

Canada's Report on the Implementation of the Kimberley Process Certification Scheme, 2019

Preamble

In conformity with Section VI paragraph 11 of the Kimberley Process Certification Scheme (KPCS) document, the Administrative Decision on the KPCS Peer Review System, the Guidance Document / Annual Report Template endorsed by the Kimberley Process (KP) Working Group on Monitoring at the Guangzhou Plenary, the Swakopmund Decision on implementation and enforcement, and Instructions for the 2019 Annual Reporting Process, this report covers the implementation of the KPCS by Canada during 2019.

A. INSTITUTIONAL FRAMEWORK

CONSTANT:

The *Export and Import of Rough Diamonds Act* (EIRDA) came into force on January 1, 2003. This Act provides for controls on the export, import or transit across Canada of rough diamonds and for a certification scheme for trade in rough diamonds with Participants and eligible entities meeting the minimum requirements of the KPCS.

The Minister responsible for the administration of EIRDA is the Minister of Natural Resources Canada (NRCan). An amendment to EIRDA to gain authority to publish statistics, based on Kimberley Process Certificate (KPC) data, came into force on June 16, 2006. This amendment also provides the Minister of NRCan with the authority to make regulations prescribing the classes of diamonds to be excluded from the definition of "rough diamond".

The text of EIRDA can be found on the website of Canada's Department of Justice:

<http://laws-lois.justice.gc.ca/eng/acts/E-18.5/>

Ministerial authorities under EIRDA include:

- amendment of the Schedule of Participants and eligible entities meeting the minimum requirements of the KPCS with which Canadians can trade in rough diamonds;
- disclosure, in the public interest, of KP information collected under the authority of the Minister of NRCan, taking into account competitive interests;
- collection, compilation, use and publication of KP statistics, and the sharing of these statistics with other Participants;
- delegation of certain Ministerial powers, duties and functions;
- designation of inspectors and investigators;
- issuance, replacement and invalidation of Canadian KPCs;
- ordering of the return of rough diamonds if the container has been opened;
- the determination of the manner of submitting an application for a Canadian KPC;
- the determination of the content of Canadian KPCs and the period of their validity;
- the determination of the place and manner of submitting an export declaration report or import confirmation report;
- the prescription of the requirements for containers to be used for the export of rough diamonds;
- the prescription of the records, books of account or other documents or data to be kept by persons who export or import rough diamonds, their form and content and the period during which they must be kept;
- the disposition of rough diamonds or other things that are forfeited under EIRDA, the determination of the persons to be notified of their disposition and the manner of the notification; and,
- the making of regulations.

NRCan provided resources for the office of the Chair of the KP Working Group on Statistics until December 31, 2008. NRCan and Global Affairs Canada (GAC) provide resources for participation in various KP working groups, committees, Review Visits and Review Missions. In 2019, Canada sent a delegation to both the Kimberley Process Intersessional and Plenary meetings, respectively in Mumbai and in New Delhi, India.

NRCan's Kimberley Process Office (KPO) is responsible for the implementation of the KPCS in Canada (KP Focal Point). As such, all inquiries relating to Canada's implementation of the KPCS should be directed to the following individuals via the central e-mail address mentioned below.

CONSTANT:

KPCS Focal Point and Export/Import Authority

Kimberley Process Office

Lands and Minerals Sector

Natural Resources Canada

580 Booth Street, 10th floor

Ottawa, Ontario

Canada K1A 0E4

Telephone: (343) 292-8710

Toll free Phone Line: 1-866-539-0766

E-mail: nrcan.kpc-cpk-canada.nrcan@canada.ca

Website: <http://www.nrcan.gc.ca/mining-materials/kimberley-process/8222>

Mr. Oliver Schatz

Coordinator, Kimberley Process Office

Lands and Minerals Sector

Natural Resources Canada

580 Booth Street, 10th floor

Ottawa, Ontario

Canada K1A 0E4

Mr. Kai Schaefer

Policy Analyst, Kimberley Process Office

Lands and Minerals Sector

Natural Resources Canada

580 Booth Street, 10th floor

Ottawa, Ontario

Canada K1A 0E4

VARIABLE:

Mr. Oliver Schatz has been appointed as the new Coordinator of the KPO (July 18, 2019).

Mr. Kai Schaefer has joined the KPO as the new Policy Analyst (July 15, 2019).

B. LEGAL FRAMEWORK

CONSTANT:

The Export and Import of Rough Diamonds Act (EIRDA)

EIRDA provides the legal basis for implementing the KPCS as shown in Table 1 below:

Table 1 Canada’s Legal framework for implementing the KPCS

Provision	Sections of the EIRDA	Regulations¹	Agency*
Export of rough diamonds	8,9,10,11,12,13	7,9	KPO, CBSA, RCMP
Import of rough diamonds	14,15,16	8,9	KPO, CBSA, RCMP
Issuance and invalidation of KPCs	9,10, 11,12	2,3,4,5,6	KPO, GAC
Internal controls	17,19,20,21,22,23,24,36,37, 38,39,40	10	KPO, CBSA, RCMP
Seizure, forfeiture and retention	25, 26, 27, 28, 29, 30, 31, 32	11	KPO, RCMP, DOJ, PPSC, CBSA
Penalties, fines and punishment	28,32(2),33,40.1,41,42,43	11	KPO, DOJ, PPSC
Data exchange and publication	4,5		KPO, RCMP, DOJ, STATSCAN, QC, ON, GNWT

¹ Refers to the *Export and Import of Rough Diamonds Regulations*

*Agencies supporting the legislative scheme: Canada Border Services Agency (CBSA), Royal Canadian Mounted Police (RCMP), Natural Resource Canada’s Kimberley Process Office (KPO), Department of Justice Canada (DOJ), Public Prosecution Service of Canada (PPSC), Global Affairs Canada (GAC), Statistics Canada (STATSCAN), Government of Ontario (ON), Government of Quebec (QC), Government of the Northwest Territory (GNWT).

VARIABLE:

An amendment to the EIRDA Schedule came into force on January 28, 2019, adding Gabon to Canada's list of KP Participants and eligible entities meeting the minimum requirements of the KPCS with which Canada may trade in rough diamonds.

C. IMPORT AND EXPORT REGIME

CONSTANT:

Global Affairs Canada is responsible for managing diplomatic relations, promoting international trade, leading international development, peace and security assistance efforts and contributing to national security and the development of international law. As such, Canadian participation in the Kimberley Process (KP) is led by Global Affairs Canada with support from NRCan.

The Minister of Natural Resources Canada has responsibility for coordinating the domestic implementation of the KPCS through the administration of EIRDA. Compliance with EIRDA is ensured through joint efforts with the Canada Border Services Agency (CBSA), the Royal Canadian Mounted Police (RCMP), Global Affairs Canada, the Department of Justice (DOJ), and the Public Prosecution Service of Canada (PPSC), as reported under the Legal Framework section (B) of this report.

Exports

Blank Canadian Kimberley Process Certificates (KPCs) are produced by the Canadian Bank Note Company Ltd. and meet or exceed all of the requirements of Section II (c) and Annex I-A of the KPCS document. In addition, Canadian KPCs include a Confirmation of Import tear-off, as recommended.

Application forms for a Canadian KPC can be downloaded in Adobe Acrobat (.pdf) format from the NRCan website:

<http://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/mineralsmetals/pdf/mms-smm/busindu/kpd-pdk/Formkimberlyprocess.pdf>

Applications can be submitted to the KPO using the following three methods.

1. Courier
2. E-mail
3. Mail

Almost all clients submit their applications by e-mail.

Each application is analyzed and verified to ensure that all required information is provided, including a seal number for each tamper resistant container, as required under section 9 of the *Export and Import of Rough Diamonds Regulations* (the Regulations). In Canada, for the initial export of diamonds of Canadian origin, applicants are required to identify the name of the mine or the exploration site from which the diamonds originate. For re-export of diamonds, applicants must provide the unique number of the KPC or KPCs that accompanied the original import or imports. The application includes a requirement for a signed declaration by the applicant. Each application is logged with the sequence, date and details of the application, assigned a unique file number by the KPO and, when approved, is assigned a Canadian KPC serial number. Under the Act, only a resident of Canada is eligible to apply for a Canadian KPC.

An application can be delayed if the information is incomplete or rejected if there is reason to believe that information has been purposely omitted from the application or misrepresented to subvert the process. In all instances, the applicant will be notified.

Each Canadian KPC is verified and approved prior to final printing. Printing of KPCs can occur in Ottawa or off-site through a remote printing system. A first version of this system was established in 2005 to reduce the time delay for the transmission of the certificates to remote diamond mines and frequent applicants. It was upgraded in 2012 as part of a modernization project.

When a KPC is printed in Ottawa, a designated NRCAN senior official signs the KPC and a copy is retained on file. The certificate is then sent via courier to the applicant's or the exporter's place of business, as indicated on the application. When a KPC is printed off-site, an electronic signature is transmitted through secure means along with the certificate information required for printing on the KPC. The client then sends a secured scanned colour copy of the printed certificate back to KPO and it is retained on file. All records are stored in a secure area.

Upon export of a rough diamond shipment at any border point, the exporter or his agent must present, to the CBSA, the Canadian KPC issued for the shipment. A border services officer (BSO) verifies that the diamonds are in a sealed tamper resistant container and that the information on the certificate matches the information on the Canada customs export declaration. The CBSA has the authority to inspect the shipment content and will proceed to do so if risk assessment programs are triggered.

A Canadian KPC has three tear-off portions: an Export Declaration; an Exporter's Copy; and a Confirmation of Import.

The Export Declaration tear-off is signed by the exporter, stamped by CBSA upon export of rough diamonds from Canada, and returned by the exporter to NRCAN within seven days of export as stipulated under section 7 of the Regulations.

The Exporter's Copy tear-off serves as a record for the exporter.

The Confirmation of Import tear-off is stamped by the import authority and is to be returned by the import authority to Canada's KPO. In order to minimize security risks, Canada does not send advance notification of shipments to importing authorities unless the latter requires it by law and the export client authorizes the action.

The return of tear-offs is tracked to confirm Canada's export transactions. Communications with import authorities are also used to confirm import of Canada's exports. Data corresponding to export transactions are recorded in the Canadian KP database. Improvements to the database were made in 2012, 2013 and 2014 to enhance its security and functionality.

In 2019, NRCan issued 213 KPCs. The primary export destinations were India and the European Union, followed by Vietnam, Botswana, Israel, Armenia and the United States. Table 3 shows the number of KPCs issued to Participants in 2019, on a quarterly basis.

Table 3 Canadian KPCs issued for export to Participants in 2019

Participant	Q1	Q2	Q3	Q4	Total Count
Armenia	2	3	2	2	9
Australia	0	0	1	0	1
Botswana	4	3	6	3	16
European Union	15	13	14	13	55
India	26	17	23	21	87
Israel	2	4	2	4	12
South Africa	1	1	0	1	3
United States	3	1	2	1	7
Vietnam	3	8	8	4	23
TOTAL	56	50	58	49	213

Source: Canadian KPC based data collected by NRCan under the authority of the Minister of NRCan

Imports

When a shipment of rough diamonds arrives at any Canadian border point, the importer or the importer's agent presents the request for the release of the goods, along with the foreign KPC to the BSO for the shipment of rough diamonds. The CBSA has mechanisms in place to facilitate the interception of non-compliant shipments of rough diamonds and will alert the BSO in this regard, who will then follow instructions on what to do with the shipment, as recommended by the KPO. If the shipment is compliant and the provisions of CBSA's Memorandum D19-6-4 have been met, the BSO will date-stamp the certificate and return it to the importer or its agent once the goods are released.

As a routine, the CBSA will:

- 1) verify that shipment of rough diamonds is accompanied by a valid original KP Certificate from a KP Participant or an eligible entity meeting the minimum requirements of the KPCS;
- 2) ensure that the required data elements for the certificate are on the KPC;
- 3) ensure that the container is tamper resistant and has not been opened;
- 4) inspect the shipment content if risk assessment programs are triggered; and
- 5) date-stamp the KPC and return it to the importer or the importer's agent (if there are no discrepancies between the KPC and the import documentation at the time of importation).

If there is uncertainty about an import, the BSO will call NRCan. If warranted, the shipment will be detained and NRCan may request that an investigation be conducted by the RCMP. Otherwise, the BSO may release the shipment to the Canadian importer or its agent. The importer is required to send the date-stamped foreign KPC to NRCan within seven days of import as stipulated under section 8 of the Regulations.

A foreign KPC, when received by CBSA and by NRCan, may be checked by either agency against a specimen foreign KPC. Both CBSA and NRCan have access to up to date records of all KPCs from Participants and eligible entities meeting the minimum requirements of the KPCS, which can be consulted for verification purposes. In addition, it is now a requirement to provide the foreign KPC number on Customs declarations when importing rough diamonds. NRCan continues to work closely with CBSA to seek improvements to the reconciliation of transactions. A CBSA-led project called the Single Window Initiative continues to facilitate CBSA-NRCan exchange of import data, providing NRCan with timely access to import transactions records.

Details of the foreign KPC are logged in a database and the certificate is securely stored. Anomalies are brought to the attention of both CBSA and the RCMP. Foreign KPC tear-offs are stored until the end of the month, when the Confirmation of Import tear-offs are returned to the relevant exporting authority with a letter of confirmation indicating that the KPCs and corresponding shipments were received in Canada. The KPO continues to share information with export authorities to reconcile KP transactions on a regular basis. Advance notifications of

shipments and are only received from a few KP trading partners. In such cases, the advance notification is useful in the reconciliation of imports but does not serve any purpose for the release of shipments by Customs officials.

The KPO received 189 KPCs issued by Participants in 2019. Imports were primarily from the European Union and the United States, with a lesser number from Botswana, Armenia and India. A breakdown by Participant on a quarterly basis is shown in Table 4.

Table 4 2019 Foreign KPCs received by Canada as of April 1, 2020

Participant	Q1	Q2	Q3	Q4	Total Count
Armenia	4	2	3	2	11
Botswana	5	6	6	4	21
European Union	22	23	18	18	81
India	1	2	4	1	8
Israel	0	0	1	1	2
Singapore	1	0	0	0	1
United States	14	23	16	12	65
TOTAL	47	56	48	38	189

Source: KPC based data collected by NRCan under the authority of the Minister of NRCan

VARIABLE:

No development to report other than the KPC counts.

D. SYSTEM OF INTERNAL CONTROLS AND INDUSTRY SELF-REGULATION

CONSTANT:

Canadian decisions regarding which recommendations of Annex II of the KPCS document should be adopted are based on the structure and economic development of the Canadian diamond industry, the federal/provincial division of powers, and the absence of alluvial (artisanal) mining of diamonds.

General Recommendations (GR) one and two have been implemented by Canada. Moreover, GR 3 does not apply in Canada's case.

GR 4: To date there have been eight convictions (including forfeiture of the diamonds) in Canada and eighteen other instances of diamonds being forfeited to the Crown.

VARIABLE:

Diamonds forfeited under the EIRDA are currently held by the RCMP, the CBSA or NRCan. In 2019, NRCan initiated the process to consolidate forfeited diamonds to facilitate their eventual destruction. This is consistent with obligations under section 11 of the Regulations, which provides for the disposal or destruction of forfeited rough diamonds to prevent them from re-entering the international rough diamond trade.

GR 5: EIRDA applies specifically to international trade. Neither EIRDA nor any other legislation in Canada imposes requirements that would apply to the domestic purchase of rough diamonds.

GR 6: Canada submits data on its actual production (carat and USD value) on a semi-annual basis, three months after the reference period. Waivers obtained from rough diamond producers allow the release of data to meet Canada's obligations under the KPCS. Valuation of Canadian diamond production is currently conducted on a regular basis by the Government of the Northwest Territories' Department of Industry, Tourism and Investment, by the Ontario Ministry of Energy, Northern Development and Mines, and by Revenu Québec (Quebec's Department of Revenue) for the purpose of Canada's profit-based royalty regime.

GR 7-8: Canada is meeting the *Recommendations for Control over Diamond Mines*. Review Teams that visited Canada in November 2004 and in October 2012 were able to confirm that effective controls are in place at Canadian diamond mines to ensure the security of their workplace. All Canadian diamond mines meet federal and provincial/territorial permitting and operating requirements.

VARIABLE:

Canada hosted a Review Visit in September 2019. While not yet finalized, the draft report stated that "the findings from this review visit indicate that Canada remains compliant to the KP minimum requirements".

GR 9-10: There is no *Small-Scale Diamond Mining* in Canada. Accordingly, GR 9-10 are not applicable.

GR 11-14 are also not applicable as Canada does not have the legislative authority to implement the *Recommendations for Rough Diamond Buyers, Sellers and Exporters*. Canada's legislative framework covers exports and imports of rough diamonds only. However, there is a *Voluntary Code of Conduct for Authenticating Canadian Diamond Claims* (the Code) which outlines a chain of warranties that companies selling "Canadian Diamonds" could use to prove, at the retail level, that a diamond was mined in Canada. As a voluntary code, not all diamond related businesses are obligated to maintain a chain of warranties; but retailers who adhere to the code are able to display a sign of their participation. NRCan continues to endorse the *Voluntary Code of Conduct for Authenticating Canadian Diamond Claims* as being a transparent, sound vehicle for confirming, through an adequate chain of guarantees, that a diamond represented as being a Canadian diamond is indeed a Canadian diamond", in effect demonstrating the integrity of the Canadian diamond industry. In addition, Canadian companies must keep records of operations for at least 7 years as a general requirement of taxation legislation.

GR 15-19: The processes applicable to the export and import of rough diamonds were described in Section C (Import and Export Regime).

E. STATISTICS

Canada's statistical information is published on the KP Rough Diamond Statistics Website at:

<https://kimberleyprocessstatistics.org/>

VARIABLE:

In compliance with Annex III of the KPCS document, Canada has provided the following statistics for 2019:

1. KPC-based trade statistics and certificate counts for all quarters of 2019
2. Production statistics for both halves of 2019

In 2019, Canada exported 18,682,347.29 carats of rough diamonds valued at US\$1,730,921,157.28 and imported 441,875.84 carats of rough diamonds valued at US\$32,143,764.89.

As a preliminary estimate, Canada's 2019 rough diamond production was 18,638,302.05 carats valued at US\$1,697,446,304.57 dollars.

KPC counts are shown in Tables 3 and 4 in Section C (Import and Export Regime).

F. IMPLEMENTATION OF RECOMMENDATIONS OF KP REVIEW VISITS

A KP Review Visit to Canada took place in October 2012. Recommendations of the Review Visit were presented and addressed in previous annual reports.

Canada hosted a Review Visit in September 2019. The Review Visit team consisted of Government officials from Botswana (as Review Visit team lead), the Democratic Republic of Congo and South Africa, together with a representative from World Diamond Council representing the diamond industry. While not yet finalized, the draft report stated that “the findings from this review visit indicate that Canada remains compliant to the KP minimum requirements”. Once the final report is issued, Canada will report on follow-up measures undertaken for recommendations.

G. INFRINGEMENTS AND COOPERATION WITH RESPECT TO ENFORCEMENT

CONSTANT:

The CBSA has mechanisms in place that facilitate the interception of non-compliant shipments of rough diamonds and will alert the BSO in this regard. These mechanisms allow for monitoring of non-compliant shipments at the border, and are updated on a regular basis in collaboration with NRCan. When a non-compliant shipment is intercepted, the BSO will contact NRCan to jointly determine the course of enforcement action accordingly.

The CBSA monitors the flow of rough diamonds that are of interest on a weekly basis and the results are sent to NRCan in a report for their review. This process has served as an effective tool to assist in the enforcement effort and the implementation of the certification scheme in Canada. Another valuable tool for enforcement is the CBSA compliance verification service. NRCan requests CBSA post-release compliance verification services on an ad-hoc basis for enforcement purposes.

The RCMP continues to enforce the applicable pieces of legislation in relation to the criminal use of diamonds and has conducted workshops and training opportunities for their officers in the diamond and precious stones investigative field. On an ad-hoc basis they also participated in awareness and outreach programs at different venues to promote law enforcement services to the diamond industry. In the past, the RCMP has also participated in KP enforcement seminars.

VARIABLE:

There was 1 new EIRDA infringement incident in 2019. There is also a judicial review currently underway related to a case of seized diamonds.

H. MISCELLANEOUS

Follow-up to 2018 Annual Report Assessment:

Reviewer Comment # 1 – The SCHEDULE-Participants in the EIRDA (*Export and Import of Rough Diamonds Act* (S.C. 2002, c. 25)) shows separate customs territory as a KP Participant, which does not comply with KP and must be modified.

Canada accordingly adjusted language in its 2018 (and in the current) annual report to describe Canada's implementing legislation as an Act that "provides for controls on the export and import of rough diamonds and for a certification scheme for trade in rough diamonds with Participants and eligible entities meeting the minimum requirements of the KPCS".

Reviewer Comment # 2 – The mean price of Export of U.S. in the Summary Report of U.S.'s statistical information (2017) on the KP Rough Diamond Statistics Website is 586.18 US\$/ct, the mean price of Import of Canada is 130.44 US\$/cts, while the mean price Canada imported from US is only 8.76 US\$/ct from U.S. Annual Report 2017) . The great difference in price still lack a reasonable explanation.

Canada is accordingly conducting reconciliation with the United States to address these discrepancies.

Best Practice:

Each application for the export of rough diamonds is analyzed and verified to ensure that all required information is provided, including a seal number for each container, which is printed onto the Canadian KPC. Linking the seal number of the container and the KPC should be considered a best practice.

Letters of Comfort:

In 2019, Canada issued 15 letters of comfort to facilitate the handling of potentially diamond bearing mineral concentrate samples being sent abroad for testing. This tracking activity is done to facilitate the repatriation to Canada of any rough diamonds extracted from these samples.

No letters of comfort were received by Canadian authorities, although diamond exploration samples were received for treatment in Canadian laboratories.

Technical Certificates:

No technical certificates were issued by Canada during 2019. However, two technical certificates were received, one from Botswana and another from Israel.

Site Inspections:

Site inspections of rough diamond exporters and importers (including mining companies) are conducted on annual basis through a risk-based approach, to assess compliance with EIRDA and requirements under the KPCS.