

Canada's Report on the Implementation of the Kimberley Process Certification Scheme, 2016

Preamble

In conformity with Section VI paragraph 11 of the Kimberley Process Certification Scheme (KPCS) document, the 3-year Review, the recommendations by the Kimberley Process (KP) Working Group on Monitoring for the preparation of annual reports made at the Moscow Plenary, the Brussels Declaration on Internal Controls, the Swakopmund Decision on implementation and enforcement, and Instructions for the 2017 Annual Reporting Process, this report covers the implementation of the KPCS by Canada during 2016.

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 and import of rough diamonds and for a certification scheme for trade in rough diamonds with Participants in 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 to prescribe 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 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 under the authority of the Minister of NRCan, and the sharing of these statistics with other Participants;
- delegation of Ministerial powers, duties and functions;
- designation of inspectors and investigators;
- issuance, replacement and invalidation of Canadian Kimberley Process Certificates;
- order the return of rough diamonds in transit if the container has been opened;
- the manner of submitting an application for a Canadian KPC;
- the content of Canadian Certificates and the period of their validity;
- the place and manner of submitting an export declaration report or import confirmation report;
- the requirements for containers to be used for the export of rough diamonds;
- 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; and,
- the disposition of rough diamonds or other things that are forfeited under EIRDA, the persons to be notified of their disposition and the manner of the notification.

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 2016, Canada sent a delegation to both the Kimberley Process Intersessional and Plenary meetings in Dubai, United Arab Emirates and participated in the Review Mission sent to Venezuela in April.

As per General Recommendation 1, in Annex II, Canada has identified the following individuals as the coordinators and focal points for the Canadian implementation of the KPCS. As such, all inquiries relating to Canada's implementation of the KPCS should be directed to these individuals preferably via the central email address mentioned below.

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VARIABLE:

Changes to the contact information were made to the report.

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	9,11,12	2,3,4,5,6	KPO, GAC
Internal controls	17,19,20,21,22,23,24,36,37, 38,39,40	10	KPO, CBSA
Seizure, forfeiture and retention	25, 26, 27, 28, 29, 30, 31, 32	11	KPO, RCMP, DOJ
Penalties, fines and punishment	28, 32(2),33,40.1,41,42,43	11	KPO, DOJ
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), Kimberley Process Office (KPO), Department of Justice Canada (DOJ), 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 29, 2016, adding the Central African Republic to Canada's list of KP trading participants.

C. Import and Export Regime

CONSTANT:

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 involving the Canada Border Services Agency (CBSA), the Royal Canadian Mounted Police (RCMP), Global Affairs Canada, and the Department of Justice (DOJ) as reported under the Legal Framework section (B) of this report.

Exports

Blank Canadian 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 in Annex I-B.

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/business/indu/kpd-pdk/formkimberleyprocess.pdf>

Applications can be submitted to the Kimberley Process Office (KPO) using the following four methods.

1. Courier
2. E-mail
3. Facsimile
4. Mail

Most clients submit their applications by e-mail or facsimile.

Each application is analyzed and verified to ensure that all required information is provided, including a seal number for each tamper proof container, as required under section 9 of the *Export and Import of Rough Diamonds Regulations* (the Regulations). In Canada, for 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 in accordance with Recommendation 18, Annex II of the KPCS document. 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 Regulations, only a resident of Canada is eligible to apply for a Canadian KPC.

An application can be rejected if the information is incomplete or if there is reason to believe that information has been purposely omitted from the application or misrepresented to subvert the process. Where regulatory requirements are not fully met, a letter must be sent to the applicant by the KPO explaining the reason for the rejection.

Each 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. If KPCs are printed in Ottawa, a designated NRCan senior official signs the KPC and a copy is retained on file. If 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 sends a secured scanned color copy of the printed certificate back to KPO and it is retained on file. All records are stored in a secure area.

When KPCs are printed in Ottawa, applicants indicate their preferred method for delivery of the issued Canadian KPC to the applicant's or exporter's place of business. Delivery is made as quickly as possible by the selected means.

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 proof 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 the KPO within seven days of export.

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 Participant's 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 import and export transactions. Communications with Participants are also used to confirm import receipts as part of the joint implementation of Technical Guideline 14. Data corresponding to import and export transactions are recorded in the Canadian KP database in accordance with Recommendation 3 in Annex II of the KPCS document. Improvements to the database were made in 2012, 2013 and 2014 to enhance its security and functionality.

In 2016, NRCan issued 242 KPCs. The primary export destinations were the European Union and India, followed by Vietnam, Israel, the United States and Botswana. Table 3 shows the number of KPCs issued to Participants in 2016, on a quarterly basis.

Table 3 Canadian KPCs issued for export to Participants in 2016

Participant	Q1	Q2	Q3	Q4	Total Count
Australia	1	0	0	0	1
Botswana	4	3	3	4	14
China	0	0	0	1	1
European Union	32	22	26	23	103
India	16	13	16	20	65
Israel	4	3	3	5	15
United Arab Emirates	0	1	0	0	1
United States	3	5	2	5	15
Vietnam	10	6	4	7	27
TOTAL	70	53	54	65	242

Source: 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 customs broker 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 Departmental Memorandum D19-6-4 have been met, the BSO will date-stamp certificates and return them to the importer once the goods are released.

As a routine, the CBSA will:

- 1) verify that shipments of rough diamonds are accompanied by a valid original KP Certificate from one of the participants;
- 2) ensure that the required data elements for the certificates are on the KPC;
- 3) ensure that the container is tamper proof 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 (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. The importer is required to send the date-stamped foreign KPC to NRCan 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 Participant KPCs, which can be consulted for verification purposes. 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 Participant's KPO with a letter of confirmation indicating that the KPCs and corresponding shipments were received in Canada. Advance notifications of shipment are not required by the EIRDA 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 198 KPCs issued by Participants in 2016. Imports were primarily from the European Union and the United States, with a lesser number from Botswana, Armenia, Israel and India. A breakdown by Participant on a quarterly basis is shown in Table 4.

Table 4 2016 Foreign KPCs received by Canada as of April 1, 2017

Participant	Q1	Q2	Q3	Q4	Total Count
Armenia	0	1	2	1	4
Botswana	2	3	3	2	10
Democratic Republic of Congo	1	1	0	0	2
European Union	24	16	22	25	87
Japan	0	0	0	1	1
Guinea	0	1	1	0	2
India	1	3	1	1	6
Israel	1	0	2	1	4
South Africa	0	0	1	0	1
United States	15	23	24	19	81
TOTAL	44	48	56	50	198

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

Import Confirmation

At the KP Plenary meeting in November 2011, the Administrative Decision on Import Confirmation of Rough Diamond Shipments was adopted. This Administrative Decision replaces and voids the existing Technical Guideline on Import Confirmation (Technical Guideline 14) that was adopted at the KP Plenary in October 2004.

The Canadian KPO continues to share information to reconcile KP and Customs transactions on a regular basis. In addition, it is now a requirement to provide the foreign KP number on Customs import declarations for 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, designed to connect NRCan to the CBSA import systems and provide more timely access to import transactions records was deployed during 2015 by way of a trial platform.

VARIABLES: 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 to four have been implemented by Canada. Moreover, GR 5 does not apply in Canada's case.

GR6: To date there have been seven convictions (including forfeiture of the diamonds) in Canada and fourteen other instances of diamonds being forfeited to the Crown. Diamonds forfeited under the EIRDA are currently being transferred to the RCMP for training and research purposes and will eventually be destroyed. 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.

VARIABLE:

There were four EIRDA infringement incidents during 2016 leading to two additional forfeitures mentioned above.

GR7: 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.

GR8: Canada submits data on its actual production (carat and 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 mined diamonds 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 Northern Development and Mines, and by the Québec Department of Revenu for the purpose of royalty collection.

GR9-10: 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.

GR11-16: There is no *Small-Scale Diamond Mining* in Canada. Accordingly, GR 11 & 12 are not applicable. GR 13 to GR 16 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*

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.

VARIABLE:

On December 13, 2016, the Canadian Department of Natural Resources announced it is endorsing the *Voluntary Code of Conduct for Authenticating Canadian Diamond Claims* on the basis that “[it] recognizes the Code as an important tool for demonstrating the integrity of the Canadian diamond industry. The Department endorses the Code 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.”

GR17-25: The processes applicable to the export and import of rough diamonds have been described in earlier sections of this document.

GR26: There are no free trade zones for diamonds in Canada.

E. Statistics

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

<https://kimberleyprocessstatistics.org/>

In compliance with Annex III of the KPCS document, Canada has provided the following statistics for 2016:

1. KPC-based trade statistics and certificate counts for all quarters of 2016
2. Production statistics for both halves of 2016

In 2016, Canada exported 13,056,454.72 carats of rough diamonds valued at US\$1,461,635,363.88 and imported 386,108.36 carats of rough diamonds valued at US\$58,489,071.44.

As a preliminary estimate, Canada’s 2016 rough diamond production was 11,104,000 carats valued at US\$1,223,755,000 dollars. This represents a 4.9% decrease in volume and a 27.0% decrease in value compared to 2015. The decrease in value is mostly related to the drop in the value of the Canadian dollar relative to the United States currency, the drop in the average value of the diamonds extracted, and in a drop in the commodity price.

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

VARIABLE:

No technical certificates were issued by Canada during 2016. However, 13 letters of comfort were issued by Canada 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 diamond extracted from these samples. No letter of comfort was received by Canadian authorities, although diamond exploration samples were received for treatment in Canadian laboratories.

F. Implementation of recommendations of KP Review Visits

CONSTANT:

A Review Team visited Canada in October 2012. Findings and recommendations of the Review Team are commented below.

Recommendation 1) The Review Team recommended heightening the priority border officials give to suspicious shipments and risk assessment procedures for targeting suspicious shipments.

Canada's Comment: The CBSA controls Canadian borders against smuggling of all goods including rough diamonds. Risk assessment programs developed with experiences accumulated over the past decades are in place to help identify suspicious shipments and foil contraband activities. In the case of declared goods, the D19-6-4 Memorandum between the CBSA and NRCan clearly states the procedures for clearing such goods and identifying illegal shipments. In cases where obligations under EIRDA are contravened, border officials are mandated to detain the shipment and contact NRCan who asks the RCMP to investigate.

Recommendation 2) The Review Team recommended that Canada put in place a licensing program for importers and exporters to better monitor KPCS certificates.

Canada's Comment: Canada takes note of the recommendation and will consider introducing a registration program for importers and exporters under the EIRDA.

Recommendation 3) The Review Team recommended that Canada develop a secure online database of certificates of all KPCS Participants to facilitate the authentication of certificates and signatures.

Canada's Comment: All main border entry points in Canada have a color set of all the KPCS certificates and can compare with any incoming certificate as required. In case of doubt, a procedure, described in Memo D19-6-4, informs CBSA officers to contact the KPO who can provide appropriate expertise. Having an online system would be onerous and would not improve the current system.

Recommendation 4) The Review Team recommended that cases of suspicious shipments should be raised to the attention of KPCS Participants via the Working Group of Monitoring.

Canada's Comment: Canada is willing to share information with the KP community on such cases as allowed by Canada's *Privacy Act*. In the case referred to by the Review Visit Team, the individual was refused entry into Canada and was therefore not prosecuted under the *Export and Import of Rough Diamonds Act*. In the absence of conviction, the information that can be shared is quite limited because of the *Privacy Act*. On the other hand, a positive example of information sharing concerns a rough diamond smuggling incident that occurred in Canada on February 3, 2014. All information in this case was shared with the KP community after the individual was convicted. Moreover, Canadian authorities did engage Belgian authorities early-on to manage the case.

Recommendation 5) The Review Team recommended that Canada consider keeping domestic civil society organizations better informed and engaged in the implementation of the KP in Canada.

Canada's Comment: NRCan and Global Affairs Canada have regular contact with representatives of the Canadian and international diamond industry, of provincial and territorial governments, and of civil society, which enables an appropriate exchange of information and of views on KP issues at hand, between groups. Global Affairs Canada actively engages and works constructively with Canadian and international civil society organizations for better enhancement of the KP. Canada believes the tripartite relationship between governments, civil society and industry is at the core of the KPCS, and one of its most important strengths.

VARIABLE:

There is no new development to report.

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, which 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 monthly basis, 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 services. 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 recent years, including in 2012, the RCMP has participated to KP enforcement seminars.

VARIABLE:

With respect to EIRDA infringement cases, other than the 19 instances reported under section D. GR6 of this report, which led to seven convictions (including forfeiture of the diamonds) and fourteen diamond forfeitures to the Crown, there are several other cases that did not lead to convictions because the value of the rough diamonds was too low and it was deemed not to be in the public interest to pursue, or because the violator (a non-resident) did not show up in court and the case is pending. There are also three cases for which a final outcome has not been completed while in a fourth case the rough diamond shipment was returned to the exporting country.

H. Information Requested based on the Standard Overall Assessment Matrix

CONSTANT

H/1: Follow-up to previous annual report assessment:

No additional information was requested in the 2015 assessment matrix.

H/2: Best Practice:

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