES

Tariffs

The DRC is a member of the World Trade Organization (WTO), the Central African Economic Community, the Common Market for Eastern and South African Countries (COMESA), and the South African Development Community (SADC). The DRC does not participate in the COMESA or SADC free trade areas, in part due to the DRC government's strong dependency on revenues from tariffs.

According to the WTO, the DRC's average applied tariff rate was 12 percent in 2008. Most tariffs are *ad valorem* and are charged on a cost, insurance, and freight (CIF) basis. The DRC's tariff structure consists of three tariff 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 other finished products. The Office of Congolese Control (OCC), DRC's import-export control authority, charges a 1.5 percent tax (*ad valorem*) on the CIF value of all imports exceeding \$10,000 and uses a sliding scale for imports valued less than \$10,000.

Customs Procedures

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 greater. 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/air waybill, import license, *pro forma* invoice, the U.S. shipper's export declaration, an insurance certificate, and (sometimes) a certificate of origin.

GOVERNMENT PROCUREMENT

The DRC has initiated new procurement procedures with the assistance of the World Bank. A new public procurement law aimed at countering misappropriation of public funds during bidding procedures is pending approval by Parliament.

The government's public administration reforms implemented since 2002 have allowed foreign investors to bid on government contracts. Foreign firms may be favored in the bidding process because they have easier access to international insurance funding guarantees. With the sponsorship and technical assistance of the World Bank, a tender board now operates under the supervision of the Ministry of Budget. However, contracts are often negotiated directly with the DRC government without the use of an

international tender process, thus reducing transparency. Normally, public companies and parastatals do not participate in the bidding process due to the required financing guarantees.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In theory, intellectual property receives full legal protection in the DRC under the 2006 DRC Constitution, but enforcement of 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 government is also unable to prevent most pirated goods from being imported into the country or their subsequent distribution and sale. However, the government is working to improve IPR related legislation and build its capacity for implementation and enforcement, and 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 DRC, lack of adequate intellectual property rights protection, and high levels of both bureaucracy and corruption continue to constrain private sector development. Despite that, there are no formal impediments *per se* to foreign investment by any private or public company in the DRC. Problems lay on the administrative and/or bureaucratic side since laws and regulations are often ineffectively enforced. Draft laws and regulations are not distributed for public discussion and comment.

In 2007, the government launched a review of 61 mining contracts entered into with the government prior to 2002 that may have been negotiated in less than transparent circumstances. The mining contract review process has been characterized by numerous delays and a lack of transparency, with little information provided by the government to foreign (including American) investors. The government reached agreement in December 2008 with all but six of the companies under review. Subsequently, all but two of these six companies have reached agreement with the government. Of these two companies, the government canceled the mining contract with one of them and is still in protracted negotiations with the other one. The opaque mining contract review process has highlighted the government's inability to guarantee protection of rights already secured by foreign investors, which discourages future investment.

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

In 2008, the DRC became a candidate for membership in the Extractive Industries Transparency Initiative (EITI), a multi-stakeholder effort to increase transparency in transactions between governments and companies in the extractive industries. Though the government has taken some positive steps under EITI, including establishment of a National EITI Committee, implementation of necessary steps toward EITI membership has been slow to date.

OTHER BARRIERS

Corruption

U.S. businesses often complain about corruption in the DRC, citing it as a principal constraint to doing business. Protracted negotiations with numerous officials are mandatory in commercial matters. During the Mobutu regime's 30 year rule, a culture of corruption in the DRC became deeply entrenched and has been difficult to root out.

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 public and private 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. Current law calls for imprisonment and fines of both parties involved in bribery no matter what the circumstances. However, law enforcement remains a challenge in this area. In order to enforce anticorruption laws, President Kabila launched a "zero tolerance" campaign in early September 2009. Within this framework, he set up the DRC Financial Intelligence Unit for combating money laundering and misappropriation of public funds.

Bureaucracy

As is the case in much of the Congolese 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. The DRC government has formally or informally suspended many regulations as a result of the economic upheaval of the 1990s and the rapid spread of corruption.

Deficient Infrastructure

The DRC is slowly emerging from more than three decades of mismanagement, pillaging, and war. All of these factors have negatively impacted the country's physical infrastructure, which constrains the flow, mobility and security of transportation links.