

III. TRADE POLICY AND PRACTICE BY MEASURE

(1) INTRODUCTION

1. The Congo applies the CEMAC acts concerning the common external tariff (CET), the generalized preferential tariff (GPT) and the application of internal taxes, adopted at the time of the 1993 tax and customs reform. All the Congo's 2006 tariff rates are strictly *ad valorem*, the simple average being 18.7 per cent. The application of other entry duties and taxes raises this average to 22.35 per cent. The tariff is characterized by mixed escalation due to the relatively high level of protection accorded to unprocessed agricultural products. Internal taxes (VAT and, where appropriate, excise duties) are also levied at the customs cordon but, unlike similar imported products, locally manufactured goods such as wheat flour and mineral water are exempt.

2. In general, imports valued at CFAF 3 million or more are subject to pre-shipment inspection with payment of the relevant charges (0.9 per cent of the f.o.b. value). The Congo is having some difficulty implementing the WTO Agreement on customs valuation. It has bound the rates corresponding to 17.8 per cent of its tariff lines, including all those applying to agricultural products (WTO definition). The other charges and taxes on these products are bound at the zero rate, but the Congo applies some of them to imports. The Congo has no contingency measure legislation and has never applied such measures.

3. The Congo applies an import licensing regime to staple foods; sugar marketing is a monopoly of the Agricultural Company for the Industrial Refining of Sugar (SARIS-Congo), and the importation of wheat flour is subject to a quota in order to protect the domestic producer (MINOCO). This regime is accompanied by price controls on the products concerned applied via an authorization process; the aim is to control the supply and prices of these products on the domestic market. A law adopted by Parliament but not yet promulgated at the time this report was being finalized in July 2006, amends certain aspects of this licensing regime. An administrative price control regime also applies to petroleum products, water, electricity, and postal and telecommunications services. The Congo applies sanitary and phytosanitary measures (for example, to combat bird flu), although they have not been notified to the WTO.

4. Advantages, including tax concessions, are granted to State-approved oil companies, as well as to enterprises approved under the Investment Charter. Duties and taxes are collected on exports and in particular on wood exports. Exports of rough timber in excess of the authorized threshold are subject to an export surcharge. Moreover, export earnings must be repatriated and converted into CFA francs within 30 days of exportation. The Congo does not have standardization legislation or a comprehensive competition policy. It has updated its industrial property regime as a result of the ratification in 2001 of the revised Bangui Agreement (1999) with a view to harmonizing it with the provisions of the WTO's TRIPS Agreement; the copyright and related rights regime has not been updated. The government procurement system, which dates from 1982, is in process of being revised to align it on the relevant international standards. The Congo is continuing with the implementation of an ambitious privatization programme.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Registration

5. To be a trader, economic operators must obtain an installation licence from the Ministry responsible for trade; be authorized and enrolled in the Trade and Personal Property Credit Register; be registered in the files of the National Centre for Statistics and Economic Studies; obtain a unique identification number from the Directorate General of Taxes; be registered with the Chamber of

Commerce, Industry, Agriculture and Trades; and be registered with the National Social Security Fund.¹ These conditions are the same for both nationals and foreigners. The registration formalities can be completed at the Single Window of the Business Formalities Centre (CFE)², at Brazzaville, Pointe-Noire, Ouesso and Nkayi.³ Since June 2006, the importation and wholesale distribution of tradable goods and services have been activities reserved for legal persons and are no longer open to natural persons⁴, the aim being to make the import-export business more formal.⁵

6. The trader's card is a numbered card signed by the Minister responsible for trade. Operators engaged in importing for commercial purposes must hold a trader's card marked "importer", while those engaged in exporting for commercial purposes must hold a card marked "exporter"; in both cases, the trader is required to pay the business licence fee.⁶ The card is valid for five years for Congolese and three years for foreigners and can be renewed.⁷

7. The importation of forest products is subject to special approval conditions, except in the case of forestry enterprises.⁸ Special conditions also apply to persons seeking approval to import petroleum products.⁹

(ii) Customs procedures

8. Like the other CEMAC countries, since 2001 Congo has applied the CEMAC Customs Code¹⁰ to the importation, exportation and re-exportation of goods. This Code is administered by the customs authorities of each member State. The suspensive customs procedures for which the Code provides include transit; temporary admission; and customs warehousing. The processing or economic procedures are: inward processing; outward processing; drawback; and processing of goods for release for consumption. The other customs procedures are: importation or release for consumption; exportation and re-exportation. Goods are cleared either by their owners or, mandatorily, by customs agents approved by CEMAC.¹¹

9. A mandatory programme of inspection of goods being shipped to the Congo has been applied since 1995¹²; since March 2006 this programme has been entrusted to COTECNA. According to the contract supplied by the authorities, COTECNA has the following responsibilities for goods covered by the contract: physical examination of the goods to verify their quality, quantity and origin; the

¹ Law No. 19-2005 of 24 November 2005.

² Decree No. 95-193 of 18 October 1995.

³ Decree No. 95-96 of 29 May 1995 establishes the charges for administrative formalities at the single windows. According to the table provided by the authorities, the charge for setting up a one-man business is CFAF 60,000, while that for forming a company is CFAF 95,000; in each case, payment gives entitlement to a trader's card. Foreign enterprises that carry on a temporary commercial activity are subject to more onerous conditions. Foreign economic operators who are not nationals of CEMAC countries must set up a company and pay a deposit amounting to 1 per cent of the share capital fixed at a minimum of CFAF 1 million.

⁴ These persons carry on their activities by means of shops and stalls or display retail trade. Display retail trading is reserved for Congolese nationals (Article 11 of Law No. 19-2005 of 24 November 2005).

⁵ Article 13 of Law No. 19-2005 of 24 November 2005.

⁶ Articles 277-327 of the General Tax Code establish the amount of the business licence fee on the basis of three criteria: the nature of the activity; the class of activity; and the locality in which it is carried on.

⁷ The charge for renewing a trader's card is CFAF 30,000.

⁸ Articles 127 and 128 of Decree No. 2002-437 of 31 December 2002.

⁹ Decree No. 2005-83 of 28 December 2005. A fee of CFAF 700 million must be paid to obtain approval to operate as an importer of petroleum products.

¹⁰ Regulation No. 5/01-UDEAC-097-CM-06.

¹¹ Article 1 of the CEMAC Customs Code.

¹² Decree No. 95-147 of 8 August 1995.

customs classification of the goods and their eligibility for a particular customs procedure; price verification on the basis of which COTECNA provides a report in conformity with the Agreement on Implementation of Article VII of the GATT 1994 (WTO Customs Valuation Agreement); and identification and indication of the elements relating to the transaction as defined under the WTO Customs Valuation Agreement. In principle, the Congo has applied the WTO Customs Valuation Agreement since 1 August 2001¹³, and its provisions have been incorporated verbatim into the CEMAC Customs Code.¹⁴ However, the effective implementation of the Agreement is posing certain problems and technical assistance is requested in order to build human resources capacity in this area.

10. The threshold for the application of this inspection programme is fixed at CFAF 3 million.¹⁵ Every importer must lodge a prior import declaration (DPI), approved and signed by the Minister responsible for trade, together with the pro forma invoice/purchase order and a receipt for the inspection fees (0.9 per cent of the f.o.b. value, with a minimum of CFAF 65,000). The inspection procedure gives rise to an inspection report. If the results of the inspection are satisfactory, an import (ADVI) or export (ADVE) certificate is issued. If the results of the inspection are not satisfactory, COTECNA issues a discrepancy report; an internal COTECNA appeals procedure is available in the event of disputes. The ADVI is mandatory for clearing imports. The ADV indicates the tariff heading, the customs value and the total amount of duties and taxes payable; it must be accompanied by the import attestation endorsed by the bank with which the transaction is domiciled (if the value exceeds CFAF 5 million), the commercial invoice, the transport documents and, where applicable, the certificate of origin, the certificate of conformity and the sanitary or phytosanitary certificate.

11. The processing of customs declarations is computerized, on the basis of the Automated System for Customs Data (ASYCUDA++), in the customs offices of Pointe-Noire¹⁶, Brazzaville, Pokola (Sangha), and Nzassi (Kouilou). According to the authorities, the great majority of customs transactions are processed by computer. An automation fee of 2 per cent is applicable to all transactions forming the subject of customs procedures.¹⁷ A maximum of five days is required for clearance, reckoned from the date of lodgment of a complete set of supporting documents.

(iii) Rules of origin

12. The Congo does not have national rules of origin for non-preferential purposes. However, as a member of the CEMAC customs union, in principle it also uses the Community rules of origin for non-preferential purposes.¹⁸ For the purposes of application of the generalized preferential tariff (TPG), Community origin is certified by the CEMAC movement certificate.¹⁹ Community origin is

¹³ Decree No. 2001-387 of 31 July 2001.

¹⁴ Title 1, Chapter IV, Section IV.

¹⁵ The following are exempt from COTECNA inspection: precious stones and metals, works of art, crude oil and refined products, arms and ammunition, other than for hunting or sport, explosives and pyrotechnic devices, live animals, perishable consumer goods, fresh or chilled (meat, fish, fruit and vegetables), recycled metals, plants and cut flowers, cinematographic film, printed and developed, current newspapers and periodicals, postal and fiscal stamps, stamped paper, banknotes, chequebooks, personal effects and used domestic objects (including motor vehicles), personal gifts sent by foreign residents to their close relatives for their personal use, postal parcels, commercial samples, crude oil and refined products, gifts in kind offered to the Government, supplies for diplomatic and consular missions or UN agencies (imported for their own needs), "free-shop" imports to be sold for export, and pharmaceutical products.

¹⁶ There is a single window project intended to facilitate trade (Chapter IV(5)(ii)(a)).

¹⁷ Law No. 33-2003 of 31 December 2003.

¹⁸ Article 22 of the CEMAC Customs Code.

¹⁹ Chapter III of Act 7/93-UDEAC-556-SE1.

conferred on products which are: (a) wholly obtained in CEMAC member States²⁰; (b) local; or (c) manufactured on CEMAC territory.²¹

13. In 2006, Community origin is, in principle, conferred on industrial products if at least 50 per cent, in value terms, of the total raw materials used in their manufacture are of Community origin. Approval is granted by the CEMAC Council of Ministers. Once the CEEAC TPG is operational, other rules of origin will, in principle, enter into force at CEMAC level and reduce this threshold to 35 per cent.²²

(iv) Customs levies

(a) Import duties and taxes

Overview

14. The Congolese authorities have approved the transmission to the WTO's Integrated Database (IDB) of the tariff data gathered by the Secretariat during the preparation of this report. Prior to that, Congo had not communicated any such data to the IDB.²³

15. All Congolese customs duties are *ad valorem*. Imports under the release for consumption procedure are subject to various import duties and taxes, specifically: the common external tariff (CET), statistical tax, Community integration tax (TCI), Community integration contribution (CCI), OHADA levy, automation fee, and inspection fees for qualifying transactions. In all cases, the tax base is the c.i.f. value at importation. VAT, as well as, for some products, excise duty, is levied by customs on the basis of the c.i.f. value plus import duties and taxes, and Brazzaville municipal tax at the custom-house in the capital. An advance payment on income taxes, or the flat-rate taxes payable in their stead, is also levied at the customs cordon.

16. In 2004, the Congo's revenue from the CET amounted to about 40 per cent of customs revenue from imports and exports (Table III.1). It should be noted that, since 2000, the Congo has revised its import tax regime, in particular by abolishing the temporary surcharge, since 2002²⁴, and by increasing the automation fee, in 2003, and the Community integration contribution (CCI) in favour of CEEAC, in 2004.

Table III.1
Revenue from the taxation of international trade, 2000-2004
(CFAF million)

	2000	2001	2002	2003	2004
CET	27,295	38,501	36,595	32,479	33,932
Excise duty	1,558	2,028	1,079	747	677
Surcharge	476	178	0	0	0
Disputes	157	300	270	483	601

Table III.1 (cont'd)

²⁰ For example, minerals extracted from the soil or seabed, and the products of agriculture, fishing and hunting or goods made wholly from these products without imported inputs.

²¹ Act No. 7/93-UDEAC-556-CD-SE1, amended by Act No. 1/98-UDEAC-1505-CD-61.

²² Decision No. 03/CEEAC/CCEG/XI/04 defines rules of origin that establish a 35 per cent threshold for the incorporation of raw materials of Community origin.

²³ WTO document G/MA/IDB/2/Rev.23 of 27 March 2006.

²⁴ The CACEU member countries had the right to apply a temporary surcharge on a list of goods (Annex IB to Act No. 7/93-UDEAC-556-CD-SE1) for a maximum period of six years ending on 30 June 2000.

	2000	2001	2002	2003	2004
Ancillary charges	72	65	172	34	0
Export duties	9	4	2	1	19
TCAE	57	85	61	49	74
Timber fee	1,286	2,004	2,946	7,651	10,103
Automation fee	0	0	0	3 919	7,223
Other revenue	102	1	10	39	145
Total	31,013	43,165	41,134	45,401	52,775
VAT	26,032	36,180	32,419	25,541	26,481
Total, budgetary	67,832	95,370	83,585	70,943	79,256
Timber levy	410	579	825	156	0
Road fund	21	32	50	54	67
Municipal tax	362	89	114	91	222
Statistical tax	235	353	338	407	632
TPC	66	81	81	19	0
TCI	372	557	1,947	1,869	1,936
CCI	0	0	0	0	945
A.R.	7	0	0	44	1
T.H.B.	1,472	1,691	3,355	2,639	3,802
Total, overall	69,303	97,061	86,939	73,582	83,058

Source: Congolese authorities.

The applied MFN tariff

17. Congo's 2006 applied MFN tariff has 5,794 8-digit lines (Table AIII.1). It is based on the 2002 version of the Harmonized Commodity Description and Coding System (HS) (Table III.2). In the CEMAC CET rates vary according to the category of product: basic necessities (5 per cent); raw materials and capital goods (10 per cent); intermediate and other (20 per cent); and final consumer goods (30 per cent). The zero rate is applied to 32 tariff lines relating to products covered by the Florence Agreement adopted by UNESCO²⁵ and to cement²⁶, that is, a total of 37 lines.

Table III.2
MFN tariff structure, 2006

	2006	Uruguay Round ^a
1 Tariff lines bound (as a percentage of all tariff lines)	17.8	17.8
2 Tariff lines eligible for duty-free entry (as a percentage of all tariff lines)	0.6	0.0
3 Duties other than <i>ad valorem</i> (as a percentage of all tariff lines)	0.0	0.0
4 Tariff quotas (as a percentage of all tariff lines)	0.0	0.0
5 Duties other than <i>ad valorem</i> without any AVE (as a percentage of all tariff lines)	0.0	0.0
6 Simple average rate	18.7 ^b	27.4
Agricultural products (WTO definition)	23.0	30.0
Non-agricultural products (WTO definition) ^c	17.9	14.3
Agriculture, fishing, hunting and forestry (ISIC 1)	23.7	300
Mining and quarrying (ISIC 2)	11.4	n.a.
Manufacturing (ISIC 3)	18.4	26.2
7 National tariff peaks (as a percentage of all tariff lines) ^d	0.0	0.0

Table III.2 (cont'd)

²⁵ Act No. 28/94-UDEAC-556-CD-56.

²⁶ Law No. 20-2004 of 30 December 2004 re-established the CET on imported cement, but in practice the zero rate remains provisionally applied.

		2006	Uruguay Round ^a
8	International tariff peaks (as a percentage of all tariff lines) ^e	50.9	87.9
9	Overall standard deviation of rates applied	9.6	7.1
10	Nuisance duties (as a percentage of all tariff lines) ^f	0.0	0.0

n.a. Not applicable.

a Indicators 2 to 10 are based solely on the 1,031 bound tariff lines.

b Does not include the duties and taxes additional to the customs duty applied under the CACEU Common External Tariff (CET).

c Excludes petroleum.

d National tariff peaks are duties that are higher than three times the simple average of the rates applied (indicator 6).

e International tariff peaks are duties that exceed 15 per cent.

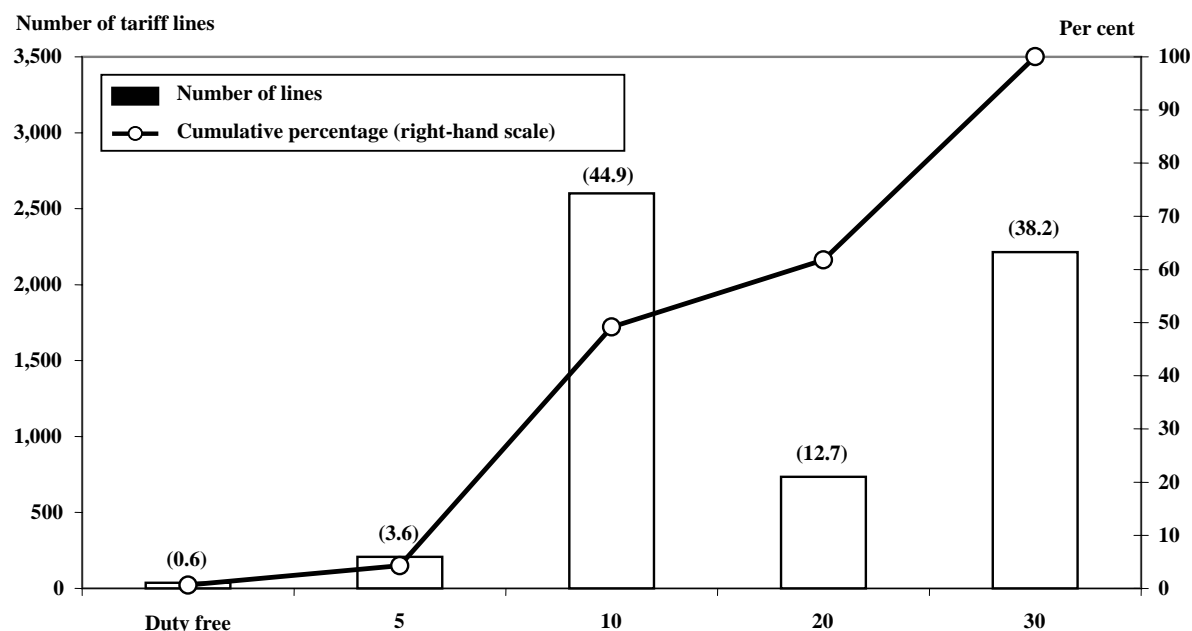
f Nuisance duties are rates that are not zero but less than or equal to 2 per cent.

Source: WTO Secretariat calculations based on data provided by the Congolese authorities.

18. The simple average of the MFN tariff rates applied is 18.7 per cent in 2006 (Table III.1). Agricultural products (WTO definition) are subject to heavier taxation (simple average 23 per cent) than non-agricultural products (simple average 17.9 per cent). Under the ISIC (Rev. 2) definition, agriculture remains the most protected sector (with an average tariff of 23.7 per cent), followed by manufacturing (18.4 per cent) and mining (11.4 per cent). Agricultural products account for a substantial proportion of the expenditure of consumers, especially those on low incomes, and their heavy taxation adds to the cost.

19. The coefficient of variation of 0.51 indicates a moderate dispersion of the applied MFN tariff rates (Chart III.1). Overall, the tariff displays mixed escalation, which is negative from raw materials (as a result of the relatively high degree of protection afforded to agricultural products), with an average level of protection of 20 per cent, to semi-finished goods, with an average level of protection of 15.2 per cent, and then positive, with an average tariff rate of 20.4 per cent, for finished products (Table III.3). However, a more detailed breakdown reveals positive escalation in most industries, with the exception of wood and articles of wood and non-metallic mineral products (Chart III.2), the two largest categories of Congolese exports (Chapter I(3)).

Chart III.1
Distribution of applied MFN duties, 2006



Note: Figures in parenthesis represent the percentage of total lines.

Source: WTO Secretariat calculations based on information provided by the Congolese authorities.

Table III.3
Customs tariff according to degree of processing,^a 2006

Products	Number of lines	Average	Range
Raw materials	822	20.0	5-30
Semi-finished products	1,889	15.2	0-30
Finished products	3,083	20.4	0-30
Total	5,794	18.7	0-30

a International Standard Industrial Classification (ISIC), revision 2.

Source: WTO Secretariat calculations based on data supplied by the Congolese authorities.

20. Apart from customs duty, goods released for consumption are subject to several other taxes, namely: the 2 per cent automation fee (Section (2)(ii)); the 1 per cent CEMAC Community integration tax or levy (TCI/PCI)²⁷, applicable to imports originating in countries outside the CEMAC and released for consumption; the 0.2 per cent statistical tax applicable to goods of all origins²⁸; the 0.05 per cent OHADA levy applicable to goods of all origins²⁹; and the 0.4 per cent Community integration contribution (CCI) applicable to imports originating in countries outside the CEEAC.³⁰ These various charges bring the simple average of import duties and charges (including customs duties) to 22.35 per cent. Imports are also subject to a 5 per cent levy by way of an advance payment on income taxes or the flat-rate taxes payable in their stead. There is a 15 per cent tax on imports of

²⁷ Additional Act No. 03/00-CEMAC 046-CM-05.

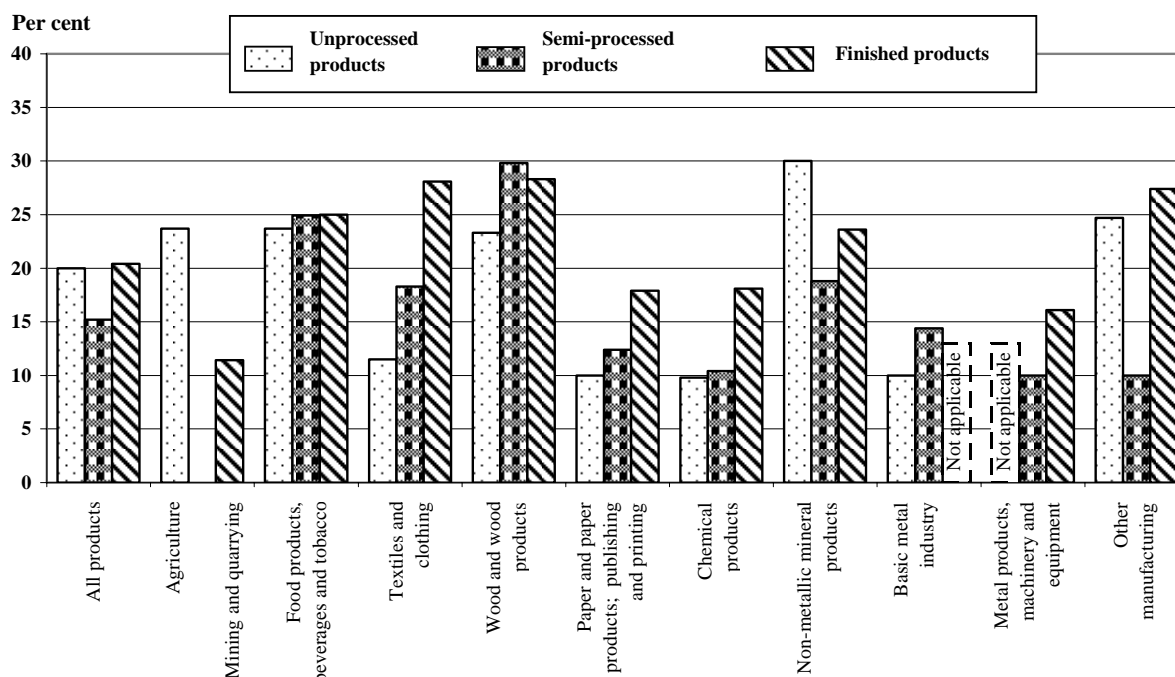
²⁸ Order No. 0601/MF/DGCRF of 19 January 1982.

²⁹ Order No. 5808/MEFB-CAB of 20 September 2005.

³⁰ Decision No. 05/CEEAC/CCEG/X/02 of the CEEAC Conference of Heads of State and Government.

wood products and products derived from wood, with the exception of those intended to supply local industries.³¹

Chart III.2
Escalation of applied MFN tariff rates, 2006



Note: Product groups defined by the 2-digit ISIC.

Source: WTO Secretariat calculations based on data provided by the Congolese authorities.

Binding of MFN import duties and taxes

21. During the Uruguay Round, the Congo bound 1,031 HS 6-digit tariff lines, or 17.8 per cent of the total (Schedule CVI). Resulting solely from the Uruguay Round, as the Congo had no previous specific tariff commitments, these bindings cover all agricultural products, like those of other WTO Members, and a few non-agricultural products. Agricultural products were bound at the ceiling rate of 30 per cent, with only a small difference between bound rates and applied rates.³² With respect to the few non-agricultural products concerned (wool fabrics, umbrellas, wigs, locomotives, etc.), the Congo generally bound its tariff rates at the applied level. However, the applied rate of 30 per cent on cool boxes (HS 39239010) exceeds the 10 per cent bound fee.

22. The other duties and taxes on the products affected by tariff commitments were bound at the zero rate, although the Congo is currently applying some of them to imports (Section (2)(iv)(a)).

³¹ Order No. 6384/MEFB of 31 December 2002.

³² Consolidated Tariff Schedules (CTS) Database. This database was established pursuant to a decision, taken on 27 November 1998, of the WTO Committee on Market Access. It contains all the information on tariff concessions (relating to goods) in a format convenient for purposes of analysis (MS-Access 97), albeit without prejudging the legal status of those concessions. WTO Members can amend information held under their names.

(b) Internal taxes

23. Since 1997, in accordance with CEMAC regulations³³, the Congo has applied VAT at the standard rate of 18 per cent³⁴; the exemption granted to the petroleum-related activities of companies approved under the Hydrocarbons Code and their subcontractors has been codified since 1999.³⁵ VAT is assessed on goods released for consumption, whatever their origin (including goods of CEMAC or CEEAC origin), on the basis of the c.i.f. value plus import duties and taxes, including excise duty, where appropriate, but excluding the advance tax payment³⁶; local products are taxed on the basis of the ex-factory price.³⁷

24. Some staples are, in principle, exempt from VAT (as well as customs duties).³⁸ Inputs, machinery and equipment for use in the agro-pastoral and fisheries sector are temporarily exempt from VAT, until the end of 2006.³⁹ Moreover, some locally produced goods, such as wheat flour produced by MINOCO⁴⁰ and mineral water produced by SN PLASCO, are exempt from VAT, unlike competing imports. Altogether, according to the Secretariat's estimates, VAT is applied to 4,949 of the 5,794 lines in the Congo tariff. Exports are zero-rated (see below).

25. In accordance with CEMAC regulations⁴¹, the Congo levies a 24 per cent excise duty on, among other things, beverages, tobacco and precious stones (Table AIII.2). The excise duty is calculated on the basis of the c.i.f. value plus import duties, whatever the origin of the goods. Altogether, according to the Secretariat's estimates, excise duty is applied to 107 of the 5,794 lines of the Congo tariff.

(c) Duty and tax preferences

26. The Congo grants preferences, under the CEMAC generalized preferential tariff (TPG), to originating products accompanied by a CEMAC movement certificate (Section (2)(iii)); in principle, preferences will also be granted to products originating in CEEAC member countries once the latter's preferential tariff becomes operational (Chapter II(3)(ii)).⁴²

³³ Act No. 1/92-UDEAC-556-CD-SE1, amended by Act No. 4/94-UDEAC-556-CD-SE1 and Act No. 1/96-UDEAC-556-CD.

³⁴ Law No. 12-97 of 12 May 1997, as amended by successive finance laws.

³⁵ Decree No. 99-186 of 26 October 1999, repealed by Decree No. 2001-522 of 19 October 2001. The equipment and products that can be admitted free of duties and taxes for mineral and oil exploration purposes are listed in Annex IV to Chapter V, General Tax Code.

³⁶ Article 13, Texts relating to VAT, General Tax Code.

³⁷ Article 12, Texts relating to VAT, General Tax Code.

³⁸ Annex III, Texts relating to VAT, General Tax Code. The goods concerned include: wheat flour; milk; bread; meat and poultry; infant food; powdered milk; medicaments; medical appliances and invalid carriages; spectacles; books; fertilizers, insecticides and pesticides.

³⁹ Law No. 33-2003 of 31 December 2003.

⁴⁰ Law No. 20-2004 of 30 December 2004 extends the exemption from VAT to within CEMAC.

⁴¹ Act No. 1/92-UDEAC-556-CD-SE1, amended by Act No. 4/94-UDEAC-556-CD-SE1 and Act No. 1/96-UDEAC-556-CD. The products liable to excise duty are listed in Annex II to Chapter V, General Tax Code.

⁴² Pursuant to Decision No. 03/CEEAC/CCEG/XI/04, the implementation of the TPG is to be spread out over three and a half years from 1 July 2004 to 1 January 2007. The allowance would be: 100 per cent for traditional handicraft products and local products, other than mining products, from 1 July 2004; and in the case of mining products and manufactured products, 50 per cent from 1 July 2004, 70 per cent as of 1 January 2005; 90 per cent as of 1 January 2006, and 100 per cent as of 1 January 2007.

(d) Duty and tax exemptions and concessions

27. The Congo grants conditional relief from duties and taxes to goods placed under the following procedures: transit; temporary admission⁴³, and customs warehousing. It grants exemption from customs duties to enterprises approved under the National Investment Charter (Chapter II(4)(i)), the Forestry Code (Chapter IV(2)(iii)(c)), the Mining Code (Chapter IV(3)(i)), and the Hydrocarbons Code (Chapter IV(3)(ii)). Diplomatic missions, international NGOs, and public contracts financed by external funds are exempt from VAT and, where appropriate, excise duty. Agricultural inputs, machinery and equipment are exempt from duties and taxes until 2006⁴⁴. The loss of revenue attributable to exemptions amounted to CFAF 109 billion in 2005 (Table III.4). During the period 2000-2005, the petroleum sector accounted for about 75 per cent of the total amount of exemptions.

Table III.4
Exemptions from various duties and taxes, 2000-2005
(CFAF million)

	2000	2001	2002	2003	2004	2005
Exemptions granted to the petroleum sector	38,480	36,052	43,711	30,490	36,057	91,166
Statutory exemptions (CACEU Act 2/92)	1,314	3,973	4,100	4,378	6,715	5,569
Contribution to investment:	4,931	8,459	9,841	9,993	6,562	8,056
- Duty-free admission under public contracts	2,190	4,112	5,662	3,660	3,644	2,282
- Exemption granted to MINOCO	0	0	0	0	206	1,486
- Exemption granted to PLASCO	0	0	0	0	0	166
Exceptional exemptions	1,673	6,645	1,738	1,094	2,752	4,166
Grand total	46,398	55,219	59,390	45,955	52,086	108,957

Source: Congolese authorities.

(v) Prohibitions, quantitative restrictions and licences

28. The Congo has not notified the WTO of its prohibition, authorization and import licensing regimes. The prohibition regime concerns, in particular, food waste⁴⁵ and dangerous and war-related toys.⁴⁶ Controls are imposed, through import permits, in order to protect consumers, live animals, plants and the environment, in particular within the framework of the international conventions to which Congo is a signatory.⁴⁷

29. A law adopted by Parliament, but not yet promulgated at the time this report was being finalized in July 2006, would substantially amend certain aspects of the licensing regime in force.⁴⁸ The regime in place since 1994 distinguishes between the import licence and the import declaration: the import licence "applies to staple products and approved products in competition with local industries and any other product listed in the regulations"⁴⁹, whereas the import declaration applies to all other products and is used for statistical purposes. However, since the decree implementing the 1994 law has never been adopted, import licences are currently required for some dozen staples:

⁴³ For example, equipment imported for mineral prospecting purposes is eligible for the temporary admission procedure.

⁴⁴ Law No. 33-2003 of 30 December 2003.

⁴⁵ Decree No. 2001-524 of 19 October 2001. The following, in particular, are affected: old frozen meat and fish; turkey rumps; high-fat meat, in particular "capas"; cuts of meat, shaved or skinned "rasées ou épiluchées"; and chicken feet.

⁴⁶ Circular No. 931/MCCA-CAB of 19 November 2003.

⁴⁷ http://www.wto.org/English/tratop_e/envir_e/membershipwtomeas_e.doc.

⁴⁸ Law No. 7-94 of 1 June 1994.

⁴⁹ Article 10 of Law No. 7-94 of 1 June 1994.

meat, poultry, saltwater fish, salted fish, wheat flour, edible oils, salt, mineral water, sugar, rice, and tomato concentrate.⁵⁰ The purpose of this regime, linked with price authorization (Section (4)(ii))⁵¹, is to control the supply and prices of the goods in question on the domestic market. On the other hand, the import declaration is applied in accordance with the 1994 law. Moreover, a prior import declaration (DPI) is required for all imports subject to pre-shipment inspection (Section (2)(ii) above).

30. Sugar and wheat flour are the two products imported under a quota. Sugar marketing is a monopoly of SARIS-Congo. If its production (part of which is exported) were to prove insufficient to meet local demand, SARIS-Congo would issue import licences to private-sector operators to relieve the shortage (Chapter IV(2)(iii)(a)). Otherwise the importation of sugar into the Congo is prohibited. Wheat flour is the subject of an import quota to protect the national enterprise, MINOCO, from competition. The National Commission on the Regulation of the Flour Market has fixed the level at 48,000 tonnes per year, with 12,000 tonnes being allocated at the beginning of each quarter.⁵²

31. The Congo imports all the pharmaceutical products consumed on its territory (about 3,000 proprietary medicines).⁵³ Private pharmacies are supplied by government-approved wholesale importers, whereas the State-owned Congolese Generic Drug Company (COMEGE) was set up in 2005 to purchase generic drugs. Before pharmaceuticals can be imported, various certificates must be obtained: a marketing or market placement certificate (AMM); a marketing or market placement renewal certificate (RAMM); and a marketing or market placement extension certificate (EAMM).

32. The Congo is no longer among the participants in the Kimberley Process on the importation and exportation of rough diamonds (Section (3)(iii)).⁵⁴ Nevertheless, trade in precious stones is subject to a licensing regime, albeit outside the framework of the Kimberley Process.

(vi) Sanitary and phytosanitary (SPS) measures

33. The Congo has not made any notification to the WTO concerning its SPS measures. The Ministry responsible for health is in charge of applying SPS measures relating to human health and food and the Ministry responsible for agriculture of applying phytosanitary measures, in both cases in collaboration with the Ministry responsible for trade⁵⁵, while the Ministry responsible for Agriculture is in charge of the protection of animal health.⁵⁶ The Congo complies with the provisions of the FAO International Plant Protection Convention; the Codex Alimentarius of the FAO and WHO; and the provisions of the World Organization for Animal Health (OIE).

⁵⁰ See the study financed by the International Trade Centre (ITC) on trade in food products, in collaboration with the Chamber of Commerce, Industry, Agriculture and Trades (CCIAM) of Pointe-Noire (2004).

⁵¹ Order No. 16/MCAPMEA/CAB of 23 August 2000.

⁵² The quota is allocated on a "first come, first served" basis with a maximum of 3,500 tonnes per importer per quarter. Licences are valid for six months and are not subject to specific charges. Printing costs are CFAF 7,500.

⁵³ French Embassy in the Congo, Economic Mission in Brazzaville (2006), "Health Sector".

⁵⁴ <http://www.kimberleyprocess.com>.

⁵⁵ Law No. 6/94 of 1 June 1994 on competition (Section (4)(ii)) and Law No. 7/94 of 1 June 1994 on the trade regime (Section (2)(v)) provide the regulatory framework for such measures.

⁵⁶ Decree No. 67/182 of 17 July 1967 concerns the animal health police and Law No. 17/67 of 30 November 1967 concerns the penalties for related infringements. Order No. 4646/BE 47-14 of 16 December 1968 concerns the importation of live animals and establishes the obligation to obtain an authorization issued by the Veterinary Inspection Service; Order No. 4645/BE 47-14 of 16 December 1968 regulates the movement of cattle on Congolese territory.

34. The importation and exportation of animal and plant products are subject to prior authorization and the issue of sanitary and phytosanitary certificates. There is a phytosanitary police presence in the main customs offices to carry out plant controls.⁵⁷ At the customs office in the capital, Brazzaville, a municipal tax is levied for the sanitary inspection of imports of products for market sale.⁵⁸ The principal SPS measures currently being applied are those intended to protect against or combat bird flu. They include the prohibition, since February 2005, of the importation of any live animal of the avian species (hens, turkeys, ducks, wild birds) and any product derived therefrom (meat, offal), of any origin; previously, the Congo imported about 18-20 tonnes of these goods a year. The SPS measure intended to combat mad cow disease was repealed in 2004.⁵⁹

(vii) Standardization, accreditation and certification

35. The Congo has not made any notification to the WTO concerning its standardization regime or accreditation and certification procedures. The "Congolese Centre for Industrial Standardization and Quality Control" project was set up in March 2000 and updated in 2003.⁶⁰ Following this updating, the purpose of the project was "to help to ensure the competitiveness of enterprises and protect the health of consumers and the environment by improving quality through support for the standardization system".⁶¹ Formally, however, "there has never been an explicit and coherent national industrial standardization and quality control policy"; technical assistance is requested from the WTO to support the establishment of a suitable legal and administrative framework to that end.⁶² The Congo is not a member of the International Standardization Organization (ISO).

(viii) Rules on packaging, marking and labelling

36. The rules on marking and labelling are laid down in the law on competition (Section (4)(ii) below).⁶³ Imports covered by a CEMAC product certificate must bear a mark identifying the CEMAC country in which they originated (Section (2)(iii)).

(ix) Contingency measures

37. The Congo has not made any notification to the WTO concerning contingency measures and the country has no national anti-dumping, countervailing or safeguard legislation. The Congo has never taken any contingency measure.

(x) Other measures

38. According to the authorities, there is no provision prescribing local content for the purpose of obtaining tax, customs or financial concessions (among others). No agreement has been concluded with foreign governments or enterprises with a view to influencing the quantity or value of goods and services exported to the Congo. Likewise, the authorities are unaware of any such agreements

⁵⁷ Order No. 3401 of 23 June 1976.

⁵⁸ Decision No. 17 of 16 September 2004 of the Department of Brazzaville, amending Decision No. 5/67 of 28/07/1967 instituting a health inspection tax on imports of products for market sale.

⁵⁹ The suspension of the importation of bovine meat produced in the countries of the European Union, in place since 20 March 2001 pursuant to Order No. 1265 of the Ministry responsible for trade, was lifted by Order No. 7631 of the Ministry responsible for trade of 5 August 2004.

⁶⁰ Draft order communicated by the Congolese authorities.

⁶¹ Article 2, draft order communicated by the Congolese authorities.

⁶² Government of the Congo, Ministry of Industrial Development, responsible for the promotion of the domestic private sector (1999), and Order No. 339/MDIPSN/CAB of 3 March 2000.

⁶³ Law No. 6-94 of 1 June 1994.

between Congolese and foreign enterprises. The Congo participates in the international trade sanctions decided upon by UN Security Council and the regional bodies of which it is a member.

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Customs procedures

39. The registration formalities required to import goods for commercial purposes also apply to exports (Section (2)(i) above). Export operations can be carried out only by traders holding a card marked "exporter". The export of forest products is subject to special conditions of approval, except in the case of forestry enterprises.⁶⁴ Owners of mining titles may transport and export the minerals concerned⁶⁵, and export operations may also be carried out by officially approved offices.⁶⁶ Special conditions apply to persons who have received approval to export petroleum products or to engage in transit and re-exportation activities involving these products.⁶⁷

40. The pre-shipment inspection regime, entrusted to COTECNA (Section (2)(ii)), applies to exports as well as imports. A customs declaration must be made out for all exports. A document concerning the foreign exchange undertaking endorsed by the bank with which the transaction is domiciled is also required for all export operations. The foreign exchange undertaking consists in the obligation to repatriate export earnings, from countries outside CEMAC, and convert them into CFA francs within 30 days of the goods being shipped.

41. In support of the customs declaration, exporters of forest products must also produce specification sheets certified by the water resources and forestry administration. These specification sheets "contain the product references, the name of the holder of the contract or permit and his tax category, indicated by his triangular hammer mark".⁶⁸ The tax is collected by customs from the exporter, on presentation of the specification sheet.

(ii) Export duties and taxes

42. Merchandise exports are subject to several export duties and taxes, in particular: the 2 per cent automation fee; the 2 per cent supplementary exit duty (DAS), from which certain products are exempt (Table AIII.3); and the 2 per cent levy on rough diamonds (Section (3)(iii)). Timber is taxed as follows: a 1 per cent levy for the public service responsible for controlling forest product exports⁶⁹, the tax on timber exports assessed on the basis of the transport costs associated with the four forest exploitation zones (Chapter IV(2)(iii)(c))⁷⁰, the f.o.b. value, the species and the degree of processing. In addition, there is a 15 per cent surcharge on rough timber exported over and above the quota of 85 per cent of the production of each forestry enterprise (Section (3)(iii))⁷¹, as well as the contribution to the road fund assessed on timber for export or in transit.⁷² The tax base is the f.o.b. value.

⁶⁴ Articles 127 and 128 of Decree No. 2002-437 of 31 December 2002.

⁶⁵ Article 78 of Law No. 2005-4 of 11 April 2005.

⁶⁶ Article 80 of Law No. 2005-4 of 11 April 2005.

⁶⁷ Decree No. 2002-265 of 1 August 2002. Decree No. 2005-83 of 28 December 2005 establishes a fee of CFAF 500 million for obtaining approval to engage in export activities, and a fee of CFAF 700 million for approval to engage in transit and re-exportation activities.

⁶⁸ Article 135 of Decree No. 2002-437 of 31 December 2002.

⁶⁹ Article 78 of Law No. 2005-4 of 11 April 2005.

⁷⁰ Order No. 6383/MEFB of 31 December 2002 and Order No. 6387/MEFB of 31 December 2002.

⁷¹ Order No. 2731/MEFE/MEFB of 17 March 2004.

⁷² The contribution is CFAF 75/m³ for Congolese timber, CFAF 250/m³ for timber from outside the CEMAC, and CFAF zero/m³ for CEMAC timber.

(iii) Export prohibitions, restrictions, controls and licences⁷³

43. An export declaration must be filed for all goods being exported or re-exported.⁷⁴ Under the Forestry Code, only processed wood in the finished or semi-finished state may be exported⁷⁵, but in practice each forestry enterprise is required to limit rough timber exports to 15 per cent of its total production volume. This threshold is often exceeded, triggering payment of the 15 per cent surcharge (Section (3)(ii)). In 2004, about 84 per cent of wood exports (in volume terms) were in rough timber form.

44. Under the Mining Code, every shipment of precious minerals requires an export authorization issued by the central mining authority.⁷⁶ The Congo, which had been participating in the Kimberley Process (KP) for the diamond trade since 10 June 2003, was suspended as from 9 July 2004, following a KP working mission which concluded that the country was not complying with the provisions of the diamond certification regime.⁷⁷ Nevertheless, trade in precious materials, including rough diamonds, is subject to licensing.

(iv) Export subsidies, promotion and assistance

45. The State grants various tax concessions to enterprises in the petroleum subsector (Chapter IV(3)(ii)), as well as to enterprises admitted to the Investment Charter regime (Chapter II(4)(i)), which also covers commercial activities connected with the collection, storage, distribution and exportation of locally manufactured products (with the exception of alcoholic beverages and tobacco goods) (Table II.3). SARIS-Congo, the sole domestic sugar producer, also benefits from preferential tariff quotas for exports to the United States (7,258 tonnes) and the European Union (13,000 tonnes) (Chapter IV(2)(iii)(a)).

46. Exports are zero-rated for VAT and benefit from the conditional relief procedure, on the same conditions as imports with respect to import duties and subject to the actual exportation of the goods concerned. In particular, the exportation of petroleum products gives entitlement to the deduction of the VAT levied upstream on purchases of the goods and services used in the production of the quantities concerned.⁷⁸

47. The task of the Congolese Foreign Trade Centre (CCCE), created in 2006⁷⁹, is to promote exports, support economic operators by providing them with market access information, and develop partnership agreements. The CCCE supports the participation of Congolese economic operators in trade fairs and similar events.

⁷³ Law No. 7-94 of 1 June 1994.

⁷⁴ Article 18 of Law No. 7-94 of 1 June 1994.

⁷⁵ Article 48 of Law No. 16-2000 of 20 November 2000.

⁷⁶ Article 80 of Law No. 4-2005 of 11 April 2005.

⁷⁷ "Kimberley Process Removes the Republic of Congo from the List of Participants", News Release, 9 July 2004, No. 004. Available at: <http://www.kimberleyprocess.com> [12 May 2006].

⁷⁸ Article 36 of Law No. 12-1997 of 12 May 1997, and Decree No. 2001-522 of 19 October 2001.

⁷⁹ Law No. 23-2005 of 30 December 2005.

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Protection of intellectual property rights

(a) Overview

48. The Congo is a member of the African Intellectual Property Organization (OAPI), set up by the Bangui Agreement (1977).⁸⁰ The Congo ratified the revised Bangui Agreement (1999) in 2001.⁸¹ This Agreement entered into force on 28 February 2002 and applies in the Congo, pursuant to the 2002 Constitution (Chapter II(1)(i)), as an automatically enforceable State law. In addition to the revised Bangui Agreement (1999), the Congo has national legislation on copyright and related rights.

49. At the same time as the revised Bangui Agreement (1999) entered into force, Annexes I to VIII also came into effect. These cover the following areas: patents (Annex I); utility models (Annex II); trademarks and service marks (Annex III); industrial designs (Annex IV); trade names (Annex V); geographical indications (Annex VI); copyright and related rights (Annex VII); and protection against unfair competition (Annex VIII). Annex X on new plant varieties, which must be patentable pursuant to Article 27 of the TRIPS Agreement, entered into force on 1 January 2006. The OAPI Administrative Council has deferred the entry into force of Annex IX dealing with layout-designs (topographies) of integrated circuits, for which protection must be provided under Article 35 of the TRIPS Agreement, because of the lack of the necessary competence to examine applications for protection that might be filed under the Annex.

50. The Bangui Agreement does not in principle allow parallel imports.⁸² Nevertheless, an *ex officio* licence may be granted when this is of vital interest for the economy of the country, public health or national defence.⁸³

51. The revised Bangui Agreement (1999) allows the national authorities to impose sanctions for infringements of intellectual property rights. The penalties for counterfeiting have been sharply increased in order to enhance their deterrent effect (Table III.5).⁸⁴ Repeat offenders may receive terms of imprisonment ranging from one to six months. The penalties may only be imposed by the competent Office of the Public Prosecutor upon the lodging of a complaint by the injured party.

⁸⁰ The Bangui Agreement (1977) established the African Intellectual Property Organization (OAPI) to replace the African and Malagasy Industrial Property Office, set up in 1962. The members of the OAPI are Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Senegal and Togo. See <http://www.oapi.wipo.net>.

⁸¹ Law No. 7-2001 of 19 October 2001.

⁸² Article 7 of the revised Bangui Agreement (1999).

⁸³ Article 56 of the revised Bangui Agreement (1999).

⁸⁴ Under the 1977 Bangui Agreement, no penalty could be applied if, at the end of a period of five years from the filing of the application for a patent, the patent had not been worked. This provision has been eliminated in the revised Bangui Agreement (1999).

Table III.5
Fines and terms of imprisonment under the Bangui Agreement (1977) and its revision (1999)

Offence	Bangui Agreement (1977)	Revised Bangui Agreement (1999)
Infringement of patents	Fine of CFAF 30,000 to 50,000 and, if the offence is repeated, a term of imprisonment of 1 to 6 months	Fine of CFAF 1,000,000 to 3,000,000 and, if the offence is repeated, a term of imprisonment of 1 to 6 months
Infringement of utility models	Fine of CFAF 30,000 to 180,000 and, if the offence is repeated, a term of imprisonment of 1 to 6 months	Fine of CFAF 1,000,000 to 6,000,000 and, if the offence is repeated, a term of imprisonment of 1 to 6 months
Unlawful exploitation of registered trademarks	Fine of CFAF 50,000 to 150,000 and/or a term of imprisonment of 1 month to 1 year	Fine of CFAF 1,000,000 to 3,000,000 and a term of imprisonment of 3 months to 2 years
Unlawful use of compulsory marks and prohibited signs	Fine of CFAF 50,000 to 100,000 and/or a term of imprisonment of 15 days to 6 months	Fine of CFAF 1,000,000 to 2,000,000 and a term of imprisonment of 15 days to 6 months
Infringement of industrial designs	Fine of CFAF 50,000 to 300,000 and, if the offence is repeated, a term of imprisonment of 1 to 6 months	Fine of CFAF 1,000,000 to 6,000,000 and, if the offence is repeated, a term of imprisonment of 1 to 6 months
Infringement of rights in trade names	Fine of CFAF 50,000 to 300,000 and/or a term of imprisonment of 3 months to 1 year	Fine of CFAF 1,000,000 to 3,000,000 and/or a term of imprisonment of 3 months to 2 years
Infringement of rights in appellations of origin	Fine of CFAF 50,000 to 300,000 and/or a term of imprisonment of 3 months to 1 year	Fine of CFAF 1,000,000 to 6,000,000 and/or a term of imprisonment of 3 months to 1 year
Layout-designs (topographies) of integrated circuits ^a	n.a.	Fine of CFAF 1,000,000 to 6,000,000 and/or a term of imprisonment of up to 6 months
Protection of new plant varieties ^a	n.a.	Fine of CFAF 1,000,000 to 3,000,000 and/or a term of imprisonment of 1 to 6 months

n.a. Not applicable.

^a The regime under the revised Bangui Agreement is not in force.

Source: WTO Secretariat.

52. Starting in 1995, the Congo availed itself of the transitional arrangements under Article 65 of the WTO's TRIPS Agreement in order to be able to delay full implementation of the Agreement (other than Articles 3, 4 and 5) until the year 2000. Congo has notified the Bangui Agreement (1999) to the WTO.⁸⁵

(b) Industrial property

53. In undertaking the revision of the Bangui Agreement, the member States of the OAPI wished "to make its provisions consistent with the requirements of international intellectual property treaties to which the member States belong, in particular the TRIPS Agreement; to simplify procedures for issuing titles; to broaden the scope of protection; and make good certain legal gaps".⁸⁶ The subjects and terms of protection have been modified in order to harmonize them with the provisions of the

⁸⁵ WTO documents IP/N/1/COG/C/2, IP/N/1/COG/C/1, IP/N/1/COG/C/2 of 29 April 2002.

⁸⁶ OAPI (undated).

TRIPS Agreement (Table III.6). The revised Bangui Agreement (1999) has sharply increased the penalties for counterfeiting with the aim of enhancing their deterrent effect.⁸⁷

Table III.6
Subjects and terms of protection under the Bangui Agreement (1977) and its revision (1999)

Agreement	Bangui Agreement (1977)	Bangui Agreement (1999)
Patents	10 years, renewable for a maximum of two further periods of 5 years	20 years
Utility models	5 years	10 years
Trademarks or service marks	10 years, renewable every 10 years	10 years, renewable every 10 years
Industrial designs	5 years	5 years, renewable twice
Trade names	10 years, renewable every 10 years	10 years, renewable every 10 years
Appellations of origin	n.a.	n.a.
Literary and artistic property		
Copyright	Lifetime of the author + 50 years	Lifetime of the author + 70 years
Films, radio and audiovisual programmes	50 years	70 years
Photographs	25 years	25 years
Related rights for performances	n.a.	50 years
Related rights for phonograms	n.a.	50 years
Related rights for radio broadcasts	n.a.	25 years
Layout-designs (topographies) of integrated circuits ^a	n.a.	10 years
Protection of new plant varieties	n.a.	25 years

n.a. Not applicable.

^a The regime under the revised Bangui Agreement regime is not in force.

Source: WTO Secretariat.

54. For each of its member States, the OAPI serves as the national industrial property office and provides a common system of administrative procedures for registering rights. The procedure commences with the filing of an application which, in the case of applicants domiciled outside the OAPI member States, must be submitted to the OAPI, either through an agent appointed in one of the member States or under the procedures laid down in the Patent Cooperation Treaty.⁸⁸ For applicants domiciled in Congo, applications are filed with the National Industrial Property Office (ANPI) (part of the Ministry of Industrial Development, SMEs and Crafts), which acts as the national structure for liaison (SNL) with OAPI. In 2004, the ANPI received 22 applications.⁸⁹

55. After the application has been received by its Director General, the OAPI initiates the procedure, registers the application and examines it. Any decision to reject an application may be the subject of an appeal to the High Commission for Appeals, whose decision is final. If a patent is issued, the relevant rights remain in force subject to payment of the requisite fees to the OAPI. Where there is a dispute, the national courts alone are empowered to rule on the plaintiff's case.

⁸⁷ Under the terms of the 1977 Bangui Agreement, no penalty could be applied if, at the end of a period of five years from the filing of the application for a patent, the patent had not been worked. This provision has been eliminated in the revised Bangui Agreement (1999).

⁸⁸ The lists of approved agents are available on the OAPI site (<http://www.wipo.oapi.net>).

⁸⁹ Including 3 subsidized patent applications, 10 trademark applications, 8 trade name applications and 1 prior right search. See ANPI (2005).

56. In the Congo, counterfeiting and appellations of origin are two of the subject matters covered by the regulatory framework for competition policy (Section (ii) below).

(c) Copyright and related rights

57. The Congo's copyright regulations date back to 1982.⁹⁰ They are not harmonized either with Annex VII to the revised Bangui Agreement (1999) or with the relevant provisions of the WTO's TRIPS Agreement. For example, under the Congolese regime, the term of copyright protection is the lifetime of the author plus 50 years after his death, whereas the term is 70 years under the revised Bangui Agreement (1999).

58. Copyright and related rights are administered and protected by the Congolese Copyright Bureau (BCDA), established in 1986⁹¹ under the authority of the Minister responsible for culture and the arts. The BCDA has 1,493 members and distributes royalties from mechanical rights to nationals and foreigners (CFAF 4 million in 2004). Efforts are apparently being made to combat the pirating of musical works, in particular by introducing holograms or stickers which will make it easier to distinguish between authentic phonograms and pirated copies. The BCDA is also the sole organization empowered to issue authorizations for cultural events on Congolese territory. Cultural activities in the Congo are supported by the National Cultural Development Fund (FONADEC), which is partly financed from the income of the BCDA.

(d) Multilateral intellectual property protection treaties

59. The Congo not only belongs to the OAPI but has also been a member of the World Intellectual Property Organization (WIPO) since 9 July 1973.⁹² The revised Bangui Agreement (1999) recommends that its members accede to certain agreements, treaties and conventions, but the Congo has not complied fully in this respect (Table III.7); technical assistance is sought by the authorities for this purpose.

Table III.7
The Congo and the intellectual property protection treaties administered by WIPO, 2006

Treaty	Undertaking to adhere to treaties under the 1999 Bangui Agreement	Date of accession
Protection of intellectual property		
Berne Convention	Yes	8 May 1962; 2 September 1975 for the Paris revision
Brussels Convention	No	Non-signatory
Film Register Treaty	No	Non-signatory
Madrid Agreement (Source)	No	Non-signatory
Nairobi Treaty	Yes	8 March 1983
Paris Convention	Yes	2 September 1963; 2 September 1975 for the Stockholm revision
Patent Law Treaty (PLT)	No	Signatory
Phonograms Convention	No	Non-signatory
Rome Convention	Yes	10 June 2003
Trademark Law Treaty	No	Non-signatory
Washington Treaty	No	Non-signatory

Table III.7 (cont'd)

⁹⁰ Law No. 24/82 of 7 July 1982.

⁹¹ Decree No. 86/813 of 11 June 1986.

⁹² Ordinance No. 24-73 of 9 July 1973.

Treaty	Undertaking to adhere to treaties under the 1999 Bangui Agreement	Date of accession
WCT	No	Non-signatory
WPPT	No	Non-signatory
Global protection system		
Budapest Treaty	Yes	Non-signatory
Hague Agreement	Yes	Non-signatory
Lisbon Agreement	Yes	8 August 1977
Madrid Agreement (Marks)	Yes	Non-signatory
Patent Cooperation Treaty	Yes	24 January 1978
Classification		
Locarno Agreement	No	Non-signatory
Nice Agreement	No	Non-signatory
Strasbourg Agreement	No	Non-signatory
Vienna Agreement	No	Non-signatory
<i>Memorandum item:</i>		
International Convention for the Protection of New Varieties of Plants	Yes	Non-signatory
Lisbon Agreement	Yes	8 August 1977
Madrid Agreement (Marks)	Yes	Non-signatory
Patent Cooperation Treaty	Yes	24 January 1978
Classification		
Locarno Agreement	No	Non-signatory
Nice Agreement	No	Non-signatory
Strasbourg Agreement	No	Non-signatory
Vienna Agreement	No	Non-signatory
<i>Memorandum item:</i>		
International Convention for the Protection of New Varieties of Plants	Yes	Non-signatory

Source: WIPO and Preamble to the Bangui Agreement (1999).

(ii) Competition policy

60. The Congo does not have any comprehensive competition policy. Some aspects are covered by the current regulatory framework, which dates from 1994, namely: pricing regimes for products, goods and services of all kinds; market transparency; anti-competitive practices (although these provisions have not yet been implemented); trading standards; stockholding; and the investigation and repression of fraud.⁹³

61. In principle, prices are determined by the free play of competition, except in the case of the authorization regime for staple foods (Section (2)(v)). The authorization process consists in the approval of maximum selling prices by the Ministry responsible for trade, on the basis of a breakdown provided by the economic operator, in accordance with the price structure and statutory profit ratios.⁹⁴ Authorization must be obtained before the goods concerned can be offered for sale (Section (2)(v) above).⁹⁵ The wholesaler importer must indicate the authorized retail selling price on his wholesale invoice. The products subject to the price authorization regime are: meat, poultry, saltwater fish,

⁹³ Law No. 6-94 of 1 June 1994.

⁹⁴ Law No. 5-94 of 1 June 1994.

⁹⁵ Circular Note No. 16/MCAPME/CAB of 23 August 2000.

salted fish, wheat flour, edible oils, cement, reinforcing bars, corrugated iron, salt, mineral water and sugar.⁹⁶

62. Consumer protection is also one of the objectives of the law, which focuses on market transparency and product quality. For example, traders must inform consumers of the prices of the goods or services on offer and must provide an invoice upon request. The law punishes offences such as counterfeiting and deceptive or misleading advertising concerning, in particular, adulterated or toxic products (thus the law touches on sanitary measures (Section (2)(vi)), dishonesty and fraud in the provision of services, and fraud relating to importation, production and sale. The law on competition also deals with infringements connected with the exercise of the profession of trader and the application of the relevant provisions on domestic and foreign trade.

63. It should be noted that price controls outside the framework of the exception regimes apply to petroleum products (Chapter IV(3)(ii)), water (Chapter IV(3)(iv)), electricity (Chapter IV(3)(iii)), and postal and telecommunications services (Chapter IV(5)).

(iii) Incentives

64. The Congo has not notified the WTO of subsidies or aid. The main support measures in effect relate to the benefits available to enterprises approved under the Investment Charter (Chapter II(4)(i)), the Forestry Code (Chapter IV(2)(iii)), the Mining Code (Chapter IV(3)(i)), or the Hydrocarbons Code (Chapter IV(3)(ii)). Concessions are also granted in order to promote SMEs (Chapter IV(4)). In addition, the State supports agriculture in various ways (Chapter IV(2)(ii)). Public services, such as electricity (Chapter IV(3)(iii)), water (Chapter IV(3)(iv)) and transport (Chapter IV(5)(i)), may also benefit from government support.

(iv) State trading, State-owned enterprises and privatization

65. The Congo has not notified the WTO of any State-trading enterprises within the meaning of Article XVII of the GATT. Nevertheless, there are *de facto* or legal monopolies on: sugar marketing by SARIS-Congo (Chapter IV(2)(iii)(a)) and the importation of electricity by the National Electricity Company (SNE) (Chapter IV(3)(iii)). Monopolies are also in effect with respect to such services as hydrocarbon transport and storage (Chapter IV(3)(ii)), fixed telecommunications and postal services (Chapter IV(4)(iv)).

66. The Congo launched an ambitious privatization programme as long ago as 1994. This was brought up to date with the assistance of the donors within the framework of the Post-Conflict Interim Programme (PIPC) 2000-2002, and is still being implemented.⁹⁷ The first stage involved the six large Congolese enterprises in the hydrocarbon, telecommunications and postal services, water, electricity, transport and rail sectors, while the second covered banks and insurance companies and small and medium-size enterprises in agriculture (forestry), aviation, transport and the hotel industry (Chapter IV). The main achievements relate to the breaking up of three large Congolese enterprises – Hydro-Congo (oil sector); Congolese Transport Agency (railways, river transport, shipyards, port activities); and the National Posts and Telecommunications Office – and the privatization or putting out to concession of several of the enterprises that resulted from this process.⁹⁸ The current privatization programme includes, *inter alia*, enterprises in the water, electricity and

⁹⁶ Order No. 16/MCAPMEA/CAB of 23 August 2000.

⁹⁷ Law No. 21-94 of 10 August 1994. The main achievements during the period 2001-2004 are listed in the report of the Government of the Congo, Ministry of Finance and the Economy (MEFB) (2005).

⁹⁸ <http://www.congo-site.biz/v1x/invstprivat.php>.

telecommunications subsectors. Enterprises have mainly been privatized through invitations to tender.

(v) Government procurement

67. The Congo's regulatory framework for government procurement dates from 1982.⁹⁹ Congo is not a member of the WTO Plurilateral Agreement on Government Procurement nor is it an observer. At the recommendation of the World Bank, the Congo may shortly be introducing a new procurement code intended to promote transparency and competition in the allocation and monitoring of public contracts, in accordance with international standards.¹⁰⁰ The Congolese authorities report the establishment of a National Commission to combat corruption, extortion and fraud, one of whose functions is "to oversee the strict application of the regulations on government procurement".¹⁰¹

68. The regulations govern procurement by the State and by local authorities and relate to works, supplies and the provision of services. They concern contracts with a total value of at least CFAF 10 million.¹⁰² Below that amount, purchases may be approved by the competent authorizing officer. A Central Public Contracts Commission¹⁰³, under the authority of the President of the Republic, oversees the Central Public Contracts Directorate (DCMCE)¹⁰⁴, which is responsible for awarding contracts with a value of more than CFAF 10 million but less than 500 million. Since 2002, contracts for amounts in excess of CFAF 500 million have been handled by a separate administrative body, the General Major Public Works Delegation (DGGT).¹⁰⁵ In principle, contracts are given out on the basis of an invitation to tender or, exceptionally, by straightforward award or private negotiation. The contract is approved by the Minister for Finance (where the value is less than CFAF 200 million), by the Prime Minister (from CFAF 200 million to 500 million) and by the President of the Republic (over CFAF 500 million).

69. No statistics have been provided concerning government procurement.

⁹⁹ Decree No. 82/329 of 22 April 1982.

¹⁰⁰ French Embassy in the Congo, Economic Mission in Brazzaville (2006), "The Health Sector".

¹⁰¹ Article 2 of Decree No. 2004-323 of 8 July 2004.

¹⁰² Pursuant to the amendment introduced by Decree No. 89/375 of 31 May 1989, the contracts awarded by certain State-owned enterprises are governed by the Code when they are for at least CFAF 20 million (works and services) or CFAF 50 million (other contracts).

¹⁰³ Decree No. 2000-34 of 20 March 2000, repealing Decree No. 82/368 of 29 April 1982.

¹⁰⁴ Decree No. 82/367 of 22 April 1982.

¹⁰⁵ Decree No. 2002-371 of 3 December 2002, amended by Decree No. 2003-062 of 7 May 2003.