REGARDS CROISES
REVUE TRIMESTRIELLE
N° 19 bis

RULES FOR SALE:
Formal and informal cross-border trade in Eastern DRC

A Pole Institute Report
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Goma, May 2007

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Preface

This study was undertaken as part of a project by the British Department for International Development (DFID) together with USAID and COMESA to analyse the trade flows on natural resources and other commodities out of the DRC. Pole Institute, based in Goma in North Kivu, undertook to analyse the mechanisms of trade in North Kivu and of gold exports from other parts of Eastern Congo. Other research bodies involved were Forests Monitor, INICA and Pact.

Research in North Kivu was undertaken between January and May 2007 in Goma, Walikale, Beni, Butembo and Kasindi by a team under the direction of Pole Institute manager Aloys Tegera. Research in Bukavu and the mining areas of South Kivu was carried out by a team under the direction of Eric Kajemba. Research in Ituri was carried out by a team under the direction of Alfred Buju.

The English and French versions of the report were written by Dominic Johnson and Aloys Tegera.

Goma, May 2007

Executive Summary

The East of the Democratic Republic of Congo has always been an important transit region for trade in Central Africa, linking the Congo basin to the West with the Asian-facing ports to the East. Most of the population lives near an international border and knows how to profit from cross-border trade. During the Congo wars, exports of natural resources from Eastern DRC, especially North Kivu bordering Rwanda, became the subject of many international investigations due to their role in financing and sustaining conflict The underlying local factors which made it possible for the export of natural resources to become a determining factor in structuring power relationships were never fully explored in this context. However, an understanding of these factors is crucial in order to understand how to revive the Eastern Congolese economy, which has always been very open and much more diversified than recent debate on natural resources suggests.

This report seeks to explain why trade in Eastern Congo, and North Kivu especially, happens in the way it does. Most exports take place outside the formal system and are unregistered. According to our research, cassiterite exports from North Kivu alone were worth around $25m in 2006, and gold exports from Ituri and South Kivu up to $100m each. But only a small fraction of this found its way into official statistics: $7m for cassiterite, $2m for gold from South Kivu, none at all for gold from Ituri. Of the cassiterite mined in Walikale district and registered as being flown to Goma, less than half is registered in Goma as having arrived, and only slightly more than half of this amount shows in the export registers.

The vast amounts of unregistered exports serve to finance imports of consumer goods and especially petroleum products which are also subject to under-declaration. Officially, North

Kivu in 2006 exported goods worth $23m and imported goods worth $109m, of which petroleum products were around $44m. Without undeclared exports, this trade deficit would be unsustainable.

Conflicts over these trade operations and their control have been a major factor in the recent wars of the region. The cassiterite export trade centred around Goma towards Rwanda and Uganda is the backbone of the business operations of a Banyarwana trading elite in North Kivu, which through this has tried to counter the power of a Nande trading elite based around Beni/ Butembo with established links to the gold trade of Ituri and South Kivu towards Uganda and Burundi.

This competition involves much more than just a race for the best business opportunities. The Beni/ Butembo traders during the war gave themselves their own, advantageous trading rules, whereas the Goma traders had recourse to substantial military power. The official end of the war did not reconcile these conflicting interests. Political and military power struggles in Eastern Congo are in part an expression of commercial rivalry, but commercial rivalry in turn is an expression of competition around means of ensuring one's own and one's community's physical survival in an area of profound and prolonged conflict.

There is a further important dimension to informal trade in Eastern Congo: The trading system favours fraud and non-declaration. Export taxes in the DRC are higher than in neighbouring countries, and thus traders benefit by bringing their goods to a neighbouring country before declaring them there instead of exporting officially from the Congo. Congolese state agencies know this and take advantage of this situation by extorting payments from traders in return for allowing unregistered exports. In many cases, traders and officials come to private arrangements with traders paying less than the legal rate to agents who then keep the transaction out of the books. „Fraud amongst consenting adults" is a convenient way for individuals on both sides to profit from non-legality.

Opting out of this system is often not an option. Many more state agencies involve themselves in trade control at the border than provided for in the law, as well as members of a rapacious and unaccountable structure of security forces with an endless capacity for „tracasseries".

This systemic corruption is not confined to the border. Analysis of the trade routes from mine to market shows that legal and illegal taxation is prevalent all along the chain. For North Kivu cassiterite, all taxes together add up to 15% of value, with a further 10% of production retained by authorities in the mines. For Ituri gold, an astonishing 40% of production, including a 30% royalty for the parastatal Okimo, is retained by official bodies before the gold even leaves the mines, plus various payments in the mining areas. For South Kivu gold, an array of charges in the mining areas plus a series of roadblocks on the way to Bukavu through some of the most insecure areas of the DRC serves to keep trading costs high. Living conditions in all mining areas are atrocious and consumer prices extortionate, and the dependence of mining communities on the few traders able to negotiate the trading routes and their barter regimes is total.

The Congolese state appears to have no interest in improving this state of affairs. Apart from the hefty taxes and opportunities for parallel earnings, it appears that in all mining areas uncertainty as to legal ownership of concessions has increased recently, with new contracts being signed for existing concessions and ownership conflicts remaining unresolved. This increases insecurity. No development takes place in mining areas, despite these being touted as showcase attractions to international investors.

Ongoing initiatives at trade reform in the DRC have been patchy, uncoordinated and ineffective. Their guiding philosophy has been that increased controls reduce fraud, but when the activities of state agencies remain unreformed, increased controls simply increase opportunities for non-legal private arrangements to keep trade outside the law. The new „Third Republic“, with the 2006 Constitution and an elected government, has not yet fulfilled its promise to improve local governance by implementing the constitutional provisions which allow revenue retention at source by provincial governments instead of sending it all to Kinshasa, thus denying local officials any incentive to increase official takings. As Eastern Congo depends almost entirely on cross-border trade for the public purse, this means that trade reform cannot be realised. North Kivu's public revenues in 2006 totalled around \$20.5m, of which an astonishing \$16.5m consisted of import duties – none of which at present stays in the province.

On a technical level, trade reform in Eastern Congo needs to take into account:

- The fact that tax rates are higher in the DRC than in its neighbours
- The leviying of unofficial taxes in addition to official taxes in the DRC
- The multiplicity of state agencies
- The prevalence of different tax regimes in different areas
- The continued involvement of the military in trade
- The general lack of trust on the formal economy
- The uncontrollable nature of the border
- The dysfunctionality of existing mining regimes
- The lack of infrastructure

But on a more general level, the unresolved issue of decentralisation, the unmet and pressing need for more human security, the continuing impunity for those who enforce their own private interests to the detriment of public ones and the complete lack of economic perspectives for a population desperate for improved well-being need to be factored into any economic reform policy.

RECOMMENDATIONS

For cross-border trade in the DRC's natural resources to benefit the Congolese population and the state, we recommend the following.

COMMERCE:

- Provide transparent, impartial and independent information on the rules and laws governing commerce, customs and tariff regimes in the DRC as well as in neighbouring countries.
- Remove incentives for fraud by harmonising tax regimes and reducing the number of services on the border trading posts through a „guichet unique“; getting the Congo Cargo Terminal in Mombasa (Kenya) to work would be a first step towards better collaboration between state services by getting the customs service OFIDA, the trade control body OCC and the maritime transport agency OGEFREM to work together
- Demand that the customs service OFIDA takes account of existing control procedures for traded commodities, such as the OGEFREM final destination documents required in Mombasa and the transit declarations issued by the Kenyan and Tanzanian authorities
- Separate economic, political and military power by prohibiting and preventing all involvement of the military and the politicians in trade; punish state agents who collect illicit taxes and end the culture of fiscal impunity
- Initiate transparency in the collection and use of public revenues from trade
- Recognise and value the contribution of small-scale and informal cross-border trade to the economy by limiting formalities to simple registration of the movement of

goods and by providing traders with the information necessary for their work.

ECONOMICS AND FINANCE:

- Improve and develop road and energy networks in agricultural and mining areas with the participation of the local population
- Put an end to the many tax exemptions granted to certain businesses with no clear criteria which only serve to consolidate imbalances in the local economy
- Institute a level playing field between local Congolese and multinational business especially in the allocation of mining concessions and trading permits
- Encourage better access for small traders to the banking system and formal financial institutions, for example by removing exorbitant charges and interest rates
- Remove administrative obstacles and red tape which inhibit the growth and legal operation of small businesses
- Put in place local development funds, administered independently of provincial budgets, which channel revenue from natural resources towards development on the provincial level
- Encourage regional management of energy resources such as the methane gas in Lake Kivu and the oil beneath Lake Albert

GOVERNANCE:

- Clearly define and implement the provisions of the DRC constitution on the retention of 40% of public revenues at the provincial level and assure transparency and accountability in the use of these funds by provincial governments

- Pay salaries in the public sector and the security services
- Safeguard the rights of local communities living within territories granted as mining, forestry or oil concessions before contracts are signed and take account of the possible environmental impact of prospection, exploration and mining; negotiating such contracts must be done publicly and transparently
- Invite the international community to take responsilibity for the actions of investors from its various home countries in high-risk ventures in the Congo, controlling them and making them accountable for their business practices in their home countries and in the DRC
- Initiate and strengthen permament dialogue between the state and the local population at all levels and guarantee that the latter's voice is heard

LIVELIHOODS:

1. Strengthen artisanal mining and ensure its coexistence with industrial mining by providing access to appropriate technology, energy supplies and services
2. Organise the inhabitants and workers of small mines in cooperatives so they can defend their interests
3. Develop local markets by improving security on local roads managed and guarded by the local population
4. Prevent the emergence of trade monopolies and favour competition
5. Ensure physical security and better access to land rights and services for the rural population

CHAPTER 1: GENERAL ASPECTS OF CROSS-BORDER TRADE IN NORTH KIVU

North Kivu, a hub of regional trade

Situated at the crossroads between the vast, forested expanse of the Congo river basin and the densely populated highlands of Uganda and Rwanda, North Kivu in the East of the Democratic Republic of Congo has always been a hub of migration and commerce, of exchange of people and goods between the West and the East of Central Africa. In its northern part, known as „Grand Nord", the Kondjo populations live on both sides of the Rift valley and the Rwenzori mountains and thus on both sides of the Congo-Uganda border; in the Congo they are known as Nande. In the southern part of the province, known as „Petit Nord", the Banyarwanda population is found on the Congolese and the Rwandan side of a border formed by a range of extinct volcanoes. These are the two main ethnic groups with significant cross-border links.

The natural features of the border, such as mountains and lakes, have never been obstacles to trade in Eastern Congo. From Lake Tanganyika in the south to Lake Albert in the north, the Great Lakes have rather facilitated exchange between different kingdoms and peoples. The volcanoes in between provide pastoral zones for herdsmen who regularly move from one side of the other in the search for pasture and salt. In precolonial times, the salt mines of Katwe in what is now Lubero district in North Kivu were an important trading centre for what today is Eastern Congo, Western Uganda and Southern Rwanda. The traders of Katwe sold not only salt but also long-distance trade products such as ivory and introduced long-distance imports from the East African coast, including firearms. Iron and finished metal products such as hoes and spears, produced by a special clan called Abashingwe not far from Lake Edward, were traded between Eastern Congo, Uganda, Rwanda and Burundi. The highland forests of Butembo and Buhunde furnished the region with ornamental products.

Belgian colonial rule opened up Kivu for white settlers who introduced coffee and quinquina plantations and began exploring mineral deposits such as tin and gold. Colonial road building connected Kivu to the rest of the Belgian Congo via Stanleyville (Kisangani) port on the Congo river, while organised labour migration from Rwanda into Kivu intensified existing regional relationships across what was now an international border.

North Kivu thus became part of an integrated system of commerce spanning Central Africa from the Atlantic to the Indian ocean. While natural resource extraction by concessionary companies and transport of mining and forestry products was organised within the Congolese borders, local trade continued along the old cross-border routes. The majority of Congo's population lives within 100 km of an international border and has closer links with people beyond the border than with other parts of the Congo itself.

The colonial opening of North Kivu gave the province a reputation which it still enjoys today: that of the nation's granary. Its exceptionally fertile arable territory, coupled with a higher population density than that of other fertile regions of the DRC, has caused it to become a major producer of beans, potatoes, vegetables and beef. On the markets of Kisangani, Lubumbashi and Kinshasa its products often command premium prices – they have to be brought in by air. Tobacco, sorgho, bananas, maize and milk products from North Kivu are common on the markets of Rwanda and Burundi.

North Kivu's cross-border trade is today organised around the main trading posts of Goma (towards Rwanda) and Kasindi (towards Uganda), each serving the two halves of the province centred around the provincial capital Goma in the „Petit Nord" and the towns of Beni and Butembo in the „Grand Nord". From Goma, there is also direct access northwards to the lesser border posts of Bunagana (towards Rwanda) and Ishasha (towards Uganda), westwards to mineral-rich Walikale district and southwards via Lake Kivu towards Bukavu in neighbouring South Kivu. The Beni/ Butembo region is closely linked to Ituri in the North and its own trading network with Uganda. Lesser border posts such as Muyaga on the Ugandan border or Kibumba on the Rwandan border are used for small-scale informal trade between neighbours. Large parts of the border are only sparsely demarcated and controlled.

Road links from North Kivu to other parts of the DRC no longer exist; the only connection with the rest of the country is by air. The only asphalt roads of significance link North Kivu with Rwanda and Uganda and thus with Kampala, Nairobi and Mombasa, Daressalam being slightly less accessible by road. Thus the North Kivu economy is integrated into that of the Great Lakes and East Africa as a whole. Almost all goods for export are traded onwards to Asia and Europe via East African ports, and many import goods reach the region along the same route, or from Dubai or China by air via East African airports. These trading routes have been in place for decades, and long before armed conflict engulfed the region the activity along them often escaped official records and taxes, Eastern Congolese traders being reluctant to share their earnings with rapacious bureaucrats in the capital Kinshasa 2000 km away.

Two further road links are important for North Kivu's trade. The road westwards into the forest via Walikale, eventually reaching Kisangani on the Congo river from where barges can reach Kinshasa, used to be the only land link between North Kivu and the Western half of the country. Since the early 90s, the road has been unusable due to disrepair and insecurity, with part of the old road being used as an airstrip in Walikale for the export of cassiterite. The German aid agency „Agro-Action Allemande" (AAA), which carries out small-scale feeder road building programmes throughout North Kivu on a food-for-work basis, has worked on this road and announced the reopening of the road link from Goma to Walikale in October 2006. Renewed fighting has closed the road since and made upkeep impossible, but if the road were to become usable again it would dramatically lower costs for cassiterite transport from Walikale to Goma and for consumer goods in Walikale, all of which currently move by air. If the road link was extended westwards towards Kisangani, North Kivu would once again be linked by road to the shipping routes leading to Kinshasa.

The road southwards from Goma towards South Kivu's capital Bukavu along the Western shore of Lake Kivu was closed for a long time and reopened in 2005 after UNHCR repaired some collapsed bridges. This could provide an alternative to lake transport between Goma and Bukavu and give Bukavu airport (at Kavumu, 40 km north of Bukavu) a direct link to Goma. However, as yet the road is slower than the lake, and renewed insecurity since the end of 2006 has made it unsafe.

Lastly, North Kivu's airports could play a role in boosting trade. Goma had an international airport until January 2002 when it was partially submerged by the eruption of the Nyiragongo volcano. Only small and medium-sized planes have been able to use it since. MONUC has cleared part of the lava-covered runway for its own use but has not rehabilitated the airport as a whole. Possibly this was because of fears that Goma businessmen, some of whom have been named as arms and mineral smugglers in UN reports, could use it to expand their commercial operations. If it was repaired, however, it could cut out Rwanda and Uganda as transit countries for some airborne trading which currently has to be routed through these countries. A second project during the war for an international airport near Butembo in the Grand Nord, which Nande traders there hoped would provide them with a direct air link to Dubai, never materialised due to lack of funds.

The political economy of trade in North Kivu

The ethnic complexity of North Kivu is a major factor in the dynamics of cross-border trade and a major source of misunderstanding, tension and conflict. In the „Grand Nord" around Beni/ Butembo trade is almost exclusively dominated by Nande who have ethnic and commercial links with Uganda. The „Petit Nord" around Goma is divided between many ethnic groups of which the Nande and the Banyarwanda (Hutu and Tutsi) are the most important. The Banyarwanda have ethnic and commercial links with Rwanda, and in the two rebellions of 1996 (in which Kabila overthrew the Mobutu regime in Kinshasa) and 1998 (which took the pro-Rwandan RCD rebellion to power in Goma for five years) they spearheaded the rebel armies supported by Rwanda. Thus they tend to dominate this region, which in reaction caused the Nande to tighten their control around the Grand Nord.

On a provincial level, the Congo war manifested itself in attempts by the Banyarwanda and the Nande to consolidate their hold on their respective areas of greatest influence, including control over trade routes and trade incomes. This was the background to the division of North Kivu during the war between the RCD (dominated by Banyarwanda and supported by Rwanda) in Goma with control over Goma trade and the RCD-K/ ML (dominated by Nande and supported by Uganda) in Beni with control of Kasindi trade.

North Kivu effectively became two countries, with a frontier at the edge of the Rift Valley at Kanyabayonga, where military roadblocks completely closed the main North-South road of the province and stopped goods and people from one half reaching the other except by air or via neighbouring countries. The strictly enforced division of North Kivu during the war is one reason why it has always been the province with the highest number of internally displaced (IDPs) in the entire DRC.

Each half of the province had its own trade and tax regime. In the Petit Nord around Goma, officially the old rules applied. The RCD government in Goma, seeing itself as a transitory phenomenon on the way to taking power in Kinshasa, never abolished current Congolese export and import duty rates and kept the „système déclaratif“ whereby traders were supposed to declare the exact nature of their merchandise and pay a percentage of its value in tax; but in fact, controls were often lax or non-existent for certain traders.

The RCD-K/ ML rebel movement in the Grand Nord around Beni, which had no national amibitions but was created to protect Nande interests against RCD-Goma with the help of the Kinshasa government, instead instituted a „système forfaitaire“, in which fixed sums were levied on each cargo on arrival at Kasindi border post without precise regards to their content. Thus, according to sources interviewed, a container declared as containing imported tissues and fabrics was taxed at $6.000 in the Grand Nord, whereby the official tax rate would be $45.000. A container of 55 m³ diesel was taxed at $5.000 in the Grand Nord, whereby today the official rate would be $13.838.

The formal reunification of North Kivu in July 2003, when the warring parties of the DRC came together to form a united government in Kinshasa, did not immediately change this state of affairs. The Grand Nord traders kept their trading advantages, but at the same time the roads between the former RCD area around Goma and the former RCD-K/ ML around Beni-Butembo were gradually reopened and movement of people and goods around the entire province became progressively easier.

This led Banyarwanda traders in Goma to fear that Nande traders using the Kasindi/ Uganda link would take advantage of the newly opened roads to inundate Goma with cut-price imports and undercut current Goma prices, while Banyarwanda traders from Goma are still not accepted in the Grand Nord. Nande traders on the other hand hope that barriers to trade within North Kivu will now fall, giving an economic boost to the province in general and themselves in particular. Competition between the two groups is virulent in business and in politics, and it dominates the economic and security prospects of the province.

The Goma-Gisenyi border relationship

The border between North Kivu's capital Goma and the neighbouring town of Gisenyi in Rwanda is a special case, as both towns lie directly on the border. In the last ten years, Goma (pop. 500.000) and Gisenyi (pop. 150.000) have practically merged into a single town, with houses in some places built right up the border and private doors in garden walls constituting entry and exit posts beyond public control. The two official border posts „Grande Barrière“ on Lake Kivu and „Petite Barrière“ near Goma airport and Gisenyi market are places of busy daily commuter transit. The Birere area in central Goma, situated between the border and the band of land devastated by the Nyiragongo volcano eruption of 17 January 2002, has developed into a flourishing hub of informal cross-border trade, including at night, and it contains a number of new stores and warehouses.

The consequences of the eruption of Nyiragongo volcano in 2002 and of persistent insecurity have caused many people to move from Goma to Gisenyi, where living costs are substantially lower and services are more reliable. The lack of economic opportunities for the rapidly growing population of the densely populated Rwandan North-West between Gisenyi and Ruhengeri has in turn led some Rwandans to seek work on the Congolese side of the border, where the markets are bigger and there are more job opportunities for example in construction. According to the Rwandan immigration authority, in 2004 around 700 Rwandans transited to Goma daily and around 1000 Congolese to Gisenyi.

The export trade from the DRC to Rwanda in Goma-Gisenyi consists mainly of primary products such as minerals and foodstuffs, mostly bananas and beans. In the other direction, Rwanda exports consumer products in transit from Mombasa to DRC and also foodstuffs such as chicken, beef and milk products – the cattle-raising industry in North Kivu was practically wiped out during the war.

A paradox is that due to high indirect taxes in Rwanda, many luxury imports such as wine and whisky are cheaper in the DRC although they may have crossed from Rwanda in the first place, so Rwandans buy them in the Congo. Many Rwandans go to school in the DRC and many Congolese go to teach in Rwanda where salaries are higher and more regular. Students come and go between Goma and Gisenyi. For a long time, there were no banking services in Goma and all banking transactions were carried out in Gisenyi using the Rwandan banking system.

A particular case is that of the disabled who use specially adapted bicycles and wheelchairs to cart trade goods across the border – they are exempt from tax and are thus used as informal traffickers by all traders. They are capable of shifting entire lorry-loads of goods across the border in a short time.

Political tension between Rwanda and the DRC is capable of influencing the cross-border relationship and impacting significantly on people's lives. Following the take-over of Bukavu by the rebels of Laurent Nkunda in June 2004, Rwanda closed the border to DRC – including that between Goma and Gisenyi – for an entire month; this caused major hardship for those people in both countries depending on cross-border activities. In times of tension, minor incidents on the border between Goma and Gisenyi serve as a political barometer for the population.

CHAPTER 2: PATTERNS OF CROSS-BORDER TRADE IN NORTH KIVU TODAY

Statistical and methodological problems

There is no single reliable set of figures of exports and imports from and into North Kivu. Five different agencies regulate trade and collect statistics: the customs agency OFIDA (Office des Douanes et Assises); the provincial commerce department; the export control agency OCC (Office Congolais de Controle); and in the case of mineral exports, the provincial mining department (Division des Mines et Géologie) and for some products the certification office CEEC (Centre d'Expertise, Évaluation et Certification).

OFIDA is the DRC state customs agency charged with registering and controlling all imports and exports. It works on the basis of self-declaration by the exporter or importer. On the basis of this, an OFIDA „vérificateur" accompanied by an officer of the „brigade mobile" certifies export products and controls import products and produces a customs declaration. This allows OFIDA to determine the customs value of the product and to deduce and collect the customs duty, generally 5% of export value. OFIDA also collects all road taxes, charges of the state maritime transport agency OGEFREM (Office Congolais de Gestion du Fret Maritime) and the state industry promotion fund FPI (Fonds de Promotion Industrielle) and insurance levies on imported or transited vehciles for the state insurance company SONAS (Société Nationale d'Assurance).

OCC is not a state agency, but a state-owned company with the authority to control the quantity and quality of imports and exports and to deliver a „Certificat de Vérification à l'Exportation" (CVE). In 1999 it lost the authority to control precious mineral exports such as gold and diamonds. It uses the OFIDA trade values and takes a tax of 1.8% of export value plus $140 laboratory costs per analysis. OCC also validates import liences which have to bought by a registered importer for a sum paid into a bank account. If there is no pre-shipment inspection, OCC takes a 1% surcharge on the 3% import tax. On 29 December 2006, outgoing DRC trade minister Moise Nyarugabo – a former RCD minister in Goma - lowered this tax to 1.5% and the laboratory charge to $30.

Concerning mineral exports, the Mining Division of the provincial government grants export licences after an agent witnesses the weighing and sealing of export lots inside the trading depots. For this, it collects 45% of a special 1.25% export tax (taxe rémunératoire) plus $50 licence charge. It also grants mining and trading licences and collects figures on incoming minerals at Goma airport from the airport authority RVA (Régie des Voies Aériennes).

The certification office CEEC was created in 2003 to verify and certify the identity and origin of minerals for exports, especially precious stones and gems. It is mainly concerned with implementing the Kimberley Process for diamonds, but is also supposed to certify gold, and since February 2007 it is charged with the certification of all other precious and semi-precious mineral substances and metals. For that, it collects the other 55% of the 1.25% export tax shared with the Mining division, plus $100 per certificate.

The External Commerce Division registers all trade operations and is supposed to promote Congolese trade. It collects no export taxes apart from a special charge for scrap metal, but it sells trading permits to foreigners and for cross-border foodstuff and livestock movements.

Table 1: Current DRC export duties[1]

Products	**OFIDA export duty**
Silver, platinum, copper, zinc, cobalt, cadmium, cassiterite not from artisanal mines, resins	10%
Untreated timber	6%
Minerals and their concentrates except where indicated otherwise, oils, metals, scrap metals, scrap copper	5%
Industrial diamonds, industrial gold	3%
Artisanal diamonds, artisanal gold	1.5%
Unroasted coffee, electricity	1%
All other goods	0%

The various agencies each collect their own sets of trade records, and not every agency covers every product in its statistics[2]. Scrap metal, goat skins, vanilla, pigeum bark and rauwolfia bark exports are covered by OFIDA but not by OCC. Timber exports are covered by OFIDA in Kasindi but not in Goma. But OCC in Goma as well as the Rwandan authorities register large amounts of sawn timber at the Goma border. On the other hand, OCC registers hardly any sawn timber exports in Kasindi, whereas OFIDA does. OCC in Goma registers trade in foodstuffs, OFIDA does not except for small quantities of maize.

Even where the same product and the same transaction is covered by several agencies they can register different numbers. In Kasindi, OFIDA registers four times as much coffee as OCC,

1 As fixed by law, 13 March 2003. Source: OFIDA
2 See Annex I for a complete list of statistics consulted and used in this report.

whereas OCC registers four times as much tea as OFIDA. Wolframite exports in Goma 2006 vary hugely by agency: 392t cccording to OFIDA, 295t according to the Commerce Dept, 268t according to OCC, but 401t according to the Mining Dept.

Some variations are accounted for by the fact that any transaction is registered with different bodies on different days and can thus easily slip from one month to the next between consecutive registrations or even from the end of one year to the beginning of the next. Thus OFIDA, OCC and the Commerce Dept. all register 97t of cassiterite exports for January 2006, but the Mining Division only 72t. The reason is that the first three bodies register four transactions but the Mining Division only three, with the last container of 25t which was registered with OFIDA on 31 January slipping into February.

However, within the same transaction surprising differences can occur, or transactions may disappear between registrations. This happens most often with minerals. Quite often a cassiterite load appears to lose weight on the way from OFIDA to OCC registers – rounding down is common, foe example from 46.116t to 45t, from 51.91t to 50t etc. A cassiterite load of 19.2t registered by the Commerce Dept and by OFIDA in March 2006 by a firm called „Nyiragongo“, which never appears again, is not even given any export value or customs number and is untaxed, although the Commerce Dept. values it at $28.031. Several cassiterite loads of the MPC mining firm, which mainly buys cassiterite in Walikale and sells it to its sister company MPA in Gisenyi/Rwanda for processing, appear in OCC statistics but not in others.

OCC fails to register any wolframite exports from Goma at all in November and December 2006, while OFIDA registers six transactions of 134t, the Commerce Dept five transactions of 112t and the Mining Division two transactions of 156t. Certain rare minerals – turmaline and yellow zircon - are exported as „samples" only, therefore not valued or taxed, but turmaline „samples" exported in 2006 total 529t according to OFIDA and 599t according to the Commerce Dept.

For the purposes of a comparative analysis of trade in Goma and Kasindi, OFIDA figures are used in this study as it is the body charged with registering all taxable export operations and as the higher totals registered by this body can be assumed to come closer to reality than the others.

Due to insecurity, no figures were available from Bunagana and Ishasha border posts which lie in areas heavily affected by fighting between FARDC, Nkunda rebels, Mai-Mai and FDLR. The competent bodies in Goma did not have any figures for these trading posts either[3]. The security situation probably has had an adverse effect on trade along these routes although they are historically important. Ishasha provided the only direct link from Goma to Uganda during the time when North Kivu was divided and is believed to be an important source of petroleum and other consumer goods imports from Uganda bypassing Rwanda. Some export goods declared in Goma, including lots of cassiterite exports, are also registered as transiting through Uganda rather than Rwanda, indicating that they were supposed to take this route. This may however have included false declarations designed to make certain movements at the Goma-Gisenyi border officially invisible.

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3 At the time of writing, Ishasha was completely inaccessible from the Congolese side due to an FARDC offensive against FDLR. Bunagana had been affected by FARDC-Nkunda fighting in 2006, Ishasha by Mai-Mai and FDLR activity in 2005 and 2006

North Kivu's official trade statistics 2006

***Table 2: North Kivu external trade balance 2006, in $*[4]**

	Goma	**Kasindi**	**Total North Kivu**
Registered exports	10,615,959.12	12,690,018	23,305,977.12
Registered imports	54,641,535	54,226,411.13	108,867,946
Balance	-43,999,575.88	-41,536,393.13	**-85,561,968.9**

Main exports Goma:

- Cassiterite $7,013,359.14 (66.1%)
- Coffee $1,284,699 (12.1%)
- Quinquina $887,745.81 (8.4%)
- Coltan $206,847.27 (2.0%)

Main exports Kasindi:

- Coffee $6,548,561 (51.6%)
- Quinquina $2,516,113 (19.8%)
- Papain $2,492,891 (19.6%)
- Bois finis $397,960 (3.1%)

Main exports North Kivu as a whole:

- Coffee $7,833,260 (33.6%). Kasindi share: 83.6%
- Cassiterite $7,065,123.14 (30.3%). Goma share: 99.3%
- Quinquina $3,403,858.81 (14.6%). Kasindi share: 73.9%
- Papaine $2,492,891 (10.7%). Kasindi share: 100%
- Wolframite $1,063,567 (4.6%). Goma share: 80.8%

Main Goma imports 2006:

- Petrol and petroleum products: $17,127,699.21
- Vehicles and vehicle parts: $5,456,761.61

4 Source: OFIDA (except OCC for non-petroleum imports through Kasindi)

- Medicines: $4,620,015.56
- Processed food: $3,149,439.13
- Prefabricated construction materials: $2,846,047.26
- Second-hand clothing: $1,857,908.80
- Powdered milk: $1,320,054.11
- Concrete: $1,078,343.73
- TV sets: $935,650.63
- Machines: $759,952.30

Kasindi imports 2006:
- Petrol and petroleum products: $27,106,945.13
- Others: $25,585,732. Many non-petrol imports in Kasindi are classified as „diverse goods“ and therefore there are few meaningful figures for individual categories of goods.

Table 3: Exports as registered by OFIDA and OCC from North Kivu 2006, in $

Product	OFIDA: Goma	OFIDA: Kasindi	OFIDA: Total North Kivu	OCC: Goma	OCC: Kasindi	OCC: Total North Kivu
Coffee	1,284,699	6,548,561	**7,833,260**	1,200,224	1,478,476	**2,678,700**
Cassiterite	7,013,359.14	51,764	**7,065,123.14**	6,846,890.86	10,000	**6,856,890.86**
Quinquina	887,745.81	2,516,113	**3,403,858.80**	839,140	2,648,298	**3,487,438**
Papain	0	2,492,891	**2,492,891**	0	2,395,702	**2,395,702**
Wolframite	859,537	204,030	**1,063,567**	590,708.16	201,660	**792,368.16**
Treated timber	0	397,960	**397,960**	0	335,258	**335,258**
Untreated sawn timber	0	322,681	**322,681**	387,737	5,942	**393,679**
Coltan	206,847.27	10,711	**217,558.27**	209,520	20,000	**229,520**
Cocoa	0	125,042	**125,042**	0	117,690	**117,690**
Tea	97,635.75	15,925	**113,560.75**	80,006	65,043	**145,049**
Gold	109,918.17	0	**109,918.17**	109,601	347,726	**457,327**
Goat skins	75,296.95	0	**75,296.95**	0	0	**0**
Scrap metal & slags	56,784.10	c.1160	**57,944.10**	120,000	0	**120,000**
Niobite (Pyrochlore)	17,136.05	0	**17,136.05**	17,220	0	**17,220**
Maize	6,999.88	0	**6,999.88**	89,663.33	0	**89,663.33**
Vanilla	0	c.3180	**c. 3180**	0	0	**0**
Pigeum	0	0	**0**	0	102,600	**102,600**
Rauwolfia	0	0	**0**	0	18,600	**18,600**

Sorgho	0	0	**0**	43,422.76	0	**43,422.76**
Palm Oil	0	0	**0**	21,430.73	0	**21,430.73**
Potatoes	0	0	**0**	9,781.51	0	**9,781.51**
Bananas	0	0	**0**	5,028	0	**5,028**
Chalk	0	0	**0**	3,110.45	0	**3,110.45**
Tobacco	0	0	**0**	893.69	0	**893.69**
Lamp Oil	0	0	**0**	775.33	0	**775.33**
Turmaline	*Valued at 0*	0	***0***	0	0	***0***
Zircon	*Valued at 0*	0	***0***	0	0	***0***
Total	10,615,959.12	12,690,018	**23,305,977.12**	10,575,352.82	7,746,995	**18,322,347.8**

The „Petit Nord" (Goma) export economy is centred around minerals, that of the „Grand Nord" (Kasindi - Beni/ Butembo) around agriculture and forestry, with the quinquina plantation economy based on the operations of the Pharmakina quinine factory in Bukavu in second place in both regions.

Historically, Kasindi has been a much more important trading post than Goma. The rise of Goma as a trading centre is due to the war, the loss of trading routes between Goma and Kasindi and the rise of a mineral economy in the southern part of North Kivu during that time. Without the cassiterite boom of recent years, Goma's export earnings would dwindle to next to nothing and the Nande-dominated „Grand Nord" export trade would be almost the only source of export earnings for the whole province. This is why the cassiterite trade is politically so important and controversial.

The central role of the cassiterite trade is emphasised by the fact that it is the only significant source of export duty earnings from North Kivu. Total OFIDA takings from North Kivu earnings in 2006 were divided as follows:

Goma: $410,369.23 of which cassiterite $337,926.82 (82.3%)
Kasindi: $81,827 of which coffee $56,244 (68.7%)
Total: $492,196.23 (cassiterite: 68.7%; coffee: 11.4%)

It is shown that while Kasindi has a greater share of North Kivu's trade, it contributes much less to the public purse than Goma. This is almost entirely due to the predominance of cassiterite, which like most minerals is heavily taxed, in Goma's export trade. Cassiterite exports contribute under one-third of total North Kivu export values but over two-thirds of total customs revenue from exports. The disproportionate taxation of cassiterite relative to North Kivu's other exports may explain why cassiterite is most vulnerable to smuggling and fraud –

along with timber.

The mechanisms of export fraud

All operators and services in North Kivu agree that a large proportion of goods entering and leaving the province from/ to neighbouring countries passes the border informally even through recognised border posts. This can take various forms[5]:

- goods are free of tax and/or import/export duty and therefore the customs bodies do not bother to register them
- goods are taxed and in order to reduce the tax burden, importers/exporters bribe customs officials and other state agents to register a lower quantity/value or even to let them through witout registration
- the state bodies concerned decide as bodies not to apply the official tax/customs regime either in full or in part to all or some traders, against payment
- taxed goods are hidden underneath non-taxed goods and detailed controls are either lax anyway or relaxed against payment
- traders obtain tax exemptions for certain goods and use them to hide other goods amongst a consignment of exempt goods
- traders in possession of tax exemptions trade on behalf of other people who do not have exemptions
- goods are traded by people with good military links or members of the military, and security services are ordered to ask other services to go away while their vehicles cross
- goods cross at non-official border posts - in the open countryside, on side roads between Goma and Gisenyi (this against payment to whatever security agencies are

5 Interviews with state services and traders in Goma, January-April 2007

stationed there, or with their involvement), through gates in the garden walls of houses belonging to state officials directly adjoining the border, or on remote shores of Lake Kivu where no services are legally present

Only the first of these options can strictly be defined as „legal but unrecorded" trade, which is the mainstay of the informal economy and thus the most important part of the North Kivu survival economy as a whole. The others involve varying degrees of illegality over which the trader does not always have control. It is even possible to have „illegal but recorded" trade, for example in the many cases where trade statistics miscalculate volumes or values or due tax payments are not recorded. It is furthermore estimated that 30-40% of revenues legally collected are pocketed by the agents responsible.

In general, it can be said that anybody who should be paying any kind of tax has the option to come to a private arrangement with the person collecting the tax instead, whereby they agree to reduce or annul the tax levy and share the profits. Import and export fraud mainly involves systematic undervaluation of goods in order to pay less, or even being escorted by paid military in order to bypass civilian customs services altogether.

Entire containers of goods can thus pass without leaving any official trace. Networks of political and military authorities can force state agents to let goods through without registration, and agents who know the law can manipulate it in favour of certain traders against payment. Each operation of „informal trade" involves „informal earnings" for all parties concerned. As these „informal earnings" are not passed on to the state but pocketed or shared by the agents involved, this prospect provides an incentive for state agents to allow, encourage or even demand the bypassing of the law by the trader and thus systematic fraud. In effect this is a kind of „informal tax reduction" which may even be factored into tax laws by demanding impossibly high levies in the knowledge that noone can pay them and will instead prefer to come to an informal arrangement.

„Fraud amongst consenting adults“ suits all parties concerned. The tax collector earns some money directly, the trader pays less taxes and can pass on savings to the consumer. The local economy has adjusted to this and profits from informal trade. „If everybody paid all their tax“, one observer comments, „everything would become too expensive for anybody.“ And because not everyone pays their tax, tax rates remain high and are applied selectively in a game of power relationships between political, military and economic agents. Legal and illegal trade coexist within the same economic sphere in which there is no clear demarcation between formal and informal sector either. Several businessmen say that they do not see why they should pay tax as everyone knows that taxes are pocketed by individuals. Fraud is systemic and structural and cannot be eliminated by appealing to an individual's sense of respect for the law or by arbitrary enforcement of rules.

Thus typically smuggling in North Kivu involves not too few state actors (and thus a lack of control), but too many, some whom are earning money simply by being there when they shouldn't. One indication of this is the extent to which state services flock around border posts and traders, each hoping for a share of the action and a cut of the profit. The presence of state security outfits of varying kinds – the official army FARDC, the presidential guard GSSP/ GR, the military police, the police, the intelligence agency – is normal at the border, but their job should not involve controlling cross-border trade. They still do so, however. „There are more military than civilians at the border“, the head of one state agency explains. „The military can intimidate. If you are a customs official and you are alone, and there are lots of soldiers around you, there is not a lot you can do."

Official efforts to fight smuggling on the borders usually begin by assuming that controls have to be strengthened. Given the structures outlined, this is likely to have the opposite effect, as every new controller means yet another claimant for „informal earnings".

The DRC government has realised that corruption on the borders requires reducing the number of state agents at the border posts[6].

- On 28 March 2002 the DRC government decreed that in future authorised services on the borders should be limited to four: the customs service OFIDA (Office de Douanes et Assises); the export control body OCC (Office Congolais de Controle), the immigration service DGM (Direction Générale des Migrations) and the Service d'Hygiène.
- On 25 October 2003 the Ministry of the Interior in Kinshasa circulated a statement arising from a Cabinet meeting on 17 October, noting „police and administrative hassle against economic operators as well as the levying of abusive and illegal taxes at border posts" and concluding: „The Government has decided the strict application of the decree of 28 March 2002."
- On 27 November 2003, North Kivu's Provincial Governor Eugène Serufuli notified the government and also the military and police authorities in Goma that from now on only OFIDA, OCC, DGM and the „Office de quarantaine du Ministère de la Santé" were allowed to operate on the borders and „all other services currently positioned there must be withdrawn".

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6 All documents cited here are in the possession of Pole Institute

- On 10 July 2004, the Governor revised this list and notified the competent authorities that from now on only OFIDA, OCC and the intelligence agency ANR (Agence Nationale de Renseignements) were allowed to operate on the borders and that „the services rendered by their agents are not paid“ but part of their duties.
- On 30 August 2004, the Governor added that „notwithstanding“ this, „provisionally“ the former RCD rebel movement's revenue collection body OPRP (Office de la Protections des Recettes Publiques) would „continue to work as in the past“ and thus control goods passing the border together with the other three bodies.

Today, the original government list of 2002 stands, but it is not respected[7].

Officially allowed at the border:

6. OFIDA
7. OCC
8. DGM
9. Hygiène Publique

Present at the border for „security reasons“:

1. Police des frontières
2. FARDC – DEMIAP (Détection Militaire d'Activités Anti-Patrie)
3. FARDC – TD (?)
4. Garde Républicaine (Presidential guard)
5. ANR (intelligence agency)

Also present in the street, officially helping customs:

1. EAD-Province (provincial revenue authority)
2. Transcom (state transport authority)
3. Commerce Extérieure (provincial trade department)
4. Pointage Province (provincial weighing agency)

7 Interviews at the border, May 2007

5. Agriculture (provincial agriculture department)

State agencies interfere with trade before it reaches the border too. The number of different and competing state agencies involved in trade control has in fact continuously increased since the war.

Table 4: State agencies on the Goma border with a role in trade control[8]

Agency	**During the RCD rebellion (1998-2003)**	**During the transition (2003-07)**	**Today**
OFIDA (Office des Douanes et Assises), customs agency	X	X	X
OCC (Office Congolais de Controle), export control agency	X	X	X
DGM (Direction Générale de Migration), immigration control body	X	X	X
Service d'Hygiène	X	X	X
DSR (Direction Spéciale de Renseignement), after 2003 ANR (Agence Nationale de Renseignement), secret service	X	X	X
Police des Frontières	X	X	X
EAD-Province (provincial administration)	X	X	X
Péage route (road toll)	X	X	X
OGEFREM (Office Congolais de Gestion de Fret Maritime),	X	X	X

8 Ibid.

maritime transport agency			
FPI (Fonds de Promotion de l'Industrie)	X	X	X
Division du Commerce Extérieure (of the provincial admin.)	X	X	X
FEC (Fédération des Entreprises du Congo), employers' federation	X	X	X
Mairie de Goma (Goma town administration)	X	X	X
Transcom (state transport agency)	X	X	X
DGI (Direction Générale des Impots), tax authority	X	X	X
DGRAD (Dir. Gén. des Recettes Administratives, Judiciaires, Domaniales et de Participation), revenue agency	X	X	X
Division de l'Environnement (of the provincial admin.)	X	X	X
Division des Mines (of the provincial admin.)	X	X	X
CTCPM (Cellule Technique de Coordination et Planification Minière), subdivision of the mining ministry	X	X	X
ANC (RCD rebel army)	X		
CEEC (Centre National d'Expertise et de Certification)		X	X
FARDC - TD		X	X
FARDC – DEMIAP (Détection		X	X

Militaire d'Activités Anti-Patrie), military intelligence			
Garde Républicaine (presidential guard)		X	X
Hydrocarbures (petroleum ministry)			X
SONAS (Société Nationale d'Assurances), state insurance			X

The presence of all these bodies either directly at the border in Goma or in the town with the ability to interfere with business is an obstacle to legal teade and favours unrecorded, unnoticed exports over those which are recorded and thus noticed by all these organs.

The close proximity of Goma and Gisenyi and the fact that the two towns have practically merged makes the border impossible to control, short of building a Berlin-style wall. Many paths lead from one town to the other and are hardly guarded. If they are guarded, the soldiers stationed there on the Congolese side – often members of the presidential guard – will conduct their own cross-border trade. „It's amazing what goes on down here in the mornings“, one resident of a house on a side road in Goma just a few yards from the border explains. A lorry, he says, will be let through by the presidential guard for $1000. On both sides of the border in certain areas, expensive villas have been built directly on the border, with the garden wall constituting the border. This wall may have private doors. Some of these villas were built during the time of the RCD rebellion, others are still under construction, and many are inhabited by high-ranking state officials from the DRC.

CHAPTER 3: MINERAL EXPORTS FROM NORTH KIVU

Mineral exports, being a major source of income and of conflict in North Kivu as in the whole of the DRC, are supposed to be tightly controlled. In fact, as will be shown, large proportions of production bypass official statistics and recorded trade.

The most complete set of recorded figures is provided by the Mining Division of the North Kivu provincial government which continued to function throughout the war. The figures show that coltan exports peaked in 2001 and have remained at a lower but significant level ever since. Cassiterite exports gre rapidly during the coltan boom of 2000-01 and again exploded during the tin price boom of 2004, remaining at a high level since then. The latest mineral product to experience a boom is wolframite (tungsten) which in 2006 became the biggest growth sector in the mining industry of North Kivu.

Table 5: North Kivu registered mineral exports 1999-2006, in tonnes[9]

	Coltan	**Pyrochlore**	**Cassiterite**	**Wolframite**
1999	5	0	71	5
2000	15	22	23	15
2001	90	605	550	28
2002	28	1339	497	28
2003	26	670	938	26
2004	42	386	4672	42
2005	26	91	3599	26
2006	39	8	2904	401

9 Source: Division des Mines, Goma

There are also important differences between figures collected by the different bodies supposed to specialise in mineral trade: the minng division of North Kivu province and the certification body CEEC. The latter are almost consistently lower than the former.

Table 6: Different North Kivu mineral trade statistics (in tonnes), Goma

2005	**Coltan**	**Pyrochlore**	**Cassiterite**	**Wolframite**	**Slags**	**Gold**
Div. Mines: Exports	26	91	3599	26		
CEEC: Production	20		2065		25.5	
CEEC: Exports	13.5		1452		25.5	
2006						
Div. Mines: Exports	39	8	2904	401	38	.009
CEEC: Production	35.5		2637.5	445	55.5	.009
CEEC: Exports	33		2391	345	55.5	.009
OFIDA: Exports	39	8	2948	392	20	.009

A large number of trading firms are active in the mineral trade, but only a few of them are significant.

Amur, owned by a Congolese trader from Idjwi island in Lake Kivu who has good links with the local administration and also food supply contracts with WFP, is the market leader in cassiterite exports. He is followed by Sodexmines, directed by a Lebanese businessman with a British passport who entered the North Kivu mineral market from Kinshasa in 2005, as did Gemico. MPC is an established South African mineral trader, linked with Rwanda through the sister company MPA in the Rwandan border town of Gisenyi which operates a tin smelter there. Munsad is a local trading firm with established links to the Belgian importer Trademet.

Coltan trading is carried out via official channels only by MHI International, the trading firm of the local trader Edouard Mwangachuchu who was this year elected into the DRC Senate as a representative of the Banyarwanda community of North Kivu.

The leader in wolframite is Starfield, a new player on the market who is exploiting the market niche provided by rising world demand for tungsten.

Pyrochlore is exclusively mined by the German-owned Société Minière du Kivu (Somikivu), now managed by the Goma businessman Modé Makabuza. The Somikivu pyrochlore mine in Lueshe has been closed since 2004 and exports since then consist of existing stocks only.

Table 7: North Kivu recorded mineral exports by trading firm, 2006[10]

	Coltan	Pyrochlore	Cassiterite	Wolframite	Scories	Gold
Amur			943.561	173.242		
Sodexmines			777.768			
MPC			429.07			
Munsad			296		38	
Gemico			156.034	19.631		
La Comète			97.627			
Ets Panju			73.8			
Bakulikira Ng.			67.5			
Ets Gama			27.454			
Hill Side			25			
Metachem			10.261	57.366		
Somikivu		8.4				
MHI	38.8					
Starfield (SMC)				140.64		
Bulongo Gems				10		
Congo Mines T.						.009
Total	**38.8**	**8.4**	**2904.075**	**400.879**	**38**	**.009**

10 Compiled from monthly breakdowns by Division des Mines, Goma. For wolframite, there is a discrepancy of 24.822 t in October between the monthly total given and the breakdown by exporter. An export with the missing volume by Amur appears in the OFIDA statistics and has been added in this table to provide consistency.

Most cassiterite from North Kivu goes to Belgium, the second most important destination is Rwanda, accounted for mainly by MPC exports but also by a few exports of Gama and Metachem. Metachem also exports to Hong Kong (China). Ets. Panju – formerly a gold trader from Bukavu – exports to Malaysia and Russia. Exports to Britain are carried out by Comptoir Ibak, which on the Mining Division list of trading firms appears under the name of Bakulikira.

Table 8: Cassiterite exports from Goma 2006 by destination[11]

Country and firm(s) of destination	Quantity (in tons)
Belgium (Trademet, SDE, STI)	2289.69
Rwanda (MPA, Eurotrade)	435.07
Malaysia (Corporation Berhad)	73.8
Britain (Afrimex)	73.8
Russia (Fincocor Kazakhstan)	27.454
Hong Kong (C.Steinweg)	4.261

Of the cassiterite destined for Belgium, almost all transits via Uganda, only 60t via Rwanda. The rest transits via Rwanda[12].

Of the coltan exports, 28.4 tonnes went to the Netherlands and 10.4 tonnes to South Africa. The pyrochlore exports went to Britain. The gold exports went to the United Arab Emirates. The scories went to Belgium. The wolframite exports went to the Netherlands, Belgium, Hong Kong, Germany, Russia and Singapore, with Amur exporting to Belgium, Starfields to the Netherlands and Germany, Metachem to Singapore and Hong Kong and Gemico and Bulongo to Russia.

11 Source: Division des Mines, Goma

12 These and the following data from detailed tables compiled by Division des Mines, Goma

The registered gold exports of 9kg correspond to a lot of 10kg gold smuggled out of DRC to Rwanda which was confiscated by the Rwandan authorities and sent back to Goma in April 2006, only to be re-exported legally later.

Cassiterite exports are the main mineral export product, and Goma depends on them for its foreign exchange earnings. It is thus a strategic good and we will now examine it more closely.

CASSITERITE: FROM MINE TO MARKET

The mines

Most cassiterite in North Kivu comes from Walikale territory, the westernmost part of the province deep in the forest beyond the Masisi hills leading into the Congo basin. The local authorities count 10 cassiterite mines, each consisting of several pits[13]. The most important mine is Bisie with 57 different pits, situated in Wassa forest. The mines of Matamba, Idambo, Ibondo, Bukombe, Terrain de Mines Bakondjo, Loba Lisusu, Bolindo and Lichacha lie near the border between North and South Kivu and near the border of the Kahuzi-Biega national park, and their production is transported to South Kivu by bicycle. The tenth mine, Mabuta, has been abandoned.

Bisie, discovered as mineral-rich in 1998, was initially mined for coltan and since 2001 also for cassiterite. It now has around 15.000 inhabitants, 1.000 of which work in the mines. The mines are owned by the customary traditional owners of Bisie hill, supervised by the local territorial authority. Each of the 57 pits is named after its head miner, eg „Hamuli“, „David“, „Fifi“, „Dimanche“, „Simon-Lotus“, „John Titi“ etc. They employ between 15 and 17 people each, giving a total number of

13 This section is based on interviews in Walikale, February 2007

around 1000 miners including those working clandestinely. They dig tunnels up to 2 metres wide and 200 metres deep to find cassiterite-rich streaks. The miners may shift between pits depending on where major finds are being exploited. Maximum production capacity in all pits together is 29.7 tonnes per day when it is not raining and no major earthworks are needed, meaning up to 29.7 kg per miner - giving up to 890 tonnes per month and more than 10,600 per year.
A pit can be exploited for up to three month before new major digging operations are needed, which may take weeks to complete. Most of them extend deeper than the maximum limit of 30m allowed by law for artisanal mines, and in February the Walikale district administration declared ten of them closed for safety reasons – not that this had any effect on, or rather under, the ground.

There are said to be 29 more pits in Bisie controlled exclusively by the military or other security organs under the control of known senior commanders. Their production does not figure in the statistics.

Ownership disputes

As everywhere in the DRC, the Walikale cassiterite region is object of an intractable ownership dispute. Under customary law, the mines are owned by the traditional customary owners of the land under which they lie and they collect taxes. Under modern law, the mines belong to the state which has the right to concede them. This it has done in a way which creates new conflicts.

One player is the local firm GMB (Groupe Minier Bangandula), consisting of land owners grouped in the Bangandula clan. One of them through the firm „Saphir" is Alexis Makabuza, formerly head of the now defunct semi-statal development organisation TPD (Tous pour la Paix et le Développement) close to former North Kivu provincial governor Eugène Serufuli and now a target of UN sanctions because of his and TPD's supposed links to illegal arms imports.

The other player is the South African firm MPC (Mining and Processing Congo), which has close links to Rwanda and is one of North Kivu's main mineral trading firms; it sells cassiterite to its sister firm MPA (Metal Processing Association) in Gisenyi just across the Rwandan border for processing.

GMB says the Bisie mines form part of the old concessions of the parastatal Sominki (Société Minière et Industrielle du Kivu) which used to hold vast gold and tin mining areas in the Kivu provinces. On this basis it signed a lease contract with the Sominki arm Sakima (Société Aurifère du Kivu et Maniema), one of the successor bodies of Sominki created in the 90s.

MPC says the Bisie mines actually lie outside the Sominki concessions and obtained an exclusive exploration licence from the Ministry of Mines in Kinshasa on 29 September 2006, covering four exploration areas including Bisie. The firm was already well established in the area as a buyer of artisanally mined cassiterite. Thus in fact there was nothing for MPC to explore exclusively as the local population was already mining there.

To win over the local mining population, MPC promised to build industrial mining units. The miners and the traditional land owners to whom the pits belong reacted by forming the „Coopérative Minière de Mpama Bisie“ to defend their interests against MPC. On 29 October 2006, the MPC team in Bisie was attacked by unknown gunmen; an internal MPC report on this incident seen by Pole Institute suggests that this attack was carried out either by or with the complicity of army units stationed to protect the firm's compound.

MPC seems to have won the day, however. On 30 December 2006, a development pact (Convention Collective de Développement) foir Bisie was signed between the traditional chiefs on the one hand, represented by the Mwami Kiroba Mulengezi, and MPC, represented by Benjamin Moore and Yves Van Winden. It says in Article 2 that for each ton of cassiterite bought by MPC during the period of validity of the exploration licence $90 will be paid to Walikale district. MPC also agreed to operate a policy of preferential employment for Walikale natives and to let each „groupement" operate an artisanal pit. In each „groupement", MPC would build houses for the chiefs, one primary and one secondary school, two dispensaries, one workshop with a generator and one cassava mill and pay one year's worth of one student's fees, as well as transporting basic goods into the area.

In January 2007 MPC reinforced its position by being integrated into the consortium „Kivu Resources" together with MPA and another local firm CAR. „Kivu Resources" wholly owns these three firms now and is itself controlled by the Virgin Island based „Edin Mining", whose CEO Alan Smith was designated as Kivu Resources CEO. Edin Mining holds 50% of Kivu Resources with an option to increase its stake to 70%. The other investors in Kivu Resources are the Ireland based „Coronation Capital" and the South African listed miner „Metmar".

According to Metmar, „Kivu Resources, through its wholly owned local companies (Metal Processing Association SARL in Rwanda, Central African Resources SPRL and Mining and Processing Congo SPRL in the DRC) will hold a number of assets in the DRC and Rwanda including a management agreement with SAKIMA, a state owned company, in the DRC to manage tin and tantalum production from small scale miners; an option to acquire an 80% shareholding in SAKIMA's mining permits; a joint venture with the government of Rwanda on the Gatumba mining permits; as well as a number of exciting prospecting permits in the region"[14]. Metmar CEO David Ellwood said in Johannesburg that „the area could be host of the world's next biggest (tin) deposit, although it would take approximately two years to prove resources here"[15].

The GMB contract is now on the list of mining contracts to be reviewed by the interministerial commission set up by the Kinshasa government on 20 April 2007 with a mandate of reviewing a selection of investment partnerships of the DRC's mining parastatals. MPC does not figure on the list. This indicates that the ownership wrangle between GMB and MPC has been resolved in favour of MPC, but it does not mean that the local population has accepted the activities of MPC.

The trading chain

The trading chain works as follows.

- In the pit, miners barter cassiterite for basic goods with independent traders. 1 kg cassiterite will currently (January 2007) buy 1 kg flour, rice, or beans, or 300g sugar, or two bottles of palm oil. 2 kg cassiterite will buy one Primus beer (72 cl). 3 kg cassiterite will buy 1 kg beef.
- From the pit, porters employed by the traders carry the cassiterite on foot to Njingala, 35 km away and a two-day journey through difficult terrain. In Njingala, population 12.000 and only creaed 2001, the „comptoirs d'achat" of trading firms from Goma and Bukavu are based:

14 "Metmar moves to invest in DRC and Rwanda tin assets", JSE, 24 January 2007
15 "DRC tin exploration under way as metal price soars", Mineweb Johannesburg, 25 January 2007

Sodexmines, Panju, Amur, MPC, Bakulikira, Starfield and GMB for Goma; Muyeye and Olive for Bukavu. They buy cassiterite from the traders for up to twice the pit price.

- From Njingala, the comptoirs transport their cassiterite by car to Walikale airport, known as Kilambo, 23 km from Walikale town, the district capital. Kilambo is in fact part of the old Goma-Walikale road which is no longer used and has been turned into a makeshift runway expanding into the bush. Only small planes can land there; they have to be turned around manually between landing and starting. Accidents are frequent. In Kilambo, state services will verify prior declarations made by the trading firms.
- Trading firms and state services have their offices in Mubi, a well-established trading centre with 20.000 inhabitants which came into being 1985 for gold trading and which since the coltan and cassiterite booms has seen major construction work. Traders from Kisangani, Bukavu and Goma live there. Mubi is where trading firms and state services have their offices and interact, where declarations are made and taxes paid. It is 11 km from Njingala and 7 km from Kilambo runway to which it is connected by a tarred road.
- From Kilambo/ Walikale, cassiterite is flown to the provincial capital Goma and brought from the airport to the head offices of the trading firms based there. At these head offices, the mineral may still be rejected as too impure and the trader not paid, especially if he is working on a credit basis. When agreement is reached on the quality of the merchandise and some preliminary purification has taken place, the mineral is officially weighed and packaged for export, usually in container loads of 25 tonnes, under the supervision of a multitude of state agencies, not all of whom are supposed to be

there and all of whom demand a ombination of legal and illegal taxes in order to allow export to go ahead. The mineral may be stocked before export at the TMK freighters and some of the most obvious impurities may be removed to reduce weight.

- From Goma, cassiterite is transported by road to either Rwanda or Uganda as transit goods from where it reaches the world market.

The extent of export fraud

The extent of fraud is proved by comparing the figures of cassiterite leaving Walikale, arriving in Goma and leaving Goma.

Table 9: Main official records of cassiterite trade volumes 2006 (in tonnes) by source[16]

Month	Witnessed as leaving Walikale for Goma (DGM Kilambo)	Registered as leaving Walikale for Goma (Bureau Minier Walikale)	Registered as arriving in Goma (Bureau de Navigation Aérienne Goma)	Registered as leaving Goma (Division Minière Goma)	Declared for export at customs (OFIDA Goma)	Checked for export (OCC Goma)	Certified for export (CEEC Goma)
Jan	627.4	192.6	285.85	72	97	97	92
Feb	817.6	285.3	362	265.626	271.238	265.626	221.530
Mar	945.6	348.1	424	315.657	330.613	287.789	273.697
Apr	920	346.4	357.85	207.781	212.818	225.780	200.761
May	960	481	490	201.818	208.393	201.818	204.818
June	931.8	429.3	434.2	269.815	255.799	248.814	261.792
July	836.8	472.4	386	248.16	281.851	289.057	241.141
Aug	989.4	489.2	361.5	161.218	208.431	203.660	161.218
Sept	582.6	231.5	432	150.825	174.732	171.939	172.546
Oct	857.4	471.3	460.9	305.091	249.212	261.551	257.091
Nov	1040	559.6	432	325.485	332.434	335.358	304.500
Dec	800.4	460.6	391.9	380.599	325.609	323.611	431.839
Total	**10309**	**4767.3**	**4818.2**	**2904.075**	**2948.029**	**2912.002**	**2391.094**

16 All sources collected at point of origin in Walikale and Goma

From this table certain facts emerge:

- if the Walikale figures are correct, cassiterite exports from Goma in 2006 were worth not $7m as the OFIDA figures suggest but almost $25m, which is more than the entire value of registered exports from North Kivu in that year
- differences between different services within Goma are minimal, between the two ends of the air transport link Walikale-Goma also
- in Walikale, over half of cassiterite production drops out of the statistics; and between arrival in Goma and export, again almost half of the remainder drops out
- the figures of the migration police DGM at Kilambo airstrip in Walikale correspond closely to the known production capacity of the cassiterite mines in Bisie (10,600 tonnes a year). They can be assumed to have been compiled in a disinterested way, as DGM agents do not levy taxes on goods and therefore have no interest in entering into deals with traders to reduce declared volumes and therefore taxes and then share the difference. They are also said to be the service which is present at the airstrip most often.

All state services in Goma feign incredulity when confronted with these sets of figures and at the same time show great interest, as they do not normally get to see each others' statistics. There are some natural factors which may explain the reduction of registered volumes between Walikale and the point of export[17]. One is cleaning and sifting in Goma – some parts of the raw material may be removed before a container load of 25 tonnes is assembled for registration and export, but the volume loss is estimated at no more than 10%. Besides, cassiterite may be transferred to Bukavu; officially 267 tonnes

17 Interviews with traders and state services, Goma, March 2007

moved from Walikale to Bukavu in 2006, but these do not show in the figures given above anyway. Road transports from Walikale to Bukavu via Hombo and from Walikale to Goma are possible but difficult and lengthy.

Between Goma and Bukavu, according to the Mining Division transports by boat are registered but not those by road. However, small boats carrying goods along the water at night will escape registration. There are also many other ways of crossing the DRC-Rwanda border – in the countryside, much of it is unmarked; between Goma and Gisenyi it may consist just of a wall between adjacent plots or a piece of string across a sandy track.

Most of the reduction in volumes is, however, due to fraud.

The reasons for export fraud

Officially, export fraud is not possible. All chiefs of services strongly deny that there is any possibility that their various figures might not be the same or not accurate.

According to the Director of OCC in Goma, export merchandise is accompanied by documents issued by OCC as the export control agency which issues a „Certificat de Vérification à l'Export" (CVE)[18]. Export duty will have been paid beforehand at OFIDA and the OFIDA receipt will also show details of the export goods. OCC and OFIDA records are supposed to be the same; officially, if there is a difference, the goods cannot leave the country. Border controls are usually limited to checking these documents and possibly, if a certain number of containers is given, to verify this number, but without checking the contents. Similar checks are made in Mombasa/ Kenya, the

18 This and the following: Interviews in Goma, March 2007

Goma services say. It is in the transporter's interest to verify that all records are the same in order to avoid hassle at the various transit points.

However, the trading chain is in fact very expensive for people who keep to the law. As one trader in Goma explains: „At the moment, to export one container of 25 t cassiterite legally from DRC I have to pay $6500 in tax. If I export from Rwanda, I pay $200; if I export from Uganda, $40. So if I can get my product to Rwanda or Uganda first and export officially from there, I save a lot of money. Avoiding DRC taxes costs me $2000 for one container. So I save $4500. The DRC is the only country in the region which still levies an export tax. All the others have abolished it.“

There are many other taxes besides official ones, often levied by the same official. When cassiterite is weighed by trading firms in Goma and sealed for export in order to provide an official statement of volume – from which export value and hence duties to pay are calculated – the following services are present by law as witnesses, as the head of one of them explains:

- CEEC, the official mineral certification body
- OCC, the official export control body
- OFIDA, the customs agency
- DGRAD, the non-tax state revenue collection agency
- Provincial Mining Division
- Representative of the Provincial Governor

But in addition one may also find some or all of the following:

- ANR, the intelligence agency
- DGM, the immigration control agency
- DEMIAP, the military intelligence agency
- Police des Mines, the mining police
- GR, the presidential guard
- PM, the provincial military police

The authorised services sign a „procès-verbal“ confirming the accuracy of the weighing and packaging for export. The others may demand money simply for being there, and are capable of disturbing and contesting proceedings in order to be paid off.

One businessman describes what happens as follows: „If you want to export legally, lots of services come and witness the loading operation, and each of them demands a payment for having been there. They come and witness, later they demand that you come to their office and they ask for $300, and if you don't pay you are arrested.“ In order to avoid this „they negotiate with you that you don't declare the entire amount and you give them part of the taxes you save.“

Table 10: Taxes and fees levied along the trading chain Walikale to Goma[19] (various sources)

Tax or other charge	**Amount**
Bisie „droit coutumier“ by customary land owners	5% of production
Bisie „supervision“	5% of production
Mubi: Walikale territory tax	$100 per 2t
Mubi: North Kivu province tax	$50 per 2t
Mubi: Small and Medium Enterprises Inspectorate	$10 per 2t
Mubi: Revenue authority DGI	$35 per 2t
Mubi: Mining Bureau	$10 per 2t
Kilambo: Transport authority Transcom for airstrip use	$25 per 2t

19 Compiled from various sources in Walikale and Goma. Rates may be incomplete and subject to change

Goma: North Kivu province EAD	1% of export value ($24 per t)
Goma: Customs agency OFIDA	5% of export value ($120 per t)
Goma: Maritime freight agency OGEFREM	0.59% of export value ($14 per t)
Goma: Non-tax state revenue authority DGRAD	45% of 1.25% of export value ($13.5 per t)
Goma: Certification authority CEEC	55% of 1.25% of export value ($16.5 per t)
Goma: Export control authority OCC	1.8% of export value ($19.2 per t)
Goma: DGRAD export licence	$50 per container (1 container: 25t)
Goma: OCC product analysis	$140 per container
Goma: CEEC certificate	$100 per container
Goma: OFIDA export seal witness declaration	$60 per container
Goma: OCC export seal witness declaration	$30 per container
Goma: Mining Division export seal witness declaration	$30 per container
Goma: CEEC export seal witness declaration	$20 per container
Goma: DGRAD export seal witness declaration	$20 per container
Goma: Provincial Govt export seal witness declaration	$20 per container
Total (current official export value: $2400 per ton), excluding Bisie levies (not paid by trader)	**$365.26 per t = 15.2%**
Total exluding Mubi levies (not paid by exporter)	**$250.26 per t = 10.4%**

Exporting unofficially to Rwanda and Uganda and re-exporting products as local from there has other advantages for traders besides saving taxes[20]: They can keep their business to Rwandan and Ugandan banks rather than Congolese ones which they do not trust. As one trader explains, Rwandan law requires that export revenues in hard currency have to repatriated into the Rwandan banking system. At the end of the year, the Rwanda Revenue Authority will take a 30% tax on profits – but Congolese traders say that this is still better value than paying Congolese taxes which are based not on profits but on export values.

„Exporting 60% of your merchandise fraudulently is normal", the trader says. „Rwanda encourages exports in order to have access to hard currency. The DRC discourages exports through its export tax regime which means we import much more than we export and lose hard currency. We would like to be able to import and export via Congolese banks, but they don't have enough hard currency. Repatriated export earnings pass through the Central Bank in Kinshasa and often the government borrows them for its own requirements, so they do not come to Goma. So a trader in Goma will find himself blocked. That is why we don't use our banks. We have the impression that our government prefers to keep our banking system dead so as to encourage money laundering and a circuit of earnings distribution outside the official system."

The weakness of the Congolese banking system also discriminates against Congolese traders wishing to start business and trying to raise capital. According to the Goma branch of the Congolese business federation FEC, this is the reason why most mineral trading firms are either owned or financed by Lebanese, South African and Rwandan trading

20 This and the following: Interviews in Goma, April-May 2007

firms who bring their own money.

The Goma branch of the Central Bank does not agree that the state of the Congolese banking system might constitute a problem for traders. „International currency movements have to be authorised by the Central Bank", North Kivu Central Bank director Venance Lengwe Bin Kaumba concedes. „But the money in a bank does not belong to the state, we have moved on from that. Exchange rules are clear and buying up foreign exchange reserves is forbidden." He points out that all import and export declarataions have to be bought via the banking system – which, however, might be a further discouragement for traders to declare all their transactions. There are persistent reports that foreign exchange reserves are withdrawn from the Central Bank by the DRC government to finance current expenditure, and the new government is still working on a way to improve controls in this sector.

The statistical monetary effect of unrecorded cassiterite exports is huge. Using the export price of $2400/ ton used for export registrations (which is much lower than the real world market price), the difference between exporting 2,948t and 10,309 t gives a difference of $17.666m in export earnings and of over $880.000 in foregone export duties for OFIDA alone. Using real prices, the difference is higher still. MPC, one of the main mineral traders in Goma, uses a cassiterite price of $3000/ton in its own accounts for 2006. This would give $22m undeclared and unregistered export earnings. Other, lesser sums go unrecorded in other sectors.

The actual economic effect is rather less, as unrecorded and untaxed exports nevertheless take place and generate export earnings for economic operators in North Kivu – they just do not show in official accounts and do not enter into the formal banking system. Only with the millions earned by unrecorded exports, traders explain, can North Kivu finance its massive and soaring amounts of consumer goods imports and sustain its huge trade deficit,

OTHER EXAMPLES OF EXPORT FRAUD

Export fraud is not limited to minerals, as the punitive Congolese tax regime extends to other products. Agricultural exports from North Kivu are also subject to fraud. According to an industry source[21], total taxes and levies on coffee leaving the DRC are 7% of value – but in Rwanda and Uganda it is only 1%. This is an incentive to smuggle coffee out of the DRC into these countries and export it as Rwandan or Ugandan produce - a phenomenon which is also known elsewhere in East Africa, for example of Tanzanian or Ugandan coffee being smuggled into Kenya in order to benefit from superior prices paid for Kenyan coffee on the world market.

As a consequence of the taxation difference, coffee merchants offer lower prices to coffee farmers in DRC than in Rwanda or Uganda. This gives Congolese farmers a further incentive to smuggle coffee out of the country. All three coffee roasting plants which used to exist in Goma have closed. The source explains: „A coffee farmer here in North Kivu will take his coffee beans to Rwanda and sell them to a Rwandan who exports them. He can go across the official border or across the lake. He may hide his coffee beans among other beans, whose export is not taxed."

A similar situation is said to prevail for exports of papain, a paw-paw juice extract used in food processing for which the DRC was historically the leading producer in the world. Much of Congolese papain is now re-exported from Uganda as Ugandan produce, and local Congolese production of papain,

21 Interview in Goma, March 2007

as that of coffee and quiquina bark, has fallen sharply due to the war, the lack of investment in plantations and the spread of plant diseases.

There are other products where Rwandan import registers provide a much more complete picture than DRC export registers – especially with products which are not taxed on the DRC side and thus go unregistered, but are heavily taxed on import into Rwanda. This is simply a measure of the differing levels of efficiency of the two countries' trade records.

Table 11: Goma-Gisenyi differences in non-mineral trade, in $, 2006[22]

	Recorded DRC exports to Rwanda in Goma	**Recorded Rwanda imports from DRC in Gisenyi**	**Rwanda import tax**
Palm oil	21,431	180,380	42,76%
Bananas	5028	160,017	10,32%
Sawn timber	387,737	411,819	38%

22 Sources: OCC Goma, Rwanda Revenue Authority (RRA); figures converted into $ at exchange rates used by these services. The Rwandan authorities refused to provide import figures for minerals from DRC

CHAPTER 4: IMPORTS INTO NORTH KIVU

The rationale and extent of fraud and unrecorded trade cannot be understood through exports alone. The huge amounts of money generated by unrecorded export earnings serve to finance the huge and burgeoning trade deficit of the province which is far larger than officially registered economic activity in this very poor province could ever sustain.

Imports and exports involving products coming from Mombasa or other ports are generally carried out by the same traders, and they use and face the same mechanisms for both. The problems are the same for both operations: arbitrary taxes and a multiplicity of rapacious state services, as the following example shows.

Table 12: Sugar import taxes and fees in Goma[23]

Tax or charge	**Amount for 1 container of 40t sugar**
OFIDA import duty	$3300
OFIDA office account	$1200
DGI (tax authority)	$240
FPI (Industry Promotion Fund)	$275
OGEFREM (freight agency)	$76
Commerce Department	$188
Hygiene Inspection	$380
- printing costs	$15
OCC (product control)	$1300
- printing costs and escort	$20

23 Provided by importer, January 2007

„Taxe Extraordinaire“	$60
Tax for paying taxes	$20
Brigade (military)	$20
Recette (revenue authority)	$20
Intervention (police)	$80
Tax for the container	$40
Tax for packaging	$29
FEC (Business Federation)	$80
Parking	$10
Bank charge	$5
Six receipts	$42
Provincial government	$50
Weighing	$180
Verification	$300
ANR (intelligence agency) office account	$100
Brigade office account	$100
Brigade under-director office account	$150
Manual services	$50
Import agency costs	$100
Total	**$8380**

Faced with such a tax regime, which has little to do with legality, traders have a choice between avoiding official structures or increasing the resale prices of their goods. The former strategy causes political problems, the latter commercial ones. Traders in different situations adapt to this in different ways. Because of the different trade regimes which emerged in the two halves of North Kivu during the war, a system of import fraud developed in the „Grand Nord" which is just as well entrenched and established as that for mineral exports out of the „Petit Nord".

The mechanisms of import fraud in the Grand Nord

During the time of the RCD-K/ ML rebellion in the „Grand Nord" around Beni and Butembo, the rebel government of Mbusa Nyamwisi in Beni financed itself through cross-border trade[24]. Traders conducting imports or exports were asked to contribute financially to the „war effort", and in exchange they received tax exemptions (lettres d'exonération) for the same amount – payments to the rebel movements were thus in fact tax deductible. In this way, all traders were encouraged to align behind trading houses with the biggest tax exemptions. Taxation itself was set at a flat rate per container and merchandise, regardless of the exact nature of the goods.

Some trading firms operated under protection of RCD-K/ML military who themselves became involved in commerce and in the course of time gained complete control of customs at Kasindi on the Ugandan border. OFIDA was staffed by relatives of rebel chiefs. All this allowed import goods to reach the market of Butembo at low prices, which made the RCD-K/ ML rebellion hugely popular. Since the rebellion was basically created by the local traders to protect their own interests, it was natural that such a system should emerge; it corresponded to the flourishing system of unrecorded trade which had already characterised the economy of the region during the time of the Mobutu dictatorship.

24 Interviews with traders in Beni and Butembo, April 2007

When the RCD-K/ ML government in Beni was dissolved on the reunification of North Kivu and the DRC as a whole in July 2003, this structure did not immediately change but remained in place for at least six months. In this time, the heads of state services in Beni, the military and the traders continued to work the old system. Official – much higher - tax rates have been imposed since, but they are not often respected. Some state services deplore that „trafficking networks" from wartime continue to dominate the administration.

Table 13: Old and new tax rates in Kasindi[25]

Product	**Itinerary**	**Quantity**	**RCD-K/ML tax**	**Current tax**
Printed cloths	Hong Kong - Kasindi	1 container (20')	$6000	$45,000
Diesel	Mombasa - Kasindi	55 m³	$5000	$13,838
4-star petrol	Mombasa - Kasindi	30 m³	$5000	$9,500
„Divers"	Dubai - Kasindi	1 container (20')	$3000	$15,000
Timber	Kasindi - Mombasa	1 m3	$50	$135
Papain	Kasindi - Mombasa	1 t	$500	$12,310.5

Economic operators who were used to the lower old rates find

25 This and the following: Interviews with traders and service chiefs in Beni and Butembo, April 2007

it hard to adapt to the new higher ones and instead prefer to resort to fraud to declare lower amounts in order to arrive at the old lower tax rate. Thus a fuel declaration of 55m³ may be used to pass five cisterns of that amount through customs, paying not $13,838 but $6000. The customs officials and all other services know this and share the $6000 between themselves.

There is no means of verifying import declarations made at OFIDA in Kasindi. There are two kinds of customs officials who register declarations:

- „déclarants assis“, sent by Kinshasa, who sit in their offices and wait for traders to come and declare their goods
- „déclarants debout“, recruited locally, who wander around the border between traders, officials and their „sitting“ colleagues to organise fraud.

Petroleum import fraud

North Kivu has a large and growing energy deficit. Its transport sector and to a growing extent its household and commercial energy needs depend on shipments of petrol and other petroleum products from the Middle East to Mombasa, from where North Kivu lies at the end of the complicated trading chain comprising the Mombasa-Eldoret pipeline, road transport to Uganda and then either directly into North Kivu through Kasindi or Ishasha or to Rwanda and then on to Goma. Any disturbances or scarcities along this trade route are felt in Eastern Congo a few days after they are experienced in Uganda and Rwanda. It is noticeable, however, that petrol prices in North Kivu are hardly higher than in Rwanda and sometimes lower.

Most petrol entering North Kivu passes through Uganda, avoiding the mountain roads of Rwanda and the additional burdens imposed by adding another transit country to the import route. In 2006, Rwanda officially exported between petrol worth between $2m and $3m to DRC[26], but Goma registered petrol imports worth $17,127,698.92. Thus despite the prevailing insecurity at Ishasha and Bunagana, most petrol came along these hasardous routes.

The tax and customs mechanisms for Kasindi described above are especially visible for petroleum products, which are a strategic good on a par with cassiterite exports. One litre of petrol currently costs FC 600 in Beni and FC 650-675 in Goma. On the black market in Beni and Butembo it costs FC 580.

According to sources in the Grand Nord, petrol imports there are systematically under-declared. Pole Institute has obtained a table of real and declared petrol imports for the period January to September 2005 prepared by the Beni branch of the state petroleum distribution company SEP-Congo which provides statistical proof of the extent of import fraud.

26 The precise RRA figure is Frw 1,115,266,851 ($2,027,757), but several months are missing from the statistics provided

Table 14: Declared and real petroleum products imports into Beni, Jan-Sep 2005[27]

	Declared vol. (m^3)	Import duty declared ($)	Real vol. (m^3)	Import duty due ($)	Difference in volume	Difference in takings
Jan 2005	993	98,739	2123	251,066		
Feb 2005	1387.9	136,656	2342.9	285,898		
Mar 2005	1888.6	229,061	2454	343,615		
Apr 2005	2116.8	257,075	3162.8	461,988		
May 2005	2221	229,903.57	4313	613,979.97		
June 2005	1343.1	174,767.736	2483.1	335,003.278		
July 2005	1683	226,365.43	3202	449,088.4		
Aug 2005	1950	265,729.64	2578	357,205.59		
Sep 2005	2681.5	382,720.8	3146.5	451,099.3		
Total	**16,264.9**	**2,001,018.176**	**25,805.3**	**3,548,943,538**	**-9540.4**	**-1,547,925.36**

27 Own calculations from detailed tables of SEP-Congo

The fact that some imports are tax-exempt, for example for the UN, has no bearing on this, as these are properly declared and a tax declaration made; there is just no tax due. The import transactions in which declared and real numbers do not match are simply under-declared or not declared at all by private traders. Thus in January 2005, of 42 actual petroleum product movements 19 were under-declared and 13 were not declared; one was over-declared, presumably to make up for a previous under-declaration, and 9 were correct. In a special column „Observations" used to explain non-declarations, SEP-Congo qualifies five of the 13 transactions as „non déclaré" and six as „sortie forcée" (moved by force), while one is not observed on. The „Observations" column is only patchily filled in later and left blank from July 2005 onwards.

Whereas in Kasindi import fraud is conducted through non- or under-declarations, in Goma – where traders pride themselves on saying that the petroleum import sector is the only one that works properly - the preferred instrument of fraud in the petroleum sector is the misuse of tax exemptions. A so-called „enlèvement d'urgence", used for example by MONUC, aid agencies such as Agro-Action Allemande, or by filling station chains using their own fleet, but not by private traders or individuals, is taxed at only a fraction of the ordinary rate, but it is used suspiciously widely - especially for diesel fuel which is also heavily used for generators:

Table 15: Declared petroleum product imports into Goma 2006[28]

	Volume (in m³)	**Value (in $ CIF)**	**OFIDA import duty (in $)**
„Ordinary" petrol	1,232,718.63	902,123.75	200,065.41
„Ordinary" diesel	1,445,077.08	1,062,932.95	289,131.37
„Ordinary" Jet A1	10,331,086.08	7,445,352.43	1,189,147.26
Lighting fuel	1,143,175.95	803,682.34	39,226.32
Lubricants	746,436.7	339,435.74	53,805.24
Total	**14,898,494.43**	**10,553,527.21**	**1,771,375.59**
„Urgent" petrol	758,920.152	503,011	4,506.47
„Urgent" diesel	4,450,474.474	3,234,421	16,437.52
„Urgent" Jet A1	3,637,534.177	2,836,740	0
Total	**8,846,928.804**	**6,574,172**	**20,943.99**
Grand Total	**23,745,543.234**	**17,127,699.21**	**1,792,319.58**

The petrol trade is one of the most lucrative in the region and of the utmost strategic importance, as without fuel economic activity literally grinds to a halt. Thus every player in the market is determined to control the petrol trade in his own area of activity so as not to become dependent on potential rivals. Goma traders warn that they will not tolerate cheaper Kasindi

28 Source: OFIDA Goma with own calculations

imports penetrating into the „Petit Nord" around Goma from the „Grand Nord" around Beni. „If their petrol tankers arrive here, I will start financing insecurity", one of them proclaims and points out that given the nature of the border and the state of the official servides it would be extremely easy to organise fraudulent petroleum imports completely outside the official system if necessary without any risk of being caught[29].

Informal imports: the case of tomatoes

The import of Rwandan tomatoes into North Kivu is a typical counter-example of how small-scale traders can work the border. The trade escapes official statistics because of the lack of taxes at the border, but it is clearly part of the formal economy (at least in Rwanda) and well organised[30].

Most tomatoes sold in Goma come from Rwanda, and Rwandan tomatoes even reach the towns of Sake and Walikale. Conversely, North Kivu is an attractive market for Rwandan tomato growers compared to the home market. First, cultivators' associations in different parts of Rwanda buy tomatoes from individual farmers on Rwandan markets. One of the main districts of origin for Rwandan tomatoes in Goma is Cyangugu in South-West Rwanda – from there, tomatoes are transported along Lake Kivu to Gisenyi. After sale to local traders on Gisenyi market, they are bought by Goma retailers who come to Rwanda for that purpose. Two stalls on Nyakabungo market in Gisenyi are used by trade buyers from Goma.

29 Interview in Goma, February 2007
30 Interviews in Rwanda and Goma, February 2007

Sale prices:
Cyangugu: 1600 Frw/25kg
Sale in Gisenyi: 3000 Frw/25kg
Resale in Gisenyi for Goma: 3500 Frw/25kg
Retail price in Goma: $10 (Frw 5500)/25kg

Transport costs:
Cyangugu: 550 Frw/25kg
within Gisenyi: 100 Frw/25kg
Gisenyi to Goma: 200 Frw/25kg

Taxes:
Cyangugu: 50Frw each at the market, Cyangugu port, Brasserie port
Gisenyi: 50Frw at the market
Border: None

Once bought by Goma retailers, the tomatoes are carried across the border by members of the porters' association Dukundane, which has 80 members and is part of the wider transporters' associations collective Karani-Ngufu registered in Gisenyi. A porter charges 200 Frw to carry a 25kg sack of tomatoes from Nyakabungo market in Gisenyi to Virunga market in Goma. If he is strong, he can carry two sacks at once, giving 400 Frw per trip. This is more than the daily wage on the fields (300 Frw). At the border, no tax is paid, but some tomatoes may be given to the soldiers present to keep them happy.

This cross-border trade usually happens in the mornings, as the tomatoes can then be resold on Birere and Virunga markets in Goma in smaller quantities to individual traders from late morning onwards. Tuesdays and Fridays are the best days for tomatoes on Gisenyi market, when up to 1200 sacks of 25kg may be sold every day. The amount reaching Goma will not exceed 600 sacks per day, which is still 20 tons in one day with a value of 2.1m Frw ($3800). Goma market traders deplore the fact that many tomatoes are snapped up by roadside traders before reaching Birere and Virunga markets. These roadside traders then conduct long-distance trade up to Walikale, where tomatoes may be among the goods exchanged for cassiterite.

CHAPTER 5: GOLD TRADE IN EASTERN CONGO

The gold trade is one of the main features of Eastern Congo's export trade and possibly historically the most important branch of unrecorded or fraudulent trade. Being very easy to transport and to hide, but very difficult to mine, gold gives traders a great advantage over miners and imparts the sector with a particular power structure. Gold is used as a store of value as well as being a commodity in its own right, which makes it attractive in another way too. Today, the return of industrial gold mining in areas long dominated by artisanal mining is set to create a whole new set of conflicts in which future control over gold exports may well be decisive. In this chapter, we look at the gold economy of South Kivu and Ituri, the most important gold-producing areas of the DRC.

The population of what today is Eastern Congo was unaware of the existence of gold deposits in the region before colonial rule. Until well after independence it was forbidden for the local population to mine or even to possess gold. Only in 1982 did the government of what was then called Zaire allow artisanal mining in specially designated areas with special permits, and nationals were allowed for the first time to possess gold and diamonds – but only outside mining concessions[31]. This was partially designed to gain a hold on the informal gold trade which by then was already well established.

Today, artisanal gold mining and informal gold exports constitute a major branch of the Eastern Congolese economy,

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31 „Inside the national territory, but outside the perimeter of exclusive mining permits, Zairian nationals are authorised to possess and transport gold and diamonds“ (Arreté départemental 00734/DPT MINIER/82 of 1 Decmber 1982, §3). „In national airports and on interior flights barriers concerning the possession of gold and diamonds are abolished. But they remain in place at the exit points of the national territory“ (ibid. §6)

possibly larger in value than all other export products of the region. As the analysis below shows, it can be estimated that around 5 tonnes of gold leave South Kivu and Ituri each per year, giving a total of 10 tonnes. With current export prices of around \$20/ gram - \$20.000/ kg and \$20m/ tonne – this gives export earnings of around \$200 million a year, hardly any which shows up in official statistics. Gold exports lubricate the entire local economy of Eastern Congo, and the battle over control of gold trade and gold mining is shaping up to be one of the biggest conflicts of the future in the region.

The South Kivu gold mines

The Belgian „Compagnie Minière Belge des Grands Lacs" (MGL) began prospection in South Kivu 1902 and mined its first gold in Mufwa (Kabare district, South Kivu) in 1923.

South Kivu today has three gold concessions: Twangiza (93.000 ha), Kamituga (52.550 ha) and Lugushwa (46.750 ha), the latter today also including Kabereke (2.500 ha). The neighbouring concession of Namoya (7.511 ha) is part of Maniema province. All of these concessions used to be part of the gold and cassiterite mining concessions of the now defunct parastatal Sominki (Sociète Minière et Industrielle du Kivu). This was formed in 1976 out of a merger of smaller mining firms. Its mining rights have been the object of military and legal battles since 1996 after it first entered into a partnership with the Canadian firm Banro which was then rescinded during the Congo war.

Today, Banro has re-acquired the Sominki gold concessions through Sakima (Société Aurifère du Kivu et du Maniema) which it had first created in 1995 as the gold mining arm of Sominki in a joint venture. Sakima/ Banro kept Sominki's gold mining concessions and formed Banro Congo Mining for the purposes of prospection and exploration in other areas on 13 March 2003; the remaining, tin-bearing Sominki concessions were left to the state, and it is still not clear what is happening to them. A rival state firm Somico (Société Minière du Congo), formed by the Kabila government on 29 July 1998 in replacement of Sakima, and whose claims to the Sominki concessions were successfully challenged by Banro in court, was officially dissolved by the DRC Supreme Court on 20 November 2006.

Banro has since undertaken extensive prospection work in the gold concessions. In Sominki times, the concessions' gold reserves were estimated at 1.545m tr.oz (48.095 tonnes)[32], almost all of which was in Kamituga. Kamituga was first prospected by Sominki to contain gold reserves of 43.52 tonnes, with a gold content of up to 6 grams per tonne of earth in the most productive mine Mobale. This mine, which was the first in the concession to be exploited in 1954 and is situated on the southern slope of Mont Kibulika in the centre of the concession, was also the last to cease industrial production in 1996. Until then it had yielded around 20 tonnes of gold. Since its closure, it has been intensively mined by artisanal miners and is in danger of collapse. The lower part of it is already flooded and inaccessible. Banro today estimates Kamituga/ Mobale's gold reserves at 2.526m tr.oz (78.559 tonnes)[33].

Lugushwa was prospected by Sominki in 1994 to contain 401.7 kg gold in the alluvial mines and 10.550 tonnes in other sites, but prospection was never as complete as in Kamituga. Between 1985 and 1996, when industrial mining stopped and was replaced by artisanal mining, it had produced around 105 kg of gold per month. Known reserves are expected to increase

32 In gold mining, 12 tr.oz (troy ounces) = 0.3732 kg or 1 lb; 1 tr.oz = 0.0311 kg. The common Congolese measurement, derived from India, of 1 tola = 11.666 g
33 These and other Banro figures: Banro website presentation, 2003

substantially once Banro's prospection is completed. Before that, Banro estimated gold reserves at 755,000 tr.oz (23.496 tonnes).

Twangiza is the only concession where prospection never stopped. Discovered in 1927 and further opened to small-scale mining in 1950, it was the object of Banro prospection work in 1997-98. This work proved the existence of 51.685 tonnes of gold in 39,156,000 tonnes of mineral in an area measuring 4 by 0.8 km. The Belgian prospection of 1957-66 had proved the existence of around 15 tonnes in another area. Satellite images taken between 1998 and 2003 showed that artisanal miners removed 1,348,000 tonnes of mineral in Twangiza, leaving most of the gold deposits in place. Banro today estimates the exploitable resource at 104,600,000 tonnes, containing 7,127,915 tr.oz (221.678 tonnes) gold.

Namoya in Maniema province was shown in 1961 to contain 10.337 tonnes of gold, mostly in Mont Mwendamboko. This was regarded as sufficiently important to justify the construction of a processing plant with a capacity of 10.000 tonnes of mineral per month, powered by the hydro-electric dam of Magembe situated 70km to the East in Fizi territory, South Kivu. This dam had a capacity of 1200 KW. Today, all this no longer exists and Namoya is inaccessible by road. Only the airstrip is still operational. But artisanal activity in Mont Mwendamboko is intense. It is also extremely difficult: The miners dig into the side of the mountain and carry the mineral on their head for long distances down a steep slope to the bottom to find water for washing it. Banro today estimates its reserves at 2,501,875 tr.oz (77.808 tonnes).

All ex-Sominki concessions together thus today have known reserves of at least 401 tonnes of gold, with many regions not yet prospected. There are other gold sites in South Kivu, Maniema and parts of North Kivu and northern Katanga not covered by existing concessions, but whose produce is mined artisanally and traded in Bukavu.

The Ituri gold mines

In Ituri, alluvial gold was discovered by Australian prospectors in 1903 in the Agola river which flows into the Ituri river near the village of Kr'lo. The Belgian authorities called this river Kilo and organised further prospection in the Shari and Nizi river valleys. Gold mining in Kilo began 1904. Further prospection in the Moto river basin in Uélé region was successful in 1906, but due to greater technical difficulties gold mining there only began in 1911. The „Régie Industrielle des Mines de Kilo" was formed in 1919 and extended to form the „Société des Mines d'Or de Kilo Moto" in 1926. This was nationalised in 1966 as „Office des Mines d'Or de Kilo Moto" (Okimo), a parastatal still in existence today.

The Okimo concessions total around 83.000 km² and reach from Ituri into Haut-Uélé. Concession 38 in the Watsa area of Haut-Uélé contains three mineral-rich sites: Durba, Gorumbwa and Agbarabo. They together are known as the Moto gold mines and were once the most productive of the entire Okimo area, with a production peak of 2309 kg in 1973 and 2915 kg in 1974. Gorumbwa, with an area of around 10,000 km², is the most important part of this concession. After 1974, production declined as the richest deposits were exhausted.

Concession 39 is in the Mahagi and Aru area of Ituri district, along Lake Albert and the Ugandan border.

Concession 40, which covers 9191 km² in the rest of Ituri district, is centred around Mongbwalu and is known as the Kilo gold mines. It is the main centre of artisanal gold mining in

Ituri today. Ashanti Goldfields Kilo (AGK), owner of this concession, has invested large sums in new exploration in this area with a view to restarting industrial gold mining in Mongbwalu in 2008. However, AGK's exploration activities are not yet sufficiently advanced for planning to be presice. Much of the earlier prospection by Okimo either disappeared during the war or is unreliable

GOLD IN SOUTH KIVU: FROM MINE TO MARKET

The mines

Kamituga concession contains 194 artisanal mines, not counting the large underground mine at Mobale which is no longer in use. Estimating between five and ten miners per pit, there are 1000 to 2000 artisanal miners in Kamituga, working six days a week. The pits belong to the customary chief who can do with them what he likes[34].

People with money can rent a pit for $4000 a year; they are called „PDG", meaning „director-general". Apart from paying $4000, the PDGs pay FC100 ($0.20) a day to the customary chief, $10 per month to the army, $5 registration fee to the Mining Service of the province, $220 (1 tola of gold) for the „carte jaune", $250 for the mining licence, $20 per month to the „structure transitoire".
The PDG hires artisanal miners who work on a self-employed basis but have to pay taxes: FC100/ day each to the collectivity, the army and the Mining Service, FC250/ day to the „structure transitoire". Women miners do not pay taxes but do some of the most demanding work, crushing rocks in the hope of finding gold. These so-called „Twangaises" earn FC1000/ day. But often they are not paid on the pretext that there was

34 This section is based on interviews in the mining areas, January-March 2007

supposedly no gold in their rock. Artisanal miners are also supposed to have an artisanal mining licence ($20) and pay income tax of $0.5/ day. If they are foreigners they pay $5 extra per month.

Earnings are not divided equally and can be substantial. A PDG earns on average $144.22 a day, an independent miner $10.74, an employed miner $5.60, and washers, carriers and guards $1 or slightly more. But employed miners bear fewer costs than independent ones and thus end up earning more. Independent miners pay over half their earnings in running costs. These consist of explosives, motor pumps, taxes and wages for co-workers.

Conditions in the mines are difficult. The head of the artisanal miners' cooperative in Mwenga gives his view of the main problems:

- Kamituga is a „red zone" in which the military reign supreme and carry out the functions of the police, the administration, the judiciary and the customary authorities.
- Insecurity in the countryside and the lure of gold has caused peasants to move into the Kamituga mines and agriculture to stagnate, making the area dependent on food transports by air from Bukavu. Thius one sack of 50kg salt costs $13 in Bukavu and $70 in Kamituga, with $50 air freight costs.
- Artisanal gold mining is difficult especially in the rainy season as the pits get flooded and the motor pumps used to pump water out ar not very functional and hugely expensive to run.
- Taxes are too high because everybody wants something: the community head, the collectivity, the Mwami, the district, the police, the army. The old times where a symbolic gift was given to the Mwami in return for him

allowing you to mine his territory are long gone.

- Traders fix gold prices but their criteria are unclear.
- Living conditions in the pits are atrocious: some of them resemble refugee camps, there is no clean water or food, no medical care, no shelter or clothes and some people spend a month without washing. The traders do not invest in the mines.
- It is impossible to accumulate savings. Consumer goods are expensive – a plate of beans costs $1, beef fufu $2, a bottle of Primus beer $1.5. Many payments are made in gold, beer, drugs or women. In Kamituga, some men who are short of cash send their wives into the Lugushwa pits to buy radios or other wares without money. The only way to accumulate savings is through cassiterite because it cannot be used as a currency.

A further dimension of artisanal gold mining in South Kivu is the high presence of the army and armed groups. The Rwandan FDLR is present in the mines of Shabunda, Mwenga, Walungu, Uvira and Fizi. They run mines, occasionally demand taxes or engage forced labour. In Mukungwe mine in Mushinga there are a large number of demobilised or deserted soldiers and also active FARDC troops; the son of one of the traditional land owners here was one of the leaders of the Mai-Mai militia „M-40“ during the war. They participated in the Nkunda-Mutebutsi attack on Bukavu in June 2004 and returned to the mine afterwards. In the same mine, there are representatives of the 10th military region (South Kivu) who levy taxes on artisanal miners and use soldiers as miners in their own pit.

In the case of conflicts between miners in Kamituga, the police will first arrest them arbitrarily and then demand $10 from each arrested person to cover costs („Makolo ya l'Etat“). They then demand a further $20 each to free those under arrest.

Ownership disputes

When Banro regained the Sakima gold concessions in 2003, it did not immediately regain control over the whole area[35]. The existing mines of Kamituga, Lugushwa, Twangiza and Namoya, together covering 2688 km², were constituted as wholly Banro owned societies (Twangiza Gold SARL etc), each covered with a 25-year Mining Convention. A further wholly Banro owned company, Banro Congo Mining, was in December 2003 granted an exploration permit for a 7335 km² area in between these concessions, called „Twangiza-Namoya Extension", which was later extended to 8400 km² stretching right up to the Burundian border. But these areas were not mining concessions.

In 2006, another Canadian mining firm called La Quinta Resources claimed to have entered into a partnership with the Kinshasa-based Congolese firm „Wa Balengela Kasai Investments Congo" (WBK) which also laid claim to the Twangiza-Namoya Extension. WBK is a diamond trader which came into prominence during the war and was re-registered in 2005. According to La Quinta, a Memorandum of Understanding between La Quinta and WBK for a Joint Venture and exploration agreement in the Twangiza-Namoya Extension was signed on 28 August 2006. According to the terms of the MoU, La Quinta owns 10% of the Joint Venture and can increase its share to 80% by paying WBK $1.5m[36].

Banro said it had a prior agreement with WBK for the same area and took La Quinta to court in October 2006. WBK proceeded to secure exploration permits for the disputed area from the Cadastre Minier and itself took court action against

35 Dates and figures according to Banro presentations
36 La Quinta presentation, 15 March 2007

Banro[37]. A court in Kinshasa found in favour of La Quinta on 14 March[38]. But Banro will appeal - on 8 March, Banro Congo Mining had been awarded 14 exploration licences in the disputed area covering 3130 km² by the Cadastre Minier[39].

On 20 February 2007, La Quinta signed a further Memorandum of Understanding with a hitherto unknown „Association Minière du Kivu" for the Kampene area adjacent to the Twangiza-Namoya Extension „to mine and sell all mineral products from the licence area including gold, silver, coltan and cassiterite"[40]. The firm proceeded to hire a project manager formerly with Anvil Mining from Katanga to commence activities.

Beyond this, there is one other firm with gold exploration licences in South Kivu: Saminki (Société Agricole et Minière du Kivu), created by the traditional chief of Mushinga mine (the Kurhengamuzimu family). It acquired a licence in Kinshasa but in fact all it does is to take 50% of the gold production of each new pit created in its area. Its directors are part of the Bukavu trading circuit. In Mushinga they asked miners to collect $7000 with which they wold buy a new generator; the machine they brought has never worked[41]. The ease with which the name „Saminki" might be confused with that of the former parastatal „Sominki" might be an attempt to add legitimacy to this enterprise.

The presence of opposing military factions in the mining areas adds a further problematic dimension, as FARDC, FDLR and other militia each try to control various mines, trading centres

37 La Quinta Press Release, 2 February 2007
38 La Quinta press release, Market Wire Vancouver, 14 March 2007
39 „Banro granted DRC prospection licences", Mining Weekly, 9 March 2007
40 La Quinta Press Release, 20 February 2007
41 Interviews with miners in Mushinga, February 2007

and routes.

The trading chain

At Kamituga town, there are trading firms which have mostly moved in from Bukavu[42]. In the DRC Mining Code, traders (négociants) fall into two categories. Those called „resident traders" (Category A) need to buy a „carte d'exploitant" for $3000 a year. Those called „ambulant traders" (category B) are supposed to pay $500 to their provincial Mining Division for a trading licence. In South Kivu there are no „resident traders" at all – Category A is in practice limited to diamond traders in Kinshasa, Kasai and Province Orientale. All traders fall into Category B, but instead of paying $500 for a licence in fact they pay $250 to the local agent of the Mining Service for a one-year renewable licence. In addition, they pay $150 per year to the revenue authority, $20 per year to the territorial administration and $35 per year to the collectivity.

For 2007, 90 traders are known in South Kivu but only 34 of these have paid their $250 licence. Of the 90, 21 are in Uvira and only 4 of these have paid. Apart from the traders in the Kamituga mines, there are some in Fizi territory who export gold to Tanzania via Lake Tanganyika. Some of them are in fact well-established businessmen in the gold trade but they nevertheless content themselves with a cheap licence in Category B.

On the gold market of Mubumbano in Mushia in Ngweshe chiefdom (Walungu district), 16 gold traders are established around the pit „Maroc". They buy gold every Sunday and pay $24 per gram. They have to pay a multitide of local taxes: $1 to the district, $2 to the collectivity, FC100 to the army, FC100 for

42 This section is based on interviews with traders, January-March 2007

renting hangar space. It was witnessed that the tax collector of the chiefdom gave a receipt for FC1200 to a group of six traders, meaning FC200 per trader, and in return for the receipt each trader had to pay him another FC200.

Income from gold is typically invested in prestige goods: alcohol, TV sets, Hifi sets. It is also supposed to cover the living costs of the miner's family and his childrens' school fees. Prices in Kamituga are very high, and mining prevents the development of agriculture which might reduce dependency on airfreight.

Traders may own air freight companies who lease planes, typically paying $1200 for a cargo of 2 tons. They bring in foodstuffs and other consumer products for which they are paid in gold. The traders using planes also act as brokers. They send packets of gold to relatives so that these can send them merchandise for sale around the pits. Thus the traders control the entire trading circuit in both directions.

They have to be physically present at the loading and unloading of the planes, offering opportunities for extortion by state services. Passengers taking these planes pay $3 for „the colonel's ration", $6 for the airspace agency RVA, $2 for the intelligence agency ANR, $2 for the migration agency DGM and $2 for the police.

It is possible to move gold from Kamituga to Bukavu by road, but in the dry season this trip of arond 190 km takes three to four days and in the rainy season it can take two weeks to two months. The road may be attacked by Interahamwe, other militias or the military, and there are roadblocks between Bukavu and Kamituga at which payments in the order of $0.50 and a small part of transported foodstuffs are demanded. This makes road transport very expensive:

Table 16: Payments for gold transporters on the road between Kamituga and Bukavu, 2005[43]

Tax and/or place	Tax per lorry
Walungu	$13
Tubimbi	$10 plus 2 beers
Kilungutwe	$10
Kasika	$10
Mwenga	$30 plus 4 beers
Kamituga	$10 plus 2 beers
Territorial „taxe de stationnement“	$5
Territorial „taxe patente“	$50/year
Transport agency Transcom	$150/year
Toll	$15
Total per trip and lorry	**$103 plus 8 beers and $200/year**

Taxes also apply for consumer goods moving from Bukavu to Kamituga and from the local markets around Kamituga. There are a total of 19 roadblocks on the six roads from the various agricultural areas in the vicinity into town, at each of which one might pay FC 200, or a bottle of palm wine or some cassava. Women traders estimate they lose around FC 1000 ($2) each time when transporting food to Kamituga, totalling FC 5000 ($10) a week. This reduces their profit margins to the point where they hardly manage to feed their children.

Once in Bukavu, the traders sell the gold to trading firms who have export licences or export without. These trading firms (comptoirs) will typically have advanced credit to traders operating in Kamituga and with this they secure access to the gold coming from there. The traders from Kamituga buy lots of 10 tolas from miners and sell them on to the trading firms

43 Source: Interviews with traders

(comptoirs) in lots of 8 tolas for the same price. Apart from small volume adjustments when visible impurities are removed, this gives a secure profit margin of around $8 to $12 per tola. Katanga and Maniema gold, being considered as purer than that of South Kivu, is bought in lots of 9 tolas for resale in lots of 8.

Before purchase by a comptoir, gold is washed in nitric acid, dried, melted and soaked to remove impurities. Only then, when the final volume after treatment is known, will the trade from the gold mine be paid. The price is determined by world market prices from London, New York and Singapore obtained by mobile phone. Of the volume, 5% is deducted for residual impurities when fixing the price, another 5% for taxes and a third 5% for further refinement.

To have a gold export licence, you have to buy it in Kinshasa and pay a deposit. It is valid for one year. The licence costs $50.000, with a deposit of $25.000, giving a total of $75.000 per year. As this is an exorbitant amount, there are very few registered trading firms in Bukavu. In 2002 there were three, after that there was one only until 2007 when a second one came along (CongoCom, trading unter the name of Namukaya. Apart from the licence fee, exporters pay a series of taxes:

Table 17: Gold export taxes in DRC

OFIDA export duty	1.5%
Provincial „taxe d'intéret commun“	1%
CEEC tax (export certification)	0.55%
DGRAD tax (revenue authority)	0.2%
Provincial anti-fraud tax	1.25%
Mining Service technical tax	0.25%

There are also parallel traders without a licence who export illegally and thereby also avoid paying export duties. As explained above, many of these will have „ambulant trader“ licences costing $250/year, giving them legal cover. They sell their gold mostly to Burundi where export duties are much lower (1%), but also to Uganda, Rwanda, Tanzania and South East Asia. They belong to the richest people in Bukavu.

Some traders own freight agencies who conduct trade by road between Bukavu and Burundi which serves to cover their clandestine gold exports. There are even trading firms who call themselves „complete“, meaning they have an airline, a legal trading wing, an illegal trading wing, and a road transport firm.

Official statistics today therefore are only partial.

Table 18: Registered gold exports from South Kivu 2001-2006 [44]

Year	**Registered gold exports (in kg)**	**Export value (in $)**	**Export duties paid (in $)**
2001	2,950.865		
2002	1,952.912	18,066,906	22,600
2003	754	7,719,523	9,653
2004	605	8,398,262	72,006
2005	600	7,290,410	116,935
2006	189.159	2,421,124	30,755

There is a noticeable drop in registered gold exports starting in 2003, when the RCD rebel administration in Eastern DRC (1998-2002) ceased to exist – this happened faster in South Kivu than in North Kivu – and becoming more noticeable in 2006, when the national army FARDC fully took control of the province.

44 Source: OFIDA Bukavu

One reason for the drop after 2003 was that the director of the only officially registered gold exporter in Bukavu (Ets. Panju) was arrested in the Rwandan capital Kigali on the way to Belgium with a large amount of illegal gold in his luggage in 2004; he had previously been cited in the UN reports on the illegal exploitation of natural resources in the DRC. In that year, he officially gave up gold trading and moved into cassiterite. His place was taken by another well-known trading firm, Congo Com, which had previously been one of the biggest unrecorded gold exporters; it accounted for 598.557 kg of the 600 kg registered in 2005 and 160.437 kg of the 189.158 kg registered in 2006.

Local sources in the industry estimate real gold exports from South Kivu at around 400 kg per month, giving 4800 kg a year. This is corroborated by the fact that Burundi officially exported over 3000 kg of gold in the last two years despite having almost no production of its own[45]; there is one single registered gold exporter in Burundi, the trading firm Machanga[46]. Large quantities of South Kivu gold are also traded through Tanzania and Rwanda.

45 According to UNCTAD/WTO trade statistics, Burundi's gold exports amounted to $43.178m in 2004 and $56.229m in 2005, more than its coffee exports and almost the value of entire official exports as recorded by the World Bank

46 The links between gold trade in South Kivu and Ituri, and correspondingly between Burundi and Uganda, warrant further investigation. Congo Com, the only licenced gold exporter in Bukavu, comes from Butembo in the Grand Nord of North Kivu, which is a significant transit point for gold from Ituri. Machanga, the only licenced gold exporter in Burundi, is also active in Uganda. Gold can easily be transported by air from Ituri to South Kivu or even directly to Burundi, and the main air link in Eastern DRC, operated by TMK, runs from Entebbe (Uganda) through Bunia (Ituri), Beni, Butembo, Goma (North Kivu) and Bukavu (South Kivu) to Bujumbura (Burundi). CongoCom director Kambale Kisoni was murdered in his house in Butembo by unknown gunmen on 5 July 2007.

Table 19: Taxes on gold exports from DRC and Burundi

	DR Congo	**Burundi**
Export licence	$50.000 p.a. plus $25.000	$10.000 p.a.
Export duty	1.5%	0.2%
Other relevant taxes	3.25%	0.3%

Clearly the Congolese tax regime favours fraud in gold exports, all the more as gold is easy to transport and to hide. Gold buyers in Burundi tend to act as intermediaries for clients in Europe or Australia and prefer not to keep large stocks but to buy on demand to avoid losing money on gold price changes.

One way of exporting gold without paying taxes is to export gold „samples" only. These are officially tax-free. As no company officially mines gold in South Kivu today – even Banro is still only engaged in prospection – all gold produced by recognised mining companies can be declared as „samples" and thus exported without paying taxes. In fact, it is said that Banro exports samples containing several tonnes of gold and OFIDA Bukavu has threatened to take action to recover unpaid export taxes.

Gold is not the only mineral export from South Kivu. It has been supplanted in importance by cassiterite, whose official exports surpassed those of gold in value in 2004 and 2006.

Table 20: South Kivu mineral exports in tonnes[47]

	Gold	**Coltan**	**Cassiterite**	**Wolframite**
2002	1.953	493	871	159

47 Source: OFIDA Bukavu

2003	0.754	87	1473	210
2004	0.605	32	2892	-
2005	0.600	98	3149	316
2006	0.189	13	2974	574

GOLD IN ITURI: FROM MINE TO MARKET

The mines

There are several reasons for the prevalence of artisanal mining in Ituri, especially from Concession 40 (Mongbwalu). One is the lack of alternative income sources. When during the Mobutu years investment in Kilo-Moto stopped, the state employees of Okimo lost their jobs and started digging for gold instead – a development the government tried to counter with the legalisation of artisanal gold mining in 1982. Congolese and foreign businessmen then inserted artisanally mined gold into existing trading circuits with Uganda and Southern Sudan.

Artisanal gold mining begins by the delimitation and prospection of a site. For this, the Service des Mines delivers a „carte d'exploitant" and opens a file with the Mining Cadaster. The holder of the „carte d'exploitant" is administratively responsible for the designated site and answerable to the Service des Mines or Okimo itself depending on where the site is.

During the phase of opening a file with the Cadaster and defining the site to be used, payments and gratifications are expected by Okimo, the Service des Mines and the traditional authorities. Okimo is paid the equivalent of 25 grammes of gold for three months' prospection.

In the mine itself, the holder of the „carte d'exploitant", usually known as PDG (General Manager) recruits artisanal miners as his workforce. Usually the minimum number is 20. The PDG takes charge of their nutritional and medical needs. In each mine there is a management structure consisting – from the top down – of the PDG, the supervisor, the pit chief (chef des trous), the workers (called „boulonneurs", „dégageurs", „nzengeneurs" or „drumeurs" depending on their work), and finally security guards. The PDG will establish an internal set of rules for his mine.

Most of the artisanal miners are men, but women and children are also to be found. Sometimes entire families live in the mines. Traders are also established there, living a more bourgeois life: they have shops and beer stalls. The presence of unmarried women in the mines increases the risk of a spread of prostitution with all its consequences such as HIV/Aids.

Finding gold in a new gold mine has several stages:

i) delimitation of pits
ii) digging holes in the pits
iii) taking out samples and analysing them
iv) if the analysis is positive, start mining proper
v) the raw material dug out of the holes is crushed in cylindrical morters and put through a sieve
vi) the resulting gravel and powders are either directly treated with mercury or washed in a wooden „drum" to obtain impure gold
vii) this is heated and purified using nitric and hydrochloric acid.

Finding gold in a river site (alluvial mining) involves sampling sand from the riverbed and, if the analysis proves positive, deviating the river flow and then scooping up the sand which is then washed in a wooden „drum". The sand is repeatedly poured into the drum through a sieve, and after some time gold will separate itself. There is no further purification.

The number of mines and pits in them varies constantly according to the exhaustion of gold deposits. Currently Okimo numbers 356 artisanal gold mining sites in 21 sectors[48] and there are 23 more in Mambasa territory outside the Okimo concession[49]. 85% of the Okimo sites are north and north-west of Bunia, mainly in Djugu territory. The largest sector is Mongbwalu-Nzebi with 33 mining sites.

The tax regime for artisanal gold mining was last laid out by the interministerial regulation 013/ CABMIN/ MINES/ 2005 and 118/ CABMIN/ FINANCES/ 2005 of 4 August 2005, but there are further taxes.

Table 21: Taxes and charges paid in artisanal gold mining in Ituri, in $

Tax or other charge	**Amount per pit**	**Annual revenue collected[50]**	**Legal status**
Traditional authority „droit coutumier“	200	75,800	no
Collectivity „occupation de terrain“	90	32,040	no
Collectivity annual tax	100	37,900	yes
Okimo prospection charge (frais de	150	53,400	yes

48 Information provided by Okimo Bunia, 21 March 2007
49 Report of the „Antenne minière et géologique“, Mambasa territory, October 2005
50 Calculated by multiplying the tax sum by the number of mines – 379, except for the Okimo, collectivity and provincial taxes which do not apply to the 23 Mambasa mines

prospection)			
Okimo lease (contrat de sous-traitance)	250	89,000	yes
Okimo royalties	30% of production	2,613,600	yes
Bureau des Mines registration (fiche de recensement scientifique)	20	7,580	no
Bureau des Mines mining authorisation form	100	37,900	no
Bureu des Mines file (déclaration d'ouverture)	175	66,325	no
Bureau des Mines mining licence (carte de creuseur)	25	9,475	yes
Bureau des Mines trading licence (carte de négociant)	250	94,750	yes
Provincial tax	10% of production	792,000	yes
IPMEA (small enterprise tax)	32	12,128	yes
Total	**40% of production plus $1392**	**3,921,898**	

In fact, the public purse receives nowhere near $3.9 million per year from the artisanal gold mines. The above calculations show that in theory, each mine could contribute $10,348 to the public purse using the existing taxation regime, but it also shows that the existing regime is punitive. The very high taxes shown represent the extent to which various official bodies live off informal gold production, especially Okimo which is supposed to be revitalising formal gold mining.

Ownership disputes

Various partnerships with foreign investors have characterised the history of Okimo:

- 1982-86: Auxeltra Beton (EGAB)
- 1987: Orgaman
- 1991: Kimin (Mindev International, a Joint Venture of Zairean leaders and foreign businessmen)
- 1992-97: Kimin (Mindev et Associés, led by Belgian and French firms) – this was present when Mongbwalu was taken by Laurent Kabila's AFDL forces, led by Ugandan units, in 1996/97
- 1997: Russell Resources; an automatically renewable 20-year lease was signed on 17 November 1997 by the Kabila government
- 2000 to present: Ashanti Goldfield /AngloGold Ashanti in Concession 40, officially established there on 23 April 2005
- 2006 to present (but currently annulled): Moto Goldmines/Borgakim in Concession 38
- 2006 to present: Mwana Africa Holding in Concession 39

The Okimo concessions have been in dispute since war first reached Ituri in 1996, and their control has been the object of fighting from then on until the pacification of the mining areas by MONUC/ FARDC in 2005. Control of different mining sites by different militias was one of the main factors exacerbating conflict in Ituri with its particularly violent form of ethnic massacres and mass ethnic displacement.

The various contracts signed on behalf of Okimo during this time were examined by the „Lutundula commission"of the transitional National Assembly in 2004-05. The report suggested particularly the renegotiation of the convention between Okimo and Ashanti Goldfields of 23 June 2000 with a view to making it more equitable[51]. This is one of the bases for the presence of Ashanti Goldfields (AGK – Ashanti Goldfields Kilo) in Concession 40 around Mongbwalu. The other is the Mining Convention of 25 August 1990 between the then Zairean government and Kimin which gained legal force on 11 July 1991, AGK being the legal successor of Kimin. Neither of these documents was ever made public. AGK pays a monthly lease of $125,000 - $1.5 million a year.

No action was taken on the Lutundula Commission's recommendation, but all existing Okimo contracts are subject to revision by the new DRC's Interministerial Commission established on 20 April 2007 for the examination and possible revision of investment partnerships in mining which began work in June.

One of the main problems in the relationship between Okimo and AGK is a debt of $9 million owed by Kimin to Okimo. Kimin no longer exists. In 2001, AGK as Kimin's successor and Okimo agreed on a repayment schedule for $4.5 million until 2006 which has been honoured. It is unclear, however, where this money went. Okimo says it has received $2 million, but an audit by the DRC Central Bank (BCC) has not found any trace of this. A further problem is that of the payment of outstanding Okimo wages.

There is a complicated situation around the Moto concession

51 Assemblée Nationale, „Rapport sur l'examen de la validité des conventions à caractère économique et financier conclues pendant les guerres de 1996-1997 et 1998", Kinshasa, 26 June 2005, p. 199-201

(Concession 38) in Haut-Uélé district. In order to conduct exploration there, Moto Goldmines Ltd (MGL) through its wholly owned subsidiary Border Energy formed a Joint Venture with the local private company Orgaman SPRL to form a number of local operating companies such as Borgakim Mining, Amani Gold, Rambi Mining, Kibali Gold, Gorumbwa Mining, Tangold and Blue Rose. They entered into leasing agreements with Okimo, and MGL consequently owned between 60 and 68.5% of mineral interests in the concessions, with Okimo retaining 20 to 30% and Irgaman the rest[52]. This process began in 2003. The various contracts were amalgamated as one lease on 3 November 2006 after a period of exploration work, and MGL announced the discovery of probable gold reserves of 2.806m tr.oz of gold content in its concession.

But previously, on 19 October 2006, the DRC presidency had instructed Okimo to suspend all negotations with Moto Goldmines, and Okimo CEO Victor Kasongo did not participate in the 3 November agreement, although the DRC ministries of Mining and Portefeuille did. Press reports suggested that Borgakim was not a serious partner as it was linked businessmen from the Mobutu era and the Central African Republic. Okimo Director Jean-Pierre Mbuluyo informed the Okimo offices in Watsa and Bunia on 26 January 2007 that „if Borgakim-Moto Goldmines do not fulfil their obligations in terms of various rehabilitations and production guarantees within 90 days, the contract will be rescinded." The complaint was that Moto Goldmines was not paying its $420.000 annual lease on time. A further complaint was that the lease contract said that Borgakim could exploit gold outside its lease zone.

In February 2007, Okimo CEO Victor Kasongo became Vice-Minister of Mines of the new elected DRC govenment and

52 Moto Goldmines Ltd Independent Technical Report, October 2006

proceeded to annul the Moto Goldmines contract. This was confirmed in writing on 17 April 2007. Since then, Moto Goldmines' share price has plummeted. The firm was hoping to begin production in May 2007, with 6 to 10kg monthly to begin with it and 10 to 50kg per month in the second half of 2007.

All Okimo contracts are currently subject to review by the government commission set up to revise DRC mining contracts, and so the future of the entire Ituri gold mining industry is currently wide open.

The trading chain

Informal cross-border trade in Ituri gold predates the legalisation of artisanal gold mining in 1982 and has always been substantial, regardless of the presence of multinational companies who might be expected to formalise the gold economy. There are around 340 informal border crossings between Ituri and Uganda.

Reasons for the persistence of the informal gold trade are given locally as follows[53]:

- Absence of regularity authorities with a capacity to control trade
- Lack of control at the border
- Absence of financial operators who can organise local gold markets
- Facilities offered on the Ugandan side of the border to Congolese traders for exports
- Lack of organisation amongst artisanal miners
- The war and the presence of foreign armies
- Intercommunal tension in Ituri

53 This section is based on interviews with traders in various placs in Ituri

The lack of formal structures and registered trading firms makes it extremely difficult to gain an accurate idea of the quantities and variations involved in gold exports. Nevertheless, some data exist.

Table 22: Weekly gold movements out of Ituri in 2006[54] (source: FEC Ituri)

Place of transit	Destination	Quantity
Bunia	Butembo (North Kivu)	10 kg
Bunia	Kampala (Uganda)	60 kg
Ariwara	Kampala (Uganda)	30 kg
Total		**100 kg**

This figure may appear large, but with 356 artisanal mining sites in operation it does not seem excessive. It does, however, give an idea of the importance of the Ituri gold sector within the Congolese economy. Given an average market price of $16 to $20 per gram in Bunia and weekly turnover of 100 kg in the whole of Ituri, the value of the gold trade in Ituri can be estimated at roughly $1.6 to $2 million per week, or $80 to 100 million a year – a staggering amount, most of which of course does not reach the population of Ituri. The parastatal Okimo, which retains 30% of production as royalty, appears to be the main beneficiary.

Gold prices vary according to quality and according to the place of trade. In Bunia, prices tend to be around $2/tola higher than at the Iga-Barrière market directly in the mining area. The

54 Source: Section Comptoirs d'achat d'or, FEC/Ituri

best alluvial gold, with a purity of 91-92%, fetched $200/ tola at Iga-Barrière in 2006 and $202/ tola in Bunia; the margin of $2 however applied also to lesser qualities. $2 for 1 tola (9.5g) is a small profit margin, but for 100 kg gold leaving Ituri every week it means profits of over $20.000 per week within the trading circuit before the gold has even left Ituri.

The Ariwara markets are used mainly by Indian or Pakistani traders. The Bunia markets for export to Uganda encompass a vast trading circuit including the mining areas, in which local traders roam and buy gold on a commission basis at established places, sometimes trading it directly for consumer goods which have previously been imported by their partners from Uganda with the money earnt from gold sales there. Gold passing through Bunia to Butembo in North Kivu is bought mainly by Nande traders on a commission basis with clients in Kampala, Dubai or China. Most economic operators based in the border towns invest their capital in gold. They either export it themselves outside official channels or sell it on to other traders for export.

Gold is not Ituri's only export product, but it generates much more revenue than other exports. Aru district exports timber via Uganda to Kenya, tobacco to Uganda, and wild pepper („ketchu") to Uganda. The border of Irumu and Djugu districts bordering Lake Albert export timber, sawn wood and dried cow skins. Large quantities of timber also leave Ituri for North Kivu via the towns of Luna (Irumu) and Bella (Mambasa) and are registered only on arrival in Beni in North Kivu, thus completely escaping official attention in Ituri itself.

A special case is that of exports of samples of gold-bearing minerals by Ashanti Gold Kilo (AGK) from Okimo concession 40 around Mongbwalu. These are officially registered as having no value. In 2006, AGK spent $8 million on geological and geophysical research; in 2007, this sum was set to double. Large quantities of mineral are extracted from the ground in this process and exported as „samples“ to Mwanza in Tanzania. According to the law, unprocessed mineral exports from the DRC should be taxed at a flat rate of $500 per declaration. According to the Bureau des Mines Bunia, AGA does not pay this tax, although the „samples“ exported correspond to unprocessed minerals. According to the customs agency OFIDA, the analyses of these „samples“ undertaken in Tanzania are sent directly to Kinshasa, and thus in Ituri there is no reliable data on how much gold they contain and thus what their real value might be.

Table 23: Okimo gold sample exports from Bunia, by source[55]

Month	**Quantity (in kg) according to Bureau des Mines de l'Ituri**	**Quantity (in kg) according to OFIDA Bunia (2006 only)**
Feb 2005	106	
Apr 2005	370	
May 2005	1123	
June 2005	1806	
July 2005	446	
Aug 2005	598	
Sep 2005	1239	
Nov 2005	417	
Dec 2005	3692	
Total 2005	**9,797**	
Jan 2006	4579	

55 Bureau des Mines figures are those communicated by Okimo, added together per month from the individual declarations. Where a month is ommitted, no declaration was made. OFIDA registers some of the same declarations several months later and also some which do not figure in the Bureau des Mines lists, but omits most of the Bureau des Mines data. Okimo itself provided no data.

Feb 2006	814	
Mar 2006	6357	
Apr 2006	3256	
May 2006	5750	
June 2006	1442	
Aug 2006	3656	2965
Sep 2006	4072	283
Oct 2006		1935
Nov 2006		128
Total 2006	**29,926**	**5,311**
Feb 2007	2887	
Mar 2007	2772	

CHAPTER 6: IDENTIFYING PROBLEMS, FINDING SOLUTIONS

What is being done?

The Congolese authorities are currently trying out a series of measures to „stamp out fraud“ and „re-establish the rule of law“ in trading, especially on the Eastern borders regarded as particularly susceptible to organised fraud.

Closing the border earlier

Since mid-February 2007, the DRC authorities have reduced the opening times of the Goma-Gisenyi border at the Grande Barrière to bring it in line with the other Congolese border posts. Instead of midnight, as was the case from July 2004, the border now closes at 18h for vehicles and 20h for pedestrians.

This was a response to the absurd situation that while the border used to remain open until midnight, most state services involved in trade including OFIDA went home at 18h, leaving six hours in which it was extremely easy to pass through and without goods being systematically checked. On the Rwandan side, customs was there until midnight.

It is obvious that harmonising border opening times with the working hours of customs services reduces fraud. All state services confirm that officially recorded trade has gone up since the new border regime was instituted. Cassiterite exports recorded by OFIDA changed as follows:

January 2007: 353,553.3 kg
February 2007: 559,897.9 kg
March 2007: 585,532.6 kg

This is much higher than during 2006 when OFIDA-registered cassiterite exports only rarely surpassed 300 tonnes a month. In this way, recorded trade is moving a lot closer to reality, assuming that the cassiterite mines in Bisie are still working at capacity (around 890 tonnes a month).

Traders assume that this phenomenon will be short-lived as everyone will soon find other ways of evading controls. For cassiterite, however, this may not be so easy given the large volumes involved.

There is no reason, however, why the border opening times should not be lengthened again, provided that all border agencies who are supposed to be there actually stay there. This would make life easier for cross-border commuters who under the new regime have huge problems in not overstaying their time on the wrong side of the border. It may also be that a closed, unmanned border turns out to be fairly easy to cross in complicity with the military. Keeping the border open for as long as possible, but with all services fully functioning all the time, is the best way to maximise the effectiveness of border controls. It should be emphasised, however, that a rational solution is not possible in the current situation of heightened insecurity and fears of new war in the region, which apart from anything else constitute a disincentive for anyone – including customs officials - to remain away from their homes after dark.

Separating minerals before export and imposing new conditions for export licences

Officially, exports of totally untreated minerals out of the DR Congo are illegal. Enforcing this through authoritarian means has become a favourite method of export control. Following the decision of Katanga's new provincial governor Moise Katumbi to close the main border post between Katanga and Zambia in

Katumbalesa, the authorities in Kinshasa also instituted a mineral export ban in North and South Kivu in mid-April 2007. Unlike in Katanga, this was not accompanied by the actual closure of the border and the consequent blocking of trucks with export goods. No unusual queues of trucks awaiting clearance were visible on the Goma border during the ban.

Emannual Ndimubanzi, director of the North Kivu provincial mining division, explained that the idea behind the measure was to force trading exporters cassiterite to build cassiterite processing plants in the DRC[56]. Their exporters' licences had not been withdrawn, he said, but in future it would have to be accompanied by a „processing authorisation" (autorisation de traitement) costing $300 per year. This would only be given to firms which had proved they had the necessary equipment. Most important, he said, was the use of magnetic separators which would remove other ores from cassiterite and thus ensure that other ores are not exported under the guise of cassiterite. It is known that cassiterite and coltan are often found in the same deposits, and some of the cassiterite mined in Walikale contains high concentrations of iron ore.

The ban was lifted again on 3 May. By then, according to Ndimubanzi ten trading firms had received new trading licences: Sodexmines, WBC, Amur, Avisam, Metachen, MPC, Starfields, Sodeem, Gama and Munsad. Two further trading firms, Eurotrade and Ibak, were in the process of getting their licences. Thus almost all previous traders are now back in business.

While the temporary export ban did not cause chaos on the border, it „seriously disrupted" the traders' business, Ndimubanzi claims. „The suspension came while cassiterite

56 Interview in Goma, April 2007

prices were at their peak because of problems at a mine in Indonesia“, he explains. At the time cassiterite was fetching $14.000 per ton on the world market. The price has since dropped to $12.000.

The new measures fell short of actually installing processing capacity in the DRC; they only mean that minerals for export now have to be separated earlier into their component ores and thus fraud through the export of mineral mixtures is reduced. Increasing industrial capacity in North Kivu's mining sector is limited mainly by the shortage of energy supplies. There is already not enough electricity in the Kivu provinces to satisfy domestic demand, and the success of industrial investment depends on a stable and increased energy supply.

Until this problem is addressed, it is an illusion to hope that mineral processing can take hold in Eastern Congo. There is also a real possibility that Congolese mineral processing will be much more expensive than in other countries of the region because of the lack of transport infrastructure and the generally higher prices of fuel and capital imports, that the markets will have doubts about quality, and that processed minerals from Eastern Congo will not be competitive on the world market. In this case, illegal exports of unprocessed ores will become even more attractive.

Electronically tracking cargo movements

The Mining Ministry in Kinshasa has started discussions with the South African firm „Observer Technologies“ about installing a satellite tracking system for heavy goods vehicles in the DR Congo. „Observer Technologies“, a successor to a former technological wing of the South African military, has sold such systems to businesses in Ghana, Nigeria and Uganda and is hoping for its first government contract in the DRC. A device costing 8500 South African Rand (ca $1000) per vehicle would transmit data on every movement of the vehicle in question to a central monitoring system, including location, weight and speed – a kind of electronic tagging for lorries.

This would be able to trace what Congolese lorries are doing from the DRC itself up to Mombasa, if required. It would be able to tell if cargo was being offloaded or changed during the trip and whether the weight of the vehicle including cargo corresponded to the trader's declaration.

„Observer Technologies" visited Goma at the end of April 2007 together with Deputy Mining Minister Victor Kasongo and held discussions with the provincial governor. A trial run of 30 days involving four vehicles was due to start in May 2007. Monitoring systems were being installed at the Mining Ministry in Kinshasa and in the North Kivu provincial governor's office at the end of April. During these 30 days, „Observer Technologies" would offer training and technical advice[57].

According to „Observer Technologies", the Mining Ministry is also looking into tracking cargo movements by air. Satellite observations over two months had shown the movements of 400 unregistered aircraft. In theory, satellite tracking would be possible for aircraft as well, just as it is being used for oil tankers in the Niger Delta in Nigeria.

As the Nigerian example indicates, satellite tracking does not in itself guarantee the security and legality of cargo movements. It simply means someone else can know what is going on. What they do about it is another matter. In the context of Congolese lorries, installing the „Observer Technologies" system would put traders doing so at a competitive disadvantage. According

57 Interview in Goma, April 2007

to „Observer Technologies“, the DRC government wants to make the installation of their tracking systems a condition for granting a mining licence. But the high cost, which presumably has to be borne by the trader, increases transaction costs, and traders who decide not to opt into the system will be cheaper and operate free of observation.

Tightening import controls before cargo arrival in DRC

On 1 February 2006, the Congolese trade control agency OCC (Office Congolais de Controle) launched a „Programme de Vérification des Importations“ in order to end import fraud[58]. The French firm BIVAC was given the exclusive rights to grant import licences on behalf of OCC and OFIDA. BIVAC has taken the place of the Swiss SGS (Société Générale de Surveillance) which used to have an OCC control contract. One idea behind the BIVAC control procedure is to merge operations of OCC and OFIDA regarding imports.

„The importer“, the BIVAC guide explains, „must either go to a registered bank with an invoice including the address of the exporter, the details of products and their values, rebates, commission payments and other services related to the import, in order to get an import licence LIB, or to the BIVAC office where the OCC and OFIDA cells are located in order to get an import declaration DPI. The LIB or DPI is given to the BIVAC liaison office by the OFIDA/ OCC cell. The BIVAC office opens a control dossier before embarcation.[59]“ The goods are then inspected in the port of origin – wherever in the world that may be – together with the exporting supplier. The control document (Attestation de Vérification – AV) is transmitted to the BIVAC liaison office in Kinshasa and a print-out forwarded

58 Interview with OCC director in Goma, April 2007

59 BIVAC International/Bureau Veritas: „Pre-Shipment Inspection of Imports for the Democratic Republic of Congo“ Data Sheet

to the importer. The importer in the DRC has to present the AV together with a customs declaration and a final invoice in order to get his merchandise through customs.

Since 1 January 2007, no goods may be imported into the DRC outside this prior inspection procedure. Exempted are goods worth less than $2.500 as well as the following: arms and munitions for the government, live animals, eggs, fresh foods, newspapers and magazines, re-imports, personal items including cars, parcels, specimens, charitable gifts, personal gifts, foreign aid, imports by international organisations, imports bought with foreign grants or loans.

Whether the new system can end import fraud remains to be seen. The exemption list obviously leaves a lot of small loopholes as well as a big one: apparently nobody checks a declaration by the importer that his goods are exempt.

To improve on this, the Congolese state maritime freight agency OGEFREM (Office Général de Fret Maritime) has set up a special DRC import terminal in Mombasa, the main transit point for container imports into the DRC. The „Terminal Cargo Congo", set up in partnership with the Dubai firm Al-Ilam, is supposed to provide better security, avoid port congestion, deliver reception and manutention services and speed up unloading, says the head of OGEFREM in Goma. It would also ensure that no DRC imports can bypass the control procedures at the terminal. It should deal with exports as well as imports. Similar terminals already operate in Daressalam (Tanzania) and also in Boma on the Atlantic in Western Congo for timber exports and vehicle imports.

The Mombasa terminal has not become operational because importers from the Beni/ Butembo area of North Kivu protested. In a letter of 18 January 2007 to the DRC government obtained by Pole Institute, a „Collectif des représentants des opérateurs économiques de l'Est de la République Démocratique du Congo" consisting of 23 businessmen protests that „as national and international commerce in the DRC has been liberalised,", they refuse that „the DRC's merchandise is forced to transit the abovementioned depot without our consent under the pretext that this is a fruit of the cooperation between the governments of DRC and Kenya".

They calculate that the terminal will add 30% to their transport costs, and denounce „unjustified payments" demanded by OGEFREM agents in Mombasa over the past four years. „We ask why Rwanda, Uganda and other countries of the Northern Corridor have not placed their agents in the two ports of Mombasa and Daressalam to collect money. The DRC in its drive to maximise its revenue makes the ports of Mombasa and Daressalam too expensive to use for businessmen from the East of the Republic only," the letter continues. The Butembo branch of the Congolese business federation FEC threw its weight behind this protest. The launch of the new terminal was suspended.

OGEFREM in Goma says that these protests were orchestrated by the local officials of OFIDA in Mombasa who have been there since the time of the war and want to protect certain economic interests and commercial advantages given to Beni-Butembo traders during that time. Discussions are in progress with the traders concerned[60].

These two import control operations by OCC and OGEFREM thus do not yet appear to work. An additional problem is that they operate independently of each other and there is no coordination. OCC and OGEFREM talk disparagingly about

60 Interview with Ogefrem director in Goma, April 2007

each other, unprompted, and a harmonised and simplified import control procedure for Eastern DRC is yet to emerge. Any multiplicity of competing and uncoordinated control mechanisms places additional and unnecessary burdens on trade. The idea that DRC state control of trade operations should be centralised at a „guichet unique“ has been regularly proclaimed as a goal by Kinshasa ministries but never put into practice.

The new North Kivu provincial government

Decentralisation and retention of provincial revenues at source

The current DRC constitution, adopted by referendum in December 2005 and signed into law in February 2006, revolutionises provincial government finance. Instead of all revenues flowing into central government coffers in Kinshasa first, from where some of them were supposed to be rerouted back to their provinces of origin but seldom were, the provinces are now supposed to retain 40% of the revenues they generate at source and used this to finance their own activities. This measure was a compromise between advocates of a strong centralised state and advocates of outright federalism during the debates on the new constitution in 2004-05. „Les provinces... se partagent les recettes nationales avec (le pouvoir central) respectivement à raison de 40% et 60%“[61], the text says and specifies: „La part des recettes à caractère national allouées aux provinces est établie à 40%. Elle est retenue à la source.[62]“

Until then, taxes and other state revenues were always sent to the public accounts in Kinshasa and then theoretically redistributed – in practice very little money ever came back to

61 Constitution de la République Démocratique du Congo, Exposé des Motifs
62 Ibid., §175, clause 2

the local level. Changing this so that the public purse at the provincial level can directly keep at least part of the revenues raised is often cited by public officials as a major incentive for clean and transparent revenue collection.
Implementing these provisions of the Constitution has, however, proved impossible. The text does not specify what exactly the revenues are of which the provinces may keep 40%. „Recettes à caractère national“ and „à la source“ are not precise terms. So there is room for creative politics to the detriment of the provinces here: the more revenue sources are kept out of the equation, the less money stays with the provinces and the more goes automatically to Kinshasa.

If the 40% clause was properly implemented, it would give provincial administrations an incentive to encourage legal trade so they could benefit from increased revenues. In fact, it has not yet been implemented as the necessary decentralisation law does not yet exist. Sources in Goma and Kinshasa indicate that this is unlikely to happen soon and that the newly elected government is reluctant to implement this section of the constitution, fearing an erosion of its own revenue base.

At a meeting of provincial governors and government ministers in June, it was decided to set up a commission to study the details of implementation with a view to making it effective by 1 September. However, there was no chance of this happening without a Decentralisation Law being passed. Many politicians are certain that this law will not come into effect before the planned re-ordering of the DRC's provinces, whose number is to increase from 11 to 26; this is supposed to come into effect three years after the Consitution itself, meaning in 2009.

A Decentralisation Law to settle all questions pertaining to the working of the provinces and local authorities was tabled in parliament in March 2007, but was not passed before the summer recess, and it is not clear when it will be tabled again and whether it will ever come into force. It does not clarify revenue definitions anyway. But it contains another important innovation: the 40% retained by the provinces are further divided – 40% for the provincial budget and 60% for lower local levels of administration. „Les recettes percues par la Province conformément à l'alinéa 2 de l'article 175 de la Constitution sont réparties à raison de: 40% aux Provinces; 60% aux Entités Territoriales Décentralisés.[63]" The latter do not yet exist because local elections have not yet taken place, and these are unlikely to happen before 2008.

UNDP, a key advisor to the DRC government, has recently suggested moving back the creation of the new provinces and thus the implementation of a new decentralisation law to 2011, after the next presidential and parliamentary polls.

A further subject of tension between central and provincial government may emerge in the regulation of trade. According to the Constitution, „les douanes et les droits d'importation et d'exportation" are the exclusive remit of the central government, but „l'organisation du petit commerce frontalier" the exclusive remit of the provinces[64].

In North Kivu, public revenues collected by provincial services are almost exclusively constituted of import duties, as the following table shows.

Table 24: North Kivu public revenues 2006, in $[65]

63 Projet de Loi Organique portant décentralisation territoriale, administrative et politique de la République Démocratique du Congo, §157

64 Constitution de la République Démocratique du Congo, §202 and 204

65 Sources: OFIDA Goma, OFIDA Beni (OFIDA Kasindi data was too disorganised), DGI (Direction Générale des Impots) in Goma, Butembo, Beni, Lubero, Rutshuru, Masisi and Walikale, DGRAD (Direction Générale des Recettes Administratives, Judiciaires, Domaniales et de Participation) Goma

Source of revenue	Amount	Totals
Petroleum product import duties Goma	1,792,319.58	
Petroleum product import duties Beni/Butembo	2,060,426	
Non-petroleum import duties Goma	7,061,728.33	
Non-petroleum import duties Beni/Butembo	5,603,642.50	
Total import duties		**16,518,116.41**
Export duties Goma	410,369.23	
Export duties Beni/Butembo	113,360.30	
Total export duties		**523,729.53**
Income taxes	1,775,832.22	
Business taxes	673,968.55	
Other taxes	121,816.99	
Total taxes		**2,571,617,76**
Administrative charges, penalty fees, income from state property (DGRAD income)	1,040,850.76	**1,040,850.76**[66]
Total		**20,654,314.46**

If trade fraud was eliminated, these earnings could rise significantly. But even with current earnings, under the new constitution's decentralisation clause North Kivu would have kept $8,261,725.78 (40% of the total) in 2006 – significantly more than it has at present.

66 This figure is less than the amount which should have been collected. DGRAD payment demands for 2006 total $1,832,012.36, giving a shortfall of $791,161.60

The new provincial government's programme

The new provincial government of North Kivu under governor Julien Paluku, former mayor of Beni in the Grand Nord, took office in March 2007 and set out an ambitious programme of government on 28 April 2007. This included a series of measures to tighten border controls, fight fraud and reorganise the trading system „in order to gain control of the financial resources of the province“:

- i) restrict the membership of the provincial „cellule de recouvrement de recettes“
- ii) create a provincial audit service
- iii) re-examine all existing customs exemptions
- iv) rehabilitate the banking system to reduce liquidity outside banks
- v) set up a review commission for mining and forestry titles
- vi) strengthen control of goods movements at the borders
- vii) „zero tolerance“ against tax and customs evasion
- viii) „strict“ channelling of all state revenues into the Treasury.

To implement this, a series of „actions“ was announced:

- i) publicise the provincial government's programme
- ii) publicise the tax regime
- iii) audit all revenue-generating services
- iv) audit all fiscal operations
- v) increase border controls by police and the ANR intelligence services
- vi) commission a study on building warehouses at border posts, especially Kasindi, Beni, Butembo and Goma
- vii) close „fraudulent“ border crossings

viii) prosecute all tax and customs evaders
ix) suspend all customs exemptions which do not conform to the law
x) strengthen the control of „enlèvements d'urgence“ at OFIDA
xi) install a „guichet unique“ at all border posts
xii) prosecute all economic crimes
xiii) pay all provincial bills by bank transfer
xiv) work with the business federation FEC to stop economic operators from hoarding liquidity
xv) accelerate the installation of the Artisanal and Small-Scale Mining Service SAESSCAM
xvi) repair Mabenga and Kangote bridges to avoid breakdowns in road transport
xvii) abolish all trade monopolies
xviii) improve the traffic flow at road toll stations.

Whether all this can be implemented remains to be seen. Many of these measures concern national bodies and policy areas which are not the remit of a provincial government but of Kinshasa. As the Congolese parliament in Kinshasa has not yet passed a decentralisation law which clearly determines the responsibilities of each level of government, it may be that much of this programme will turn out to be unenforceable, if not illegal.

At any rate, conflict between central and provincial government is on the cards. Ministers in Goma regularly complain that Kinshasa decides things concerning them without consultation or even information. The precise demarcation lines between central and provincial ministries is unclear. A further problem is the persistent in-fighting between ministries and between state services in North Kivu. This increases uncertainty for economic operators as to whose laws and directives they should follow. It also remains to be seen to what extent the new provincial governor can take on the commercial elites – in the Grand Nord which is his political base, but also in Goma where he is now in office.

What needs to be changed?

Many current government policies suffer from the misapprehension that the only way to combat unrecorded trade and export/ import fraud is to tighten state controls. This approach presumes that the DRC state is able and willing to impose its own laws. In fact, state agents are by the nature of things often forced to break the law, and in this context using authoritarian measures will not produce the desired results but will rather create further distortions in the working of trade which encourage traders even more to bypass official structures. To change economic agents' behaviour in line with „legality“, incentives to „illegal“ trade need to be removed before measures to enforce „legal“ trade are implemented.

The analyses presented in this study highlight a series of problems which have to be addressed if cross-border trade in natural resources in the East of the Democratic Republic Congo is to evolve in the direction of transparency and legality for the benefit of the population in a way that reduces poverty and conflict.

Higher tax rates in the DRC than in its neighbours
The DRC levies export taxes which are much higher than those of its immediate Eastern neighbours. This is an incentive for exporters to declare their merchandise as coming from one of the neighbouring countries.

Unofficial taxes in addition to official taxes in the DRC
State agencies in the DRC levy unofficial taxes in addition to the official rates. This may be due to the fact that salaries are not

paid and state agents are expected to be self-financing. It means that state agents sell the right to trade for a price ot be negotiated. Both sides gain from coming to an informal arrangement outside the official system.

Multiplicity of state agencies

There are too many different services involved in controlling and siphoning off external trade. Where controls do take place, they serve the controller's private interests rather than law enforcement and are the point of departure for a process of either extortion or negotiation.

Different tax regimes in different areas

Within North Kivu province, there is still no effective harmonisation of the tax and customs regimes inherited from the war. This distorts markets and encourages local protectionism which can only be sustained by bending official export rules to fit local circumstances,

Continued involvement of the military in trade

Military agents, from individual soldiers to generals, are involved in mining and trading. Their ability to call on means of coercion to get the best deal distorts markets and forces other economic agents to acquire a military wing or ally themselves with an existing military operator.

Lack of trust

Most people in the Congo assume, rightly or wrongly, that money given to someone else is gone for good. There is thus a general reluctance to pay taxes to the state, as this money is regarded as disappearing into private pockets rather than being available for the public good. There is also a reluctance to pay money into banks, as there is no confidence that it will ever be possible to get it back, and while banks levy high charges it costs nothing to keep cash at home.

An uncontrollable border

Given the open nature of the DRC border, especially in Goma but also in the open countryside, the idea that the DRC can ever control all its cross-border activity in its entirety is completely unrealistic. The country has to come to terms with the fact that populations living on the border will engage in cross-border activity without waiting for government permission.

Dysfunctional mining regimes

Mining, prospection and exploration rights in the Eastern DRC continue to be granted in an opaque and contradictory fashion, leading to ownership conflicts on the ground. All mining activity is carried out by artisanal miners but they systematically lose out legally against industrial mining firms who do not actually mine anything. This pushes artisanal miners into dependency on unofficial trading systems.

Lack of infrastructure

Unfair power relationships in mining areas, which force miners into unwanted dependencies, are often upheld through monopoly of control over transport routes. This is also an instrument for military or other state agents to enforce their demands. With no functioning road system sellers of primary products have no choice where and thus with whom they trade. With no functioning energy supplies there is no possibility for the DRC to move away from dependence on untreated primary exports.

On a more general level, political issues need to be tackled. The unresolved issue of decentralisation; the unmet and pressing need for more human security; the continuing impunity for those who enforce their own private interests to the detriment of public ones; the complete lack of development perspectives for a population desperate for improved well-being – without addressing these issues, economic reform cannot succeed.

Annex 1 : List of statistical sources

Pole Institute was able to obtain the following statistics for trade in North Kivu:

OFIDA Goma: Logbooks exports and imports and data sets 2006
OCC Goma: Logbooks exports and imports and monthly data sets 2006
OFIDA Kasindi: Logbooks exports 2006, petroleum imports 2006
OCC Beni: Statistics exports 2006
OCC Butembo: Statistics exports 2006, imports 2005-96
Div. Commerce Extérieur Goma: Logbooks exports 2005-1/2007, logbooks imports 2006-1/2007
Div. Mines Goma: Mineral export statistics 2006, annual figures since 1999
CEEC Goma: Mineral production and export statistics 2005-06
SEP-Congo Beni: Logbooks petroleum imports 2006-1/ 2007 (partial), fraud list 2005 (partial)
Rwanda Revenue Authority Gisenyi: Statistics of DRC petrol imports, timber/food exports 2006
North Kivu Provincial Government: Breakdown of provincial revenues 2004-06
Goma airport: Logbook cassiterite entries 10-12/2006

Consolidated tables were produced for 2006 exports and imports from which the trade figures used in this report are drawn. Further data on cassiterite movements Walikale/ Goma were consulted in Walikale.

Annex 2 : List of tables

List of Pole Institute Publications

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