



Ottawa, April 28, 2009

MEMORANDUM D19-6-4

In Brief

KIMBERLEY PROCESS — EXPORT AND IMPORT OF ROUGH DIAMONDS

A change has been made to the list of participants in Appendix A. The following countries have been added: Bangladesh, Bulgaria, Liberia, Mexico, New Zealand, Republic of Congo, Romania, and Turkey. The Ivory Coast and Venezuela have been removed.



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KIMBERLEY PROCESS — EXPORT AND IMPORT OF ROUGH DIAMONDS

This memorandum contains guidelines and information on the Kimberley Process Certification Scheme for the trade in rough diamonds. On January 1, 2003, the provisions of the *Export and Import of Rough Diamonds Act* and its associated regulations became law. This legislation is the responsibility of Natural Resources Canada (NRCan). Both the Canada Border Services Agency (CBSA) and the Royal Canadian Mounted Police (RCMP) will assist NRCan with the border enforcement aspects of the Kimberley Process Certification Scheme.

Legislation

Customs Act — Sections 101 and 107(5)

101. Goods that have been imported or are about to be exported may be detained by an officer until he is satisfied that the goods have been dealt with in accordance with this Act, and any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods, and any regulations made thereunder.

107. (5) An official may provide, allow to be provided or provide access to customs information to the following persons:

- (a) a peace officer having jurisdiction to investigate an alleged offence under any Act of Parliament or of the legislature of a province subject to prosecution by indictment, the Attorney General of Canada and the Attorney General of the province in which proceedings in respect of the alleged offence may be taken, if that official believes on reasonable grounds that the information relates to the alleged offence and will be used in the investigation or prosecution of the alleged offence, solely for those purposes;
- (b) a person that is otherwise legally entitled to the information by reason of an Act of Parliament, solely for the purposes for which that person is entitled to the information;
- (c) an official solely for the purposes of developing, administering or enforcing an Act of Parliament or developing or implementing a policy related to an Act of Parliament if the information relates to

(i) goods, the importation, exportation or in-transit movement of which is or may be prohibited, controlled or regulated under that Act,

(ii) a person who that official has reasonable grounds to believe may have committed an offence under that Act in respect of goods imported or exported by that person, or

(iii) goods that may be evidence of an offence under that Act.

Canada Border Services Agency Act — Paragraphs 5(1) and 5(2)

5. (1) The Agency is responsible for providing integrated border services that support national security and public safety priorities and facilitate the free flow of persons and goods, including animals and plants, that meet all requirements under the program legislation, by

- (a) supporting the administration or enforcement, or both, as the case may be, of the program legislation;
- (b) implementing agreements between the Government of Canada or the Agency and a foreign state or a public body performing a function of government in a foreign state to carry out an activity, provide a service or administer a tax or program;
- (c) implementing agreements between the Government of Canada or the Agency and the government of a province or other public body performing a function of the Government in Canada to carry out an activity, provide a service or administer a tax or program;
- (d) implementing agreements or arrangements between the Agency and departments or agencies of the Government of Canada to carry out an activity, provide a service or administer a program; and
- (e) providing cooperation and support, including advice and information, to other departments and agencies of the Government of Canada to assist them in developing, evaluating and implementing policies and decisions in relation to program legislation for which they have responsibility.

Support

(2) The Agency may provide support, through the provision of services, to departments and agencies for which the Minister is responsible, in accordance with agreements or arrangements entered into with those departments and agencies.

Export and Import of Rough Diamonds Act — Sections 8(1) and 14(1)

8. (1) Every person who exports rough diamonds must ensure that, on export, they are in a container that meets the requirements of the regulations and are accompanied by a Canadian Certificate.

14. (1) Every person who imports rough diamonds must ensure that, on import, they are in a container that meets the requirements of the regulations and are accompanied by a Kimberley Process Certificate that

- (a) was issued by a participant;
- (b) has not been invalidated by the participant; and
- (c) contains accurate information.

GUIDELINES AND GENERAL INFORMATION

1. The *Export and Import of Rough Diamonds Act* was introduced as a result of commitments made by several countries, including Canada, that participate in the Kimberley Process Certification Scheme. Appendix A provides the list of the participants. The purpose of the Certification Scheme is to prevent the international movement of conflict or “blood” diamonds that are being used to fund rebel activities in various African countries. The Scheme requires imports and exports of rough diamonds to be accompanied by Kimberley Process certificates (KPCs) and transported in tamper-resistant containers.

2. The *Export and Import of Rough Diamonds Act* defines a rough diamond as “a diamond that is unsorted, unworked or simply sawn, cleaved or bruted, and that falls under subheading 7102.10, 7102.21 or 7102.31 in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*...” Diamonds that are cut and polished and ready to be mounted, set or fitted do not fall under the provisions of the Act and do not require a KPC. In some cases, importers may be improperly classifying finished diamonds as rough diamonds. An examination by a border services officer or advice from an NRCan inspector may identify some of those cases.

3. Subsection 7(1) of the *Export and Import of Rough Diamonds Act* authorizes the Minister of Natural Resources to designate inspectors to administer the Act and investigators to enforce its provisions. NRCan will designate inspectors and the RCMP performs the criminal investigator role. Border services officers are not designated in either of these capacities. The CBSA’s role is to review the KPCs, verify that appropriate containers are used and detain shipments that appear to violate the Act. When the CBSA detains shipments, it immediately contacts NRCan to get specific direction on how to proceed with the appropriate course of action.

4. Information relating to Canadian diamonds that are exported and then returned to Canada can be found in Memorandum D10-14-39, *Canadian Diamonds Exported and Returned*.

Import controls

5. Every person who imports rough diamonds into Canada must ensure that the diamonds are in a container that meets the requirements described in the section called Containers and seals of this memorandum and are accompanied by a KPC that

- (a) has been issued by a participant;
- (b) has not been invalidated by the participant; and
- (c) contains accurate information.

6. Border services officers will verify that shipments of rough diamonds are accompanied by KPCs from one of the participants. See Appendix B for a list of the required data elements for these certificates. While each participant is responsible for designing its own KPC, the certificates have to contain the information identified in Appendix B. Border services officers will also verify that shipments are transported in tamper-resistant containers as described in the section called containers and seals.

7. If there are no discrepancies between the KPC and the import documentation at the time of importation, the border services officer will date-stamp the KPC and return it to the importer. The officer will advise the importer or the importer’s authorized agent to forward the KPC to NRCan at the address provided in the section called Additional information.

8. The CBSA will detain shipments and immediately contact NRCan’s Kimberley Process Office to get instructions on how to proceed if any of the following circumstances occur:

- (a) No KPC is presented and the goods are suspected to be rough diamonds;
- (b) Discrepancies are identified on the KPC;
- (c) The KPC is suspected to be fraudulent;
- (d) The shipment is imported from a non-participant;
- (e) The packaging requirements are not met; or
- (f) The KPC has expired.

Note: In such cases, NRCan will advise the border services officer on how to proceed with the appropriate course of action. In some situations, this advice may be provided over the telephone or, if required, arrangements will be made by NRCan for a designated inspector to examine the shipment and related documentation. In the event of a suspected criminal infraction, NRCan will contact the RCMP and request an investigation, which may result in the seizure of the goods. The CBSA will only detain shipments for a short period of time. Shipments that are seized under the *Export*

and *Import of Rough Diamonds Act* or that need to be detained for a longer period of time will be turned over to either NRCan or the RCMP. In accordance with the Memorandum of Understanding between NRCan and the CBSA, NRCan is expected to respond to requests for assistance within 24 hours except on weekends and holidays.

9. In the event that a CBSA infraction also applies to such imports (e.g. smuggling or false statements are made regarding the country of origin), the goods will be detained and the appropriate CBSA regional investigations division should be immediately informed. Regional investigations staff may be contacted 24 hours a day, 7 days a week. In these situations, the investigations staff will consult with NRCan and the CBSA's Partnerships Division to determine if charges will be laid under both the *Customs Act* and the *Export and Import of Rough Diamonds Act*.

10. When a violation of the *Export and Import of Rough Diamonds Act* has occurred and goods are turned over to NRCan or the RCMP, a border services officer will prepare a Form K129, *Exhibit Control*, for control purposes. A note should also be made on the form to indicate to the accepting agency that the goods must not be released to the importer until all duties and taxes owing are paid.

Form B3 coding requirements

11. Importers should be aware that specific coding requirements apply to imports of rough diamonds that are classified under tariff item Nos. 7102.10, 7102.21, 7102.31 and 9813.00.00.41. The KPC that is required for imports of rough diamonds has a unique identification number. This identification number must be entered in field 26 (special authority) of Form B3, *Canada Customs Coding Form*, at the time of accounting.

12. In most cases, it will be possible to enter the KPC number in field 26 of Form B3 as it appears on the certificate. However, as the format of the KPC number varies among the participating countries and because there are field limitations, it may be necessary for the importer to modify the number before entering it. The following rules apply when completing field 26:

- (a) The KPC number must begin with the two-letter country code. The country code must be added to the beginning of the number if it is not included.
- (b) The KPC number must be no more than 16 characters. If it is longer than 16 characters, then the appropriate number of characters should be deleted from the end of the number.
- (c) The KPC number should not contain any dashes, hyphens or slashes. These characters must be removed from the number.

13. Clients using Customs Automated Data Exchange (CADEX) and Customs Declaration (CUSDEC) should refer to the mapping requirements in their participants' guide to find out how to input this number into field 26 of Form B3.

14. In the event that an Order in Council applies to the shipment, the Form B3 will require a two-line entry because both an Order in Council number and a KPC identification number must be quoted in field 26. The form must be completed as described below:

- (a) The first line should detail all the required data including the actual value for duty with the order-in-council number shown in field 26;
- (b) The second line should have the same quantity and classification as the previous line, but the value for duty will be zero (to ensure that no additional duties and taxes are calculated) and the KPC number should appear in field 26.

Export controls

15. Every person who exports rough diamonds from Canada must ensure that the diamonds are in a proper container that meets the requirements in the section called Containers and seals and are accompanied by a Canadian KPC.

16. At the time of export, if there are no discrepancies between the Canadian KPC and the export documentation, the border services officer will date-stamp the export declaration and exporter's copy portion of the KPC and return them to the exporter. The border services officer will instruct the exporter or the exporter's agent to forward the export declaration portion of the KPC to NRCan at the address provided on the reverse side of the KPC.

17. The CBSA will detain shipments and immediately contact NRCan's Kimberley Process Office to get instructions on how to proceed if any of the following circumstances occur:

- (a) No KPC is presented and the goods are suspected to be rough diamonds;
- (b) Discrepancies are identified on the KPC;
- (c) The KPC is suspected to be fraudulent;
- (d) The shipment is about to be exported to a non-participant;
- (e) The packaging requirements are not met; or
- (f) The KPC has expired.

Note: In such cases, NRCan will advise the border services officer on how to proceed with the appropriate course of action. In some situations, this advice may be provided over the telephone or, if required, arrangements will be made by

NRCan for a designated inspector to examine the shipment and related documentation. In the event of a suspected criminal infraction, NRCan will contact the RCMP and request an investigation, which may result in the seizure of the goods. The CBSA will only detain shipments for a short period of time. Shipments that are seized under the *Export and Import of Rough Diamonds Act* or that need to be detained for a longer period of time will be turned over to either NRCan or the RCMP. In accordance with the Memorandum of Understanding between NRCan and the CBSA, NRCan is expected to respond to requests for assistance within 24 hours except on weekends and holidays.

18. In the event that a CBSA infraction also applies to such a shipment (e.g. a non-report or false statements are made regarding the destination country), the goods will be detained and the appropriate CBSA regional investigations division should be immediately informed. Regional investigations staff may be contacted 24 hours a day, 7 days a week. In these situations, the investigations staff will consult with NRCan and the CBSA's Partnerships Division to determine if charges will be laid under both the *Customs Act* and the *Export and Import of Rough Diamonds Act*.

Containers and seals

19. A container that is used to export or import rough diamonds must be constructed so that it cannot be opened when sealed without showing evidence of having been opened. In addition, a container in which rough diamonds are exported from Canada must be secured with a seal that bears a seal number listed on the accompanying Canadian KPC. If a situation arises where a seal is broken at the time of export from Canada, either as a result of a CBSA examination or damage in transit, the exporter will be advised to take steps to have the container resealed. NRCan should also be informed of any situation where the seal has been broken. In the event that an imported shipment is examined and the seal is broken, the border services officer should contact the importer before releasing the goods to determine if the importer wishes to reseat the container.

Penalties

20. Subsection 41.(1) of the *Export and Import of Rough Diamonds Act* sets out the following penalties for various offences under this Act:

(a) an indictable offence and liable to a fine in an amount that is in the discretion of the court or to imprisonment for a term not exceeding 10 years, or to both; or

(b) an offence punishable on summary conviction and liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months, or to both.

Additional information

21. For more information on the requirements of the Kimberley Process, contact :

Kimberley Process Office
Minerals and Metals Sector
Natural Resources Canada
580 Booth Street, 9th floor
Ottawa ON K1A 0E4

Telephone: 613-996-0947

1-866-539-0766 (toll-free)

Fax: 613-943-2079

Web site: www.nrcan.gc.ca/kimberleyprocess/

Office hours: 9:00 a.m. to 5:00 p.m. Monday to Friday

22. For more information on the CBSA administration of the Kimberley Process provisions, contact:

Partnerships Division
Admissibility Branch
Canada Border Services Agency
150 Isabella Street, 5th floor
Ottawa ON K1A 0L8

Web site: www.cbsa.gc.ca

Telephone: 613-954-1410

Fax: 613-946-1520

23. The CBSA's Border Information Service (BIS) line responds to public inquiries related to import requirements of other government departments, including NRCan. You can access BIS free of charge throughout Canada by calling **1-800-461-9999**. If you are calling from outside Canada, you can access BIS by calling 204-983-3500 or 506-636-5064 (long-distance charges will apply). To speak directly to an agent, please call during regular business hours from Monday to Friday (except holidays), 8:00 a.m. to 4:00 p.m. local time.

APPENDIX A

KIMBERLEY PROCESS PARTICIPANTS

Angola	India	Sierra Leone
Armenia	Indonesia	Singapore
Australia	Israel	South Africa
Bangladesh*	Japan	South Korea
Belarus	Laos	Sri Lanka
Botswana	Lebanon	Switzerland
Brazil	Lesotho	Tanzania
Canada	Liberia*	Thailand
Central African Republic	Malaysia	The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu
China	Mauritius	Togo
Croatia	Mexico*	Turkey*
Democratic Republic of the Congo	Namibia	Ukraine
European Community	New Zealand*	United Arab Emirates
Ghana	Norway	United States of America
Guinea	Republic of Congo*	Vietnam
Guyana	Russia	Zimbabwe

Members of the European Community

Austria	Germany	the Netherlands
Belgium	Greece	Poland
Bulgaria*	Hungary	Portugal
Cyprus	Ireland	Romania*
Czech Republic	Italy	Slovakia
Denmark	Latvia	Slovenia
Estonia	Lithuania	Sweden
Finland	Luxembourg	United Kingdom
France	Malta	

* Recently added countries.

APPENDIX B**REQUIRED DATA ELEMENTS FOR
KIMBERLEY PROCESS CERTIFICATE**

1. Identification of importer and exporter
2. Carat weight
3. Value in U.S. dollars
4. Harmonized System subheading
5. Name of issuing authority
6. Unique identification number
7. Date of issue
8. Date of expiry
9. Number of parcels or containers
10. Validation by issuing authority

Note 1: A certificate should bear the title “Kimberley Process Certificate” and have the following statement: “The rough diamonds in this shipment have been handled in accordance with the provisions of the Kimberley Process Certification Scheme for the trade in rough diamonds.”

Note 2: A Kimberley Process Certificate issued to export rough diamonds from Canada will apply to one shipment, identify the appropriate seal numbers and be valid for a period of 60 days.

REFERENCES

<p>ISSUING OFFICE – Partnerships Division Border and Compliance Programs Directorate Admissibility Branch</p>	<p>HEADQUARTERS FILE – 7935-26</p>
<p>LEGISLATIVE REFERENCES – <i>Export and Import of Rough Diamonds Act</i>, sections 7(1), 8(1), 14(1) and 41(1)(a), (b) (2002, c. 25) <i>Customs Tariff</i> (1997, c. 36) <i>Customs Act</i>, sections 101 and 107(5) (1985, c. 1 (2nd Supp.)) <i>Canada Border Services Agency Act</i>, sections 5(1) and 5(2) (2005, c. 38)</p>	<p>OTHER REFERENCES –</p>
<p>SUPERSEDED MEMORANDA “D” – D19-6-4, dated November 13, 2008</p>	

Services provided by the Canada Border Services Agency are available in both official languages.

