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**Council for Trade in Goods**

**KIMBERLEY PROCESS CERTIFICATION SCHEME FOR ROUGH DIAMONDS –  
REQUEST FOR AN EXTENSION OF A WTO WAIVER**

COMMUNICATION FROM AUSTRALIA, CAMBODIA, CANADA, THE EUROPEAN UNION, GUYANA,  
JAPAN, MALAYSIA, MAURITIUS, NORWAY, RUSSIAN FEDERATION, SOUTH AFRICA,  
SWITZERLAND, TURKEY, UKRAINE, AND THE UNITED STATES

In accordance with Article IX:3(b) of the WTO Agreement, Australia, Cambodia, Canada, the European Union, Guyana, Japan, Malaysia, Mauritius, Norway, Russian Federation, South Africa, Switzerland, Turkey, Ukraine, and the United States, all WTO Members that have expressed their intent to continue implementing the Kimberley Process Certification Scheme adopted by the *Interlaken Declaration of 5 November, 2002 on the Kimberley Process Certification Scheme for Rough Diamonds (Interlaken Declaration)*, have the honour to submit to the Council for Trade in Goods a request for an extension of the WTO waiver in order to allow each such Member to take or continue taking measures necessary to give effect to the trade restrictions related to international trade in rough diamonds outlined in the Kimberley Process Certification Scheme. The request covers trade in rough diamonds coming within Harmonized Commodity Description and Coding System subheadings 7102.10, 7102.21 and 7102.31. We enclose a short communication to WTO Members that explains the background to this request as well as a draft decision text in respect of the waiver extension requested. The initial request for a WTO waiver was granted in 2002. That waiver was extended in 2006 and made effective until 31 December 2012. It was further extended in 2012 and made effective until 31 December 2018. The requesting Members hereby request a further extension of the waiver until 31 December 2024.

**1 PURPOSE OF THE REQUEST**

On 5 November 2002, Kimberley Process Participants in the Interlaken Declaration (Angola, Australia, Botswana, Brazil, Burkina Faso, Canada, Côte d'Ivoire, China, Cyprus, Czech Republic, Democratic Republic of the Congo, the European Community, Gabon, Ghana, Guinea, India, Israel, Japan, Republic of Korea, Lesotho, Malta, Mauritius, Mexico, Namibia, Norway, Philippines, Russian Federation, Sierra Leone, South Africa, Swaziland, Switzerland, Tanzania, Thailand, Ukraine, United Arab Emirates, United States of America, and Zimbabwe) expressed their intent to implement an international scheme of certification for rough diamonds, with a view to helping to break the link between armed conflict and the trade in rough diamonds. The Interlaken Declaration, *inter alia*, outlines measures to be taken by Participants with respect to the international trade in rough diamonds between and among Kimberley Process Certification Scheme Participants as well as with respect to trade between Kimberley Process Certification Scheme Participants and non-Participants. Since 2002, a number of additional countries, including some WTO Members, have become Kimberley Process Participants. The WTO Members and other countries that participate in the Kimberly Process Certification Scheme are: Angola; Armenia; Australia; Bangladesh; Belarus; Botswana; Brazil; Cambodia; Cameroon; Canada; Central African Republic; China; Côte d'Ivoire; Hong Kong, China; Democratic Republic of the Congo; Eswatini; European Union; Ghana; Guinea; Guyana; India; Indonesia; Israel; Japan; Kazakhstan; Republic of Korea; Lao People's Democratic Republic; Lebanon; Lesotho; Liberia; Malaysia; Mali; Mauritius; Mexico; Namibia; New Zealand; Norway; Panama; Russian Federation; Sierra Leone; Singapore; South Africa; Sri Lanka; Switzerland; Chinese Taipei; Tanzania; Thailand; Togo; Turkey; Ukraine; United Arab Emirates; United States of America; Bolivarian Republic of Venezuela; Viet Nam; and Zimbabwe.

The Kimberley Process Certification Scheme aims to prevent conflict diamonds from entering the legitimate diamond trade. The legitimate diamond trade plays an important role in the process of economic growth and overall development of a large number of countries, including many developing countries. Considering that the trade regime outlined in the Kimberley Process Certification Scheme aims to curb the trade in conflict diamonds while supporting the legitimate diamond trade in the world trading system, the requesting Members present this request for an extension of the waiver to allow them to take measures necessary to regulate the import and export of rough diamonds as outlined in the Certification Scheme. A waiver from the provisions of Article I:1, Article XI:1, and Article XIII:1 of the GATT 1994 will lend legal certainty to the relationship between those measures and the GATT 1994.

## **2 BACKGROUND AND CIRCUMSTANCES JUSTIFYING THE WAIVER**

Kimberley Process Certification Scheme Participants recognize that the vast majority of rough diamonds traded in the world are from legitimate sources and, moreover, that these diamonds represent a valuable resource for economic and social development. However, international concern regarding the link between the illicit trade in rough diamonds and armed conflict in some parts of Africa has motivated the international community to take measures to end the trade in conflict diamonds. The trade in conflict diamonds is directly linked to fuelling armed conflict, the activities of rebel movements aimed at undermining or overthrowing legitimate governments, and the illicit traffic in, and proliferation of, armaments, especially small arms and light weapons.

The United Nations has recognized the extraordinary humanitarian nature of this issue, the devastating impact of conflicts fuelled by the trade in conflict diamonds on the peace, safety and security of people in affected countries and the systematic and gross human rights violations that have been perpetrated in such conflicts. Beginning in 1998, the Security Council adopted a series of resolutions aimed at restricting the trade in conflict diamonds. Subsequently, the United Nations General Assembly adopted two resolutions (December 2000; March 2002) calling on the international community to develop, finalize and implement proposals for an international certification scheme for rough diamonds as soon as possible, recognizing the urgency of the situation from a humanitarian and security standpoint.

In May 2000, South Africa brought together in Kimberley governments of diamond producers, exporters, and importers, as well as representatives from the diamond industry and non-governmental organizations, to discuss additional practical measures to combat trade in conflict diamonds. This meeting led to the establishment of the Kimberley Process, which then developed a set of detailed proposals for an international system of certification that aims to strengthen control over the legitimate trade in rough diamonds, thereby preventing conflict diamonds from entering into the legitimate diamond trade. Since its launch, 16 Participants have served one-year terms as Chair of the Kimberley Process.

Following an inclusive negotiating process, on 5 November 2002, Kimberley Process Participants adopted the Interlaken Declaration, which embodies the Kimberley Process Certification Scheme for certification of rough diamonds. As noted in its Preamble, the Certification Scheme reflects the determination of the Participants to contribute to and support the implementation of the measures provided for in the United Nations Security Council resolutions and responds to the call of the United Nations General Assembly to give urgent and careful consideration to devising effective and pragmatic measures to address the problem of conflict diamonds. The Participants in the Certification Scheme intend to implement or have implemented domestic measures that will *inter alia* eliminate their trade in rough diamonds with non-Participants.

The devastation financed by the trade in conflict diamonds is concentrated in a handful of countries. However, in light of the global nature of the trade in rough diamonds, combating this exceptional problem demands a continuing commitment by all members of the international community, in cooperation with other important stakeholders, such as the international diamond industry, civil society and multilateral organizations. Kimberley Process Participants consider that the measures outlined in the Kimberley Process Certification Scheme are necessary to break the link between armed conflict and the trade in rough diamonds. It is important to the success of the Certification Scheme that WTO Members recognize the exceptional circumstances of the trade in conflict diamonds, and provide the legal certainty necessary for the Scheme's effective

implementation by granting the requested waiver under Article IX:3 to support the humanitarian and security goals of the Kimberley Process.

The Kimberley Process supports the trade and economic development of all diamond trading countries in a manner consistent with the objectives of the WTO. It represents a positive effort to ensure that the diamond trade continues to make an important contribution to the economic development of developing countries. Participants in the Certification Scheme do not consider that it creates any impediment to the reduction or the elimination of tariffs, or other restrictions to trade on a most favoured nation basis.

The effectiveness of the Certification Scheme has depended on the involvement of all key participants in the international trade in rough diamonds, and inclusive participation in the Certification Scheme continues to be encouraged and facilitated, thus minimizing any disruption in the legitimate diamond trade.

Participants in the Kimberley Process Certification Scheme launched the certification scheme beginning 1 January 2003. Fifty-one of the fifty-four Kimberley Certification Scheme Participants are Members of the WTO.

### **3 DESCRIPTION OF THE MEASURES FOR WHICH A WAIVER IS REQUESTED**

The requested extension of the waiver would apply to domestic measures necessary to give effect to the import and export restrictions and prohibitions outlined in the Kimberley Process Certification Scheme, Section III, paragraph c – "Undertakings in respect of the international trade in rough diamonds," which Members that are Kimberley Process Certification Scheme Participants intend to take. Section III, paragraph c is as follows:

Each Participant should:

- (c) Ensure that no shipment of rough diamonds is imported from or exported to a non-Participant; [...]

For the purposes of the Kimberley Process Certification Scheme, "rough diamonds" are defined as: "diamonds that are unworked or simply sawn, cleaved or bruted and fall under the relevant Harmonized Commodity Description and Coding System 7102.10, 7102.21 and 7102.31."

### **4 CONCLUSION**

The requesting Members request on the basis of Article IX:3 of the Marrakesh Agreement Establishing the World Trade Organization, an extension of the waiver from their obligations under Article I:1, Article XI:1, and Article XIII:1 of the GATT 1994 with respect to domestic measures necessary to give effect to the rough diamond import and export restrictions and prohibitions outlined in the Kimberley Process Certification Scheme for the period from 1 January, 2019 to 31 December, 2024.

The requesting Members request that the Council for Trade in Goods give their application for an extension of the waiver expeditious and favourable consideration. In the meantime, the Members submitting this waiver request are prepared to give full consideration to representations made to them by other WTO Members and to engage in consultations with them as may be necessary.

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**EXTENSION OF WAIVER  
CONCERNING KIMBERLEY PROCESS CERTIFICATION SCHEME  
FOR ROUGH DIAMONDS**

DRAFT WAIVER DECISION OF ... 2018<sup>1</sup>

The General Council,

*Conducting* the function of the Ministerial Conference in the interval between meetings pursuant to paragraph 2 of Article IV of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement");

*Having regard* to paragraphs 1, 3 and 4 of Article IX of the WTO Agreement, the Guiding Principles to be followed in considering applications for waivers adopted on 1 November 1956 (BISD 5S/25), and the Understanding in Respect of Waivers of Obligations under the General Agreement on Tariffs and Trade 1994 (the "Understanding");

*Recalling* that by a Decision of 15 May 2003 the General Council granted certain Members<sup>2</sup> a waiver from obligations under paragraph 1 of Article I, 1 of Article XI, and 1 of Article XIII of the GATT 1994 for the period 1 January 2003 until 31 December 2006<sup>3</sup>;

*Recalling* that by a Decision of 15 December 2006 the General Council granted certain Members<sup>4</sup> a waiver from obligations under paragraph 1 of Article I, 1 of Article XI, and 1 of Article XIII of the GATT 1994 for the period 1 January 2007 until 31 December 2012<sup>5</sup>;

*Recalling* that by a Decision of 14 December 2012 the General Council granted certain Members<sup>6</sup> a waiver from obligations under paragraph 1 of Article I, 1 of Article XI, and 1 of Article XIII of the GATT 1994 for the period 1 January 2013 until 31 December 2018 (the "Existing Waiver")<sup>7</sup>;

*Taking note* of the request of the Members listed in the Annex for an extension of the Existing Waiver with respect to their domestic measures to regulate the international trade in rough diamonds consistent with the Kimberley Process Certification Scheme;

*Noting* that this Decision does not prejudice the consistency of domestic measures taken consistent with the Kimberley Process Certification Scheme with provisions of the WTO Agreement, including any relevant WTO exceptions, and that the Existing Waiver was granted and is hereby extended for reasons of legal certainty;

*Recognizing* that the trade in conflict diamonds remains a matter of serious international concern and has been directly linked to the fuelling of armed conflict, the activities of rebel movements aimed at undermining or overthrowing legitimate governments, and the illicit traffic in, and proliferation of, armaments, especially small arms and light weapons;

*Recognizing* the extraordinary humanitarian nature of this issue and the devastating impact of conflicts fuelled by the trade in conflict diamonds on the peace, safety and security of people in affected countries and the systematic and gross human rights violations that have been perpetrated in such conflicts;

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<sup>1</sup> Adopted in accordance with the Decision-Making Procedures under Articles IX and XII of the WTO Agreement agreed by the General Council in November 1995 (WT/L/93).

<sup>2</sup> Australia, Brazil, Canada, Israel, Japan, Korea, Philippines, Sierra Leone, Thailand, United Arab Emirates, United States.

<sup>3</sup> WT/L/518.

<sup>4</sup> Australia, Botswana, Brazil, Canada, Croatia, India, Israel, Japan, Korea, Mauritius, Mexico, Norway, Philippines, Sierra Leone, Chinese Taipei, Thailand, United Arab Emirates, United States, Venezuela.

<sup>5</sup> WT/L/676.

<sup>6</sup> Australia, Botswana, Brazil, Canada, Croatia, European Union, India, Israel, Japan, Korea, Mexico, New Zealand, Norway, Philippines, Russian Federation, Singapore, Chinese Taipei, Thailand, Turkey, United States, and the Bolivarian Republic of Venezuela.

<sup>7</sup> WT/L/876.

*Noting* the relevant resolutions of the United Nations Security Council under Chapter VII of the United Nations Charter and the Kimberley Process Certification Scheme Participants' contribution to and support of the implementation of the measures provided for in those resolutions;

*Further noting* that the Kimberley Process Certification Scheme has responded to the call of the United Nations General Assembly to give urgent and careful consideration to devising effective and pragmatic measures to address the problem of conflict diamonds;

*Recognizing* the importance and effectiveness of the Kimberley Process Certification Scheme in stemming the trade in conflict diamonds;

*Noting* the United Nations Security Council & Resolution S/RES/1459 (2003) supporting the Kimberley Process Certification Scheme;

*Noting* that the Existing Waiver is due to expire on 31 December 2018;

*Recognizing* the interests of many WTO Members in the legitimate trade in rough diamonds;

*Noting* the assurances given by Members listed in the Annex that they intend, upon request, to enter promptly into consultations with any interested Member with respect to any difficulty or matter that may arise as a result of their domestic implementation of the Kimberley Process Certification Scheme for rough diamonds;

*Considering* that, in light of the foregoing, exceptional circumstances remain justifying the extension of the Existing Waiver;

*Decides* as follows:

1. With respect to the measures taken by a Member listed in the Annex necessary to prohibit the export of rough diamonds to non-Participants in the Kimberley Process Certification Scheme consistent with the Kimberley Process Certification Scheme, paragraphs 1 of Article I; 1 of Article XI; and 1 of Article XIII of the GATT 1994 are waived as of 1 January 2019 through 31 December 2024.
2. With respect to the measures taken by a Member listed in the Annex necessary to prohibit the import of rough diamonds from non-Participants in the Kimberley Process Certification Scheme consistent with the Kimberley Process Certification Scheme, paragraphs 1 of Article I; 1 of Article XI; and 1 of Article XIII of the GATT 1994 are waived as of 1 January 2019 through 31 December 2024.
3. This waiver also applies in respect of measures implementing the Kimberley Process Certification Scheme taken by any Member not listed in the Annex to this Decision that desires to be covered by the present waiver and that notifies the Council for Trade in Goods accordingly or that has already done so pursuant to the Existing Waiver.
4. Members benefiting from this waiver should notify their measures implementing the Kimberley Process Certification Scheme to the Council for Trade in Goods to the extent that they have not already done so pursuant to the Existing Waiver.
5. Members benefiting from this waiver, upon request, intend to enter promptly into consultations with any interested Member with respect to any difficulty or matter that may arise as a result of the implementation of the measures regulating the export or import of rough diamonds covered by this waiver; where a Member considers that any benefit accruing to it under the GATT 1994 may be or is being impaired unduly as a result of such implementation, such consultations shall examine the possibility of action for a satisfactory adjustment of the matter.
6. Any Member that considers that measures regulating the import or export of rough diamonds covered by this waiver are being applied inconsistently with this waiver or that any benefit accruing to it under the GATT 1994 may be or is being impaired unduly as a

result of measures to implement the Kimberley Process Certification Scheme covered by this waiver and that considers that consultations have proved unsatisfactory, may bring the matter before the General Council, which will examine it promptly and will formulate any recommendations that it judges appropriate.

7. This waiver shall not preclude the right of affected Members to have recourse to Articles XXII and XXIII of the GATT 1994.

#### **ANNEX**

Australia, Cambodia, Canada, the European Union, Guyana, Japan, Malaysia, Mauritius, Norway, Russian Federation, South Africa, Switzerland, Turkey, Ukraine, and the United States.

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