



Ottawa, February 17, 2005

MEMORANDUM D19-6-4

In Brief

KIMBERLEY PROCESS – EXPORT AND IMPORT OF ROUGH DIAMONDS

The Appendix A of this Memorandum has been revised to reflect changes in the list of Kimberley Process Participants recently made by Natural Resources Canada. The new list is effective immediately. In addition, the contact information shown in paragraph 17 of page 3 has been revised.



Printed in Canada



Ottawa, June 23, 2003

MEMORANDUM D19-6-4

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* (EIRDA) and its associated regulations became law. This legislation is the responsibility of Natural Resources Canada (NRCan). Both the Canada Customs and Revenue Agency (CCRA) and the Royal Canadian Mounted Police (RCMP) will assist NRCan with the border enforcement aspects of this new program.

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GUIDELINES AND GENERAL INFORMATION

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

2. The EIRDA 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 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 EIRDA and do not require a KPC. In some cases, importers may be improperly classifying finished diamonds as rough diamonds. An examination by a customs inspector or advice from an NRCan inspector may identify some of those errors.

3. Subsection 7(1) of the EIRDA authorizes the Minister of Natural Resources to designate inspectors to administer the Act and investigators to enforce its provisions. NRCan will perform the role of inspector and the RCMP will perform the criminal investigator role. Customs inspectors will not be designated in either of these capacities for enforcing the EIRDA. The CCRA’s role will involve a general review of certificates, verifying that appropriate containers are used, and detaining shipments that appear to violate the Act. When shipments are detained by the CCRA, NRCan will be contacted immediately to get specific direction on how to dispose of the diamonds appropriately.

Import Controls

4. Every person who imports rough diamonds must ensure that the shipment is in a container that meets the requirements described in paragraph 14 of this Memorandum and that the container is accompanied by a KPC that:

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

5. Customs inspectors will verify that shipments of rough diamonds are accompanied by KPCs from one of the participants. See Appendix B of this Memorandum for a list of the required data elements for these certificates. While each participant is responsible for designing its own KPC, these certificates have to contain the information identified in Appendix B. Customs inspectors will also verify that shipments are transported in tamper-resistant containers as described in paragraph 14 of this Memorandum.

6. If there are no discrepancies between certificates and import documentation at the time of importation, customs inspectors will date-stamp certificates and return them to the importer. The customs inspector will advise the importer or the importer’s authorized agent to forward the certificates to NRCan at the address shown in paragraph 16 of this Memorandum.

7. Under any of the following circumstances, the CCRA will detain shipments and immediately contact NRCan's Kimberley Process Office to get instructions on how to dispose of the goods:

- (a) No certificate is presented and goods are suspected to be rough diamonds
- (b) Discrepancies are identified on certificates
- (c) Certificates are suspected to be fraudulent
- (d) Shipments are imported from a non-participant
- (e) The packaging requirements are not met
- (f) The certificate has expired

In such cases, NRCan will advise the customs inspector how to dispose of the goods. In some situations, this advice may be provided over the telephone or, if required, arrangements will be made for an NRCan 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 seizure of the goods. The CCRA will only detain shipments for a short period of time. Shipments that are to be seized under EIRDA or that need to be detained for a longer period of time will be turned over to either NRCan or the RCMP. NRCan will be available for consultation on enforcement issues 24 hours a day, 7 days a week.

8. In the event that a customs infraction also applies to such imports (e.g., smuggling or false statements regarding country of origin), the goods will be detained and the Customs Investigations Division should be immediately informed of the contravention. Regional Investigations staff may be contacted 24 hours a day, 7 days a week. In these situations, Investigations will consult with NRCan and the Admissibility Programs Division of the CCRA to determine if charges will be laid under both the *Customs Act* and the EIRDA.

9. When a violation of the EIRDA has occurred and goods are turned over to NRCan or the RCMP, Form K129, *Exhibit Control*, will be prepared 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.

Export Controls

10. Every person who exports rough diamonds must ensure that they are in a proper container that meets the requirements of paragraph 14 of this Memorandum and that the container is accompanied by a Canadian KPC.

11. At the time of export, if there are no discrepancies between Canadian KPCs and export documentation, customs inspectors will date-stamp the Export Declaration and Exporter's Copy portions of these certificates and return

them to the exporter. The customs inspector will instruct the exporter or the exporter's agent to forward the Export Declaration portion of the certificates to NRCan at the address shown on the reverse side of the document.

12. Under any of the following circumstances, the CCRA will detain shipments and will immediately contact NRCan's Kimberley Process Office to get instructions on how to dispose of the goods:

- (a) No certificate is presented and goods are suspected to be rough diamonds
- (b) Discrepancies are identified on certificates
- (c) Certificates are suspected to be fraudulent
- (d) Shipments are about to be exported to a non-participant
- (e) The packaging requirements are not met
- (f) The certificate has expired

In such cases, NRCan will advise the customs inspector how to dispose of the goods. In some cases this advice may be provided over the telephone or, if required, arrangements will be made for an NRCan 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 seizure of the goods. The CCRA will only detain shipments for a short period of time. Shipments that are to be seized under EIRDA or that need to be detained for a longer period of time will be turned over to NRCan or the RCMP. NRCan will be available for consultation on enforcement issues 24 hours a day, 7 days a week.

13. In the event that a customs infraction also applies to such shipments (e.g., non-report or false statements regarding the destination country), the goods will be detained and the Customs Investigations Division should be immediately informed of the contraventions. Regional Investigations staff may be contacted 24 hours a day, 7 days a week. In these situations, Investigations will consult with NRCan and the Admissibility Programs Division of the CCRA to determine if charges will be laid under both the *Customs Act* and the EIRDA.

Containers and Seals

14. 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 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, either as a result of customs 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 situations where the seal has been broken. In the event a shipment for import is examined and the seals are broken, the Canada Border Services Agency inspector should contact the importer before releasing the goods to determine if the importer wishes to reseal the container.

Penalties

15. Subsection 41(1) of the EIRDA creates 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 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.

More Information

16. For more information on the requirements of the Kimberley Process, contact NRCAN at the following address:

Kimberley Process Office
Minerals and Metals Sector
Natural Resources Canada
10th floor, Room 10A7
580 Booth Street
Ottawa ON K1A 0E4

Tel.: (613) 996-0947
Fax: (613) 943-2079

Web site: www.nrcan.gc.ca/kimberleyprocess
Office hours: 8:00 a.m. to 4:00 p.m. Eastern Time,
Monday to Friday

17. For more information on the administration of these provisions contact:

Border Compliance and Monitoring Division
Admissibility Branch
Canada Border Services Agency
Sir Richard Scott Building, 14th floor
191 Laurier Avenue West
Ottawa ON K1A 0L8

Tel.: (613) 954-7129
Fax: (613) 946-1520

Web site: www.cbsa.gc.ca

APPENDIX A**KIMBERLEY PROCESS PARTICIPANTS**

Angola	India	South Africa
Armenia	Israel	South Korea
Australia	Ivory Coast	Sri Lanka
Belarus	Japan	Switzerland
Botswana	Laos	Tanzania
Brazil *	Lesotho	Thailand
Bulgaria *	Malaysia *	Togo *
Canada	Mauritius	Ukraine
Central African Republic	Namibia	United Arab Emirates
China	Norway *	United States of America
Croatia	Romania *	Venezuela
Democratic Republic of the Congo	Russia	Vietnam
European Community	Separate Customs Territory of Taiwan, Penghu, Kimen and Matsu	Zimbabwe
Ghana *	Sierra Leone	
Guinea	Singapore *	
Guyana		

European Community

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

* Recently added countries.

APPENDIX B**KIMBERLEY CERTIFICATE – REQUIRED DATA ELEMENTS**

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: Certificates should bear the title “Kimberley Process Certificate” and contain the following statement: “The rough diamonds in this shipment have been handled in accordance with the provisions of the Kimberley Process International Certification Scheme for rough diamonds.”

Note 2: A Kimberley Process Certificate issued for export from Canada will apply to one shipment, identify the appropriate seal numbers, and be valid for a period of 90 days.

REFERENCES

<p>ISSUING OFFICE –</p> <p>Admissibility Programs Division Operational Policy and Coordination Directorate Customs Branch</p>	<p>HEADQUARTERS FILE –</p> <p>7935-26</p>
<p>LEGISLATIVE REFERENCES –</p> <p><i>Export and Import of Rough Diamonds Act,</i> subsections 7(1), 7(2), and 41(1) <i>Customs Tariff and Customs Act</i></p>	<p>OTHER REFERENCES –</p> <p>N/A</p>
<p>SUPERSEDED MEMORANDA “D” –</p> <p>N/A</p>	

Services provided by the Canada Customs and Revenue Agency are available in both official languages.

This Memorandum is issued under the authority of the Commissioner of Customs and Revenue.

