



## **KPCS ANNUAL REPORT FOR 2014** **AUSTRALIA**

### **A. Institutional Framework**

#### *Part A: Constant*

The Department of Foreign Affairs and Trade (DFAT) – official coordinator for the implementation of the KPCS – the Australian Customs and Border Protection Service (ACBPS) – the Import Authority – and the Department of Industry and Science (DoIS) – the Export Authority – work collaboratively to ensure the Kimberley Process Certification Scheme (KPCS) is implemented efficiently and correctly. Contact details for each agency are below.

Lead Agency and KP Focal Point: Department of Foreign Affairs and Trade

Executive Officer & KP Focal Point  
Resources and Energy Section  
Economic Engagement Branch  
Department of Foreign Affairs and Trade  
R.G. Casey Building  
John McEwen Crescent  
Barton ACT 0221 Australia  
eleanor.flowers@dfat.gov.au  
KP.policy@dfat.gov.au

Import Authority: Australian Customs and Border Protection Service

Manager  
Environment and Wildlife Team  
Trade Branch  
Australian Customs and Border Protection Service  
Customs House  
5 Constitution Avenue  
Canberra ACT 2601  
KPDIAMONDS@customs.gov.au

Export Authority: Department of Industry

Manager  
Minerals Section  
Coal and Minerals Productivity Branch  
Department of Industry and Science  
GPO Box 9839  
Canberra ACT 2601  
KP.EXPORT.AUSTRALIA.industry.gov.au

#### *Part B: Variable*

During 2014, the Department of Industry changed its name to the Department of Industry and Science.

Both DoIS and ACBS had staff changes in 2014.

### **B. Legal Framework**

#### *Part A: Constant*



The *Customs Act 1901* (the Customs Act) is Australia's principal legislation governing the movement of goods in and of the country. Section 50 of the Customs Act allows for import prohibition and/or restriction of certain items, including rough diamonds. Section 112 of the Customs Act allows for the export prohibitions and restrictions of certain prescribed goods. Restricted goods may only be imported or exported when specified conditions are met. The Customs Act is implemented by two principal regulations--- Regulation 4MA of the *Customs (Prohibited Imports) Regulations 1956* (Import Regulations) and Regulation 9AA of the *Customs (Prohibited Exports) Regulations 1958* (Export Regulations).

Under the Import and Export Regulations all rough diamonds that leave or enter Australia must meet the following conditions:

- A) the diamonds are accompanied by a valid Kimberley Process certificate
- B) the diamonds are imported or exported in a tamper-proof container, and
- C) the diamonds are imported from or exported to a country that is a KP Participant.

It is also a requirement for exporters and importers of rough diamonds to keep records for a period of five years.

Import and export records, including details of buyers and sellers are retained permanently by the Department of Industry and Science (for exports) and the ABCPS (imports).

### *Part B: Variable*

There were no legislative changes made in 2014.

## **C. Import and Export Regime**

### Outgoing shipments

#### *Part A: Constant*

Under the Australian KP system, Australian exporters are classified into either:

- Occasional Exporters, or
- Frequent Exporters.

Occasional export permits are granted on a shipment-by-shipment basis.

An occasional exporter must provide a completed application form for each shipment and must also:

- be an Australian resident or Australian registered business entity
- provide proof of origin of the rough diamonds being exported
  - including (if applicable) the original receipt of purchase from an Australian diamond producer or merchant or
  - if foreign sourced, the date of import into Australia, total metric carat weight of the shipment and the Customs Import Entry Number; and the foreign Kimberley Process certificate covering the imported goods, or at least the number of the foreign KP certificate covering the imported goods or
  - such documentary evidence as will allow the origin of the diamonds to be established
- provide an affirmative statement declaring that the rough diamonds are from legitimate sources, not involved in conflict

- a current Australia wide “name check” Criminal History Check from the Australian Federal Police.

The Frequent Exporter process is outlined in Section D.

Once a KP certificate has been issued, it is a requirement for all Australian rough diamond exports to be sealed in tamper-proof containers with the original certificate issued by the Australian Export Authority on the outside of the container.

Australian mines operate in close cooperation with the Export Authority. All information on diamonds mined, mines, buyers and sellers relevant to the KPCS is maintained on electronic databases maintained by the Import and Export Authorities.

Records are kept for all import and export of rough diamonds, including clients, volume and value of transactions. Australia does not issue licence numbers; however, each exporter has a unique identifier within the KPCS numbering system, records of which are retained.

Australia: maintains the information required by Section V of the KPCS Document on a computerised database; routinely contacts relevant authorities in other countries electronically; and routinely transmits statistical information electronically.

The Australian Export Authority, as noted above, works with Australian diamond mining companies to maintain security standards.

All producers of rough diamonds in Australia use official banking channels for rough diamond sales. Smaller trades are not tracked.

The Australian Export Authority has had no breaches of the KPCS during 2014 or previously.

### *Part B Variable*

There have been no changes in the export legislation or regulations since the previous report.

## Incoming shipments

### *Part A: Constant*

All imports of rough diamonds must be reported to Australian Customs and Border Protection Service (ACBPS) irrespective of the value of the diamonds.

Goods imported into Australia are subject to ACBPS control until released into home consumption or otherwise treated. An Import Declaration is used to clear goods. It can be submitted to ACBPS electronically through the Integrated Cargo System (ICS) or by a Customs Broker, who is accredited to process import documents on behalf of individuals or businesses.

Sections 154 to 161L of the *Customs Act 1901* give the legal rules for arriving at the valuation of imported goods. These provisions are aimed at assessing the total amount paid for the goods, packed and in export condition, at their place of export.

All goods, including rough diamonds, must be correctly classified under the *Customs Tariff Act 1995* (Tariff Act). The Tariff Act imposes customs duty on goods imported into Australia and outlines the organisation and operation of the Customs Tariff.

To identify the importation of rough diamonds, ACBPS uses a profiling method based on the classifications of rough diamonds in Customs Tariff. These are defined below:

7102	Diamonds, whether or not worked, but not mounted or set:
7102.10	Unsorted
7102.2	Industrial
7102.21	Unworked or simply sawn, cleaved or bruted
7102.31	Other

Where an importation is identified by the Customs Tariff, the importer will be requested to provide the Kimberly Process certificate where the goods are rough diamonds.

The consignment is cleared through the ICS and the original certificate return slip (where applicable) is collated by ACBPS and returned to the issuing country. A confirmation email is also sent to the issuing country.

It is important that the information given to ACBPS is true and correct. The Customs Act 1901 contains a range of offence provisions and many are 'strict liability' offences.

Detailed statistical reports on Australia's import/export activity on rough diamonds are compiled on a quarterly basis for the Secretariat to the Kimberley Process Certification Scheme (KPCS).

### *Part B: Variable*

There have been no changes in the import legislation or regulations since the previous report.

## **D. System of internal controls and Industry Self-Regulation**

### *Part A: Constant*

There are two diamond mines operating in Australia; the Argyle and Ellendale mines, both located in the Kimberley Region of Western Australia, operated by Argyle Diamonds (Rio Tinto) and Kimberley Diamond Company (KDC, trading as Kimberley Diamonds Ltd) respectively.

The vast majority of Australia's rough diamond production is generated by the Argyle mine. In April 2013, Rio Tinto completed the transition of the Argyle mine from an open pit mining operation to a large scale block caving underground mine. Rio Tinto indicates the project will extend the life of the mine until at least 2021.

Throughout 2014, the Australian KP Export Authority maintained regular contact with the two producing companies to keep abreast of developments in rough diamond mining operations. Both mines partially self-regulate as "Frequent Exporters". Under this process, the companies are able to export Australian origin product through an expedited process providing their systems and security remain robust such that they fully meet the requirements of the KPCS.

Frequent Exporter Licences are valid for 12 months commencing on 1 January of the licencing year. Frequent Exporters have to apply for renewal of the licence every year. Applications must include:

- brief company background and nature of export business
- extent of proposed business and commercial benefits likely to result, e.g. approximate export value
- evidence of a pattern of regular exports covering a minimum of 12 months prior to the application
- predicted annual activities regarding:
  - source of rough diamonds for export;
  - quality of rough diamonds for export and relevant Commodity Classification Code;
  - annual export quantity (metric carat weight, approximated value in USD and total free on board value in AUD); and
  - export arrangements and number of shipments that are projected for the coming 12 month period
- a statement which identifies the company's main end-users
- a listing of stock holdings of rough diamonds shown by metric carat weight by country of origin
- an affirmative statement declaring that all rough diamonds exported will be produced from legitimate sources, not involved in funding conflict.

Each year, representatives of the KP Export Authority visit Argyle Diamonds and KDC's head offices and mines to assess KPCS compliance, incorporating a rigorous assessment of record-keeping procedures, security processes, export processes, and reporting processes. The KP Export Authority rigorously assesses compliance against a six-page checklist. Each inspection visit is undertaken over at least a one-week period with additional follow-up with the company after the report is prepared.

In addition, each year the KP Export Authority conducts an in-depth analysis of a particular part of the KP compliance process. In previous years, the KP Export Authority has considered issues such as transport security arrangements, maintenance and recordkeeping at the mine and at the office.

As part of the review process, the Export Authority also confirms the companies' good standing with the West Australian Department of Mines and Petroleum (DMP). The DMP is the state authority which regulates mining in Western Australia and which collects royalties on all its diamond production. The DMP annually audits production statistics, export statistics and actual sales data through a rigorous process in both Perth and Antwerp.



A report is prepared on each company's compliance with the KPCS and this report is included into the application documentation for a Frequent Exporter Licence.

Both mining companies have been assessed by the Australian Export Authority and found to be undertaking all relevant activities in a manner which ensures Australia continues to meet the requirements of the KPCS.

Exploration for the development of new diamond mines in Australia is continuing with two properties at an advanced stage of exploration. The Smoke Creek alluvial deposit owned by Venus Metals Limited is located near the Argyle Diamond mine and consists of alluvial terraces containing diamonds shed from the Argyle primary diamond deposit. Merlin Diamonds Limited (formerly North Australian Diamonds) is also well advanced on the redevelopment of the Merlin diamond deposit located near Borroloola in the Northern Territory.

In terms of monitoring production, the KP Export Authority works in collaboration with a number of Australian Government agencies, including scientific information agency Geoscience Australia and economic research agency the Economic and Analytical Services Division in the DoIS (formerly the Bureau of Resources and Energy Economics), to ensure the validity of reported Australian rough diamond production statistics.

In addition, both Rio Tinto and Kimberley Diamond Company are listed on the Australian Securities Exchange, and are required to report resources information consistent with the Joint Ore Reserves Committee Code. This Code provides minimum standards for public reporting and a mandatory system for the classification of tonnage/grade established according to geological confidence and technical/economic considerations. Financial reports and media releases from producers, exploration and junior companies are also monitored.

### *Part B: Variable*

As noted above, in addition to its regular assessments of frequent exporters, the KP Export Authority chooses a particular focus area for in-depth analysis each year. In 2014, the focus area was the sealing of tamper-proof containers.

The Export Authority has sought to increase KP awareness of Frequent Exporters by running KP education sessions at the companies' offices in Perth and at the mine sites.

Merlin has announced that it is seeking to go back into production in 2015.

One minor shipment was seized by the Australian Import Authority for breaches under the *Customs (Prohibited Imports) Regulations 1956* in 2014. Eleven stones valued at 600 Euros were imported from the UK without a KP certificate. The EU KP authorities were contacted, however a KP certificate for the diamonds was not issued. The diamonds were seized and were given to Australia's national science agency, the Commonwealth Scientific and Industrial Research Organisation (CSIRO), for research and testing purposes prior to destruction. The Chair was not informed due to confidentiality requirements under the Australian legal system, noting the breach was not sufficient to trigger court action.

Kimberley Rough Diamonds, a private business in Kununurra Western Australia, has previously been a Frequent Exporter. In 2015, it will revert to an Occasional Exporter with the Australian Export Authority issuing Australian KP certificates as required on an export by export basis.

## **E. Statistics**

### *Part A: Constant*

Australia has met its reporting obligations in full for 2014. Australia submitted trade statistical reports for Q1 2014, Q2 2014, Q3 2014, Q4 2014 and mine production reports for H1 2014, and H2 2014.

**TABLE -1 : OVERVIEW OF PRODUCTION - IMPORT - EXPORT DURING THE LAST 5 YEARS.**

Period	Production			Import			Export		
	Volume, cts	Value, US\$	US\$/ cts	Volume, cts	Value, US\$	US\$/ cts	Volume, cts	Value, US\$	US\$/ cts
2010	9976154.50	251722189.57	25.23	55793.95	10877333.09	194.95	9903543.57	251899466.90	25.43
2011	7829805.25	220720063.60	28.19	108541.27	8729247.47	80.42	7912585.06	226792063.18	28.66
2012	9180923.00	269419306.00	29.34	39987.74	10086133.92	252.23	9373373.78	278806143.34	29.74
2013	11728657.41	381143069.00	32.49	28523.36	4394789.02	154.07	11371627.41	342876077.78	30.15
2014	9288231.89	304319165.00	32.76	53187.95	5278215.01	99.24	9045946.88	276271186.00	30.54

Source: Data from Participant's Statistical Tables from WGS Website

**TABLE - 2 : OVERVIEW OF KPC COUNT FOR IMPORT - EXPORT DURING THE LAST 5 YEARS.**

PERIOD	KPC Counts		
	IMPORT	EXPORT	TOTAL
2010	81	117	198
2011	69	122	191
2012	66	128	194
2013	62	92	154
2014	41	100	141

Source: Data from Participant's Statistical Tables from WGS Website

*Part B: Variable*

**KPCs issued and received in 2014**

<b>Country</b>	<b>Exports</b>	<b>Imports</b>
European Community	74	22
India	11	12
China	1	
Canada	1	
USA	7	2
Denmark	1	
New Zealand	1	
Sri Lanka	2	
Switzerland	1	
UK	1	1
Sierra Leone		2
Israel		2
<b>Totals</b>	<b>100</b>	<b>41</b>

Australian production has decreased to around 9.2 million carats in 2014 from approximately 11.7 million carats in 2013, largely due to the cessation of active mining at Ellendale. Ellendale is currently only processing existing stockpiles. The number of carats exported also decreased from approximately 11.3 million in 2013 to approximately 9.04 million carats as a result of Ellendale's decrease in mining. The number of certificates issued by Australia was up from 92 in 2013 to 100 in 2014.

In addition to regular reporting, Australia has been in contact with other participants where any statistical discrepancies have been found in order to reconcile and correct any discrepancies.

**F. Implementation of recommendations of Kimberley Process Review Visits and/or Review Missions**

In September 2014, Australia welcomed a KPCS Peer Review Visit to assess its compliance with the KPCS. As part of the review process, the KP Review Team visited the Argyle Diamond mine, ACBPS international airport facilities in Perth, Rio Tinto's offices in Perth, Kimberley Diamond Company's offices in Perth and the Department of Mines and Petroleum offices in Perth.

The Peer Review team shared the first draft of the report with Australia on 2 March 2015. Australia will work closely with the review team to ensure the final report can be issued as soon as possible.

Following the Review Visit, Australia has developed a more robust process of statistical analysis which includes a reconciliation of published statistical data between Australia and our trading partners each quarter. This is in addition to the TG14 reconciliation which is done before the publishing of statistics. This has resulted in the detection of small statistical anomalies on the KP website.

The Australian Export Authority has been able to liaise with other participants to correct these discrepancies.

In addition, the Department of Industry and Science as the Export Authority has been in discussions with the West Australian Department of Mines and Petroleum to facilitate an increased monitoring process of the valuation placed on rough diamond shipments from the producing mines.

### **G. Infringements and cooperation with Respect to Enforcement**

In accordance with the November 2009 Administrative Decision on Cooperation on Implementation and Enforcement made at the plenary meeting in Swakopmund, Australia provides the following report on implementation and enforcement issues (enforcement, KP-related infringements and breaches, fraudulent certificates, suspicious shipments, exchange of information between Participants in relation to investigations).

#### Enforcement

ACBPS undertakes checks to verify compliance with the KPCS by intervening in transactions proportionate to the perceived level of risk. Intervention by ACBPS is limited to the level required to deal with the assessed level of risk.

ACBPS has powers under the *Customs Act 1901* and its associated Regulations enabling investigations and enforcement action following incidents involving the illegal importation or exportation of prohibited goods. The specific circumstances surrounding any detection are taken into account and ACBPS may take enforcement action deemed to be appropriate. Where possible, this will include the seizure of the goods.

The seizure of goods involves a legislated process, a part of which provides the owner with the opportunity to claim for the return of the goods by submitting any supporting information to ACBPS.

If a claim is not lodged or is unsuccessful then the goods are forfeited and are disposed of within the legislative provisions of the *Customs Act 1901*. Normal disposal means for prohibited imports is by destruction. Failure to comply with the legislative requirements of the *Customs Act 1901* and the *Customs Regulations 1926* relevant to the operation of the KPCS could constitute an offence and attract pecuniary penalties. In some cases the matter may be considered through the Australian Judicial System.

The import or export of prohibited diamonds is an offence under the *Customs Act 1901*. The penalty on conviction is, if the Court can determine the value of the diamonds, a penalty not exceeding 3 times the value of the goods or 1,000 penalty units whichever is the greater.<sup>1</sup> If the Court cannot determine the value then the penalty would not exceed 1,000 penalty units.

ACBPS maintains various mechanisms to provide officers with procedural instructions on how to treat imports and exports of consignments of rough diamonds subject to the KPCS.

#### KP-related infringements and breaches

Controls remain in place at the border by ACBPS in relation to the certificates. As noted in Section D, there were two minor seizures of rough diamonds in 2014.

#### Fraudulent certificates

Australia has not detected any cases of fraudulent certificates on import or export.

#### Suspicious shipments

---

<sup>1</sup> A penalty unit is currently set at AUD 170. A company is subject to a penalty up to five times the noted penalty units, which are prescribed for individuals.

ACBPS investigates suspicious shipments on import and export.

#### Exchange of information between Participants in relation to investigations

Australia routinely exchanges information with participants to manage the KP process and ensure integrity of the system.

#### **H. Miscellaneous**

In 2014, Australia continued its engagement as a member of the Working Group on Monitoring, the Committee on Participation and Chairmanship and the Working Group of Diamond Experts. Australia also participated in discussions on internet trading.

In September 2014, Australia hosted a KP study tour for ten members of the Kimberley Process family from Asia and Africa. The tour included participants from Cambodia, Cote d'Ivoire, DRC, Guinea, Sierra Leone, Vietnam and Zimbabwe. Participants from Cameroon and Liberia were unfortunately unable to travel.

The study tour was fully funded by the Australian Government and was run by Australia's International Mining for Development Centre (IM4DC), with Maurice Miema from DRC contributing as the subject expert and facilitator. The study tour participants learned how Review Visits and Review Missions are run, as well as about best practices in KP implementation and broader mining practices.

During the study tour, participants were able to attend elements of Australia's KP Review, including government briefings, a visit to the Argyle Pink facility and a visit to the ACBPS facilities at Perth Airport. Participants also undertook a site visit to a gold mine, the Gold Stealing Detection Unit and a range of education sessions at IM4DC. In addition to KP specific matters, participants learned about geological surveys, The West Africa Exploration Initiative (WAXI) and precompetitive data, environmental compliance, relationships with civil society, communities and social issues, mining taxation, transfer pricing and diamond fingerprinting.

As a follow-on project, the study tour participants and facilitator will also develop a guidance document to assist future Review Visit teams.

At the 2014 Plenary in Guangzhou, China, Australia nominated for the position of Vice Chair in 2015 which would lead to the role of Chair in 2016. Australia would welcome the opportunity to serve the KP family as Chair. A decision on this is pending.