



## **KPCS ANNUAL REPORT FOR 2013** **AUSTRALIA**

### **A. Institutional Framework**

The Department of Foreign Affairs and Trade (DFAT) – official coordinator for the implementation of the KPCS – the Australian Customs and Border Protection Service (Customs and Border Protection) – the Import Authority – and the Department of Industry – 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. During 2013, the former Department of Resources, Energy and Tourism merged with the Department of Industry.

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

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Import Authority: Australian Customs and Border Protection Service

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Export Authority: Department of Industry

#### Contact

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## **B. Legal Framework**

### **Legislative Changes**

There were no legislative changes made in 2013. Australia's legal framework for implementing the KPCS is, therefore, the same as it was when the 2012 annual report was submitted.

#### ***Responses to additional information requested by the WGM for the annual report***

- It is a requirement for frequent and large 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 (for exports) and the Australian Customs and Border Protection Service (imports).
- Miners are required to retain all import and export documentation for a period of 3 years; however in practice producers retain relevant records for longer than this.

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

### **Outgoing shipments**

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

#### ***Responses to additional information requested by the WGM for the annual report***

- It is a requirement for 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 partnership with the Export Authority. The Australian Export Authority sends advanced notices of all other rough diamond shipments, containing information on carat weight, value, importer, certificate number and HS code, to the relevant Import Authority.
- All exports and imports are recorded on computerised databases by the relevant Authority.

### **Incoming shipments**

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

#### ***Responses to additional information requested by the WGM for the annual report***

- In 2013, Australia received prior notifications of rough diamond shipments from India and Belgium. Prior notifications were not received from other countries.
- Australia continues to work with the USA to improve tracking of small parcels that enter the country through general mail services.
- Customs and Border Protection would take action where it finds any seals or containers have been tampered with. No shipments are released unless all documentation, including the KP certificate have been presented to Customs and Border Protection.



- Diamond valuers or other experts would be engaged to value an incoming diamond shipment, where considered appropriate.
- An email (and the return slip or import confirmation coupon where relevant) is sent to the relevant Export Authority once the importation has been finalised.
- Customs and Border Protection maintains an internal computerised database that records the importation details of all rough diamond shipments.

#### **KPCs issued and received in 2013**

| <b>Country</b>     | <b>Exports</b> | <b>Imports</b> |
|--------------------|----------------|----------------|
| European Community | 68             | 24             |
| India              | 17             | 22             |
| China              | 2              | 1              |
| Israel             | 3              | 1              |
| USA                | 0              | 13             |
| Sierra Leone       | 0              | 1              |
| New Zealand        | 2              |                |
| <b>Totals</b>      | <b>92</b>      | <b>62</b>      |

Australian production has increased to around 11.7 million carats in 2013 from approximately 9.0 million carats in 2012, largely due to the commencement of the underground operations at the Argyle mine. The number of carats exported was also up from around 7 million carats in 2012 to over 13 million in 2013 also due to Argyle's underground mining start. The number of Certificates issued by Australia was down from 127 in 2012 to 92 in 2013. In 2012 there was a larger number of small exports from non-mine sources.

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

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. In early 2013, Gem Diamonds finalised its sale of Kimberley Diamond Company to the Australian listed company Goodrich Resources Ltd that later changed its name to Kimberley Diamonds Ltd.

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 2013, 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 meet the requirements of the KPCS. The Australian Export Authority reviews the mine sites and head offices annually to ensure that this remains the case.

Representatives of the KP Export Authority visited Argyle Diamonds and KDC during 2013 to assess KPCS compliance, incorporating an assessment of record-keeping procedures, security processes, export processes, and reporting processes.



Both companies were found to be undertaking these activities in a manner which allows Australia 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. It undertook some test mining in the second half of 2013 and produced around 450 carats.

The Australian Export Authority also allows Kimberley Rough Diamonds to expedite its own exports of Australian origin product. Kimberley Rough Diamonds is a private business located in Kununurra in Western Australia that is involved in diamond trading and jewellery. It is subject to the same annual review process as the Australian diamond mines to ensure Australia continues to meet the requirements of the KPCS.

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 Bureau of Resources and Energy Economics, to ensure the validity of reported Australian rough diamond production statistics. In addition, both Rio Tinto Ltd and Kimberley Diamond Ltd 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.

***Responses to additional information requested by the WGM for the annual report***

- The Australian Export Authority has had no breaches of the KPCS during 2013 or previously.
- Two minor shipments were seized by the Australian Import Authority for breaches under the *Customs (Prohibited Imports) Regulations 1956* in 2013. The Chair was not informed due to confidentiality requirements under the Australian legal system, noting the breaches were not sufficient to trigger court action.
- 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.
- Computerised databases are kept for all exporters of rough diamonds in Australia and records are also kept for all imports.
- 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 purchases of rough diamonds are through official banking channels for producers of rough diamonds in Australia. Smaller trades are not tracked.

#### **E. Statistics**

Australia has met its reporting obligations in full for 2013. Australia submitted trade statistical reports for Q1 2013, Q2 2013, Q3 2013, Q4 2013 and mine production reports for H1 2013, and H2 2013.

#### ***Responses to additional information requested by the WGM for the annual report***

- Australia has not undertaken any complementary initiatives related to the collection of statistics on the Certificates as Australian Certificates are fully compliant with Annex III of the KPCS Document.

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

Australia's last review was undertaken in 2007. Australia has invited its next review visit to be held in September 2014.

Australia is compliant with the minimum requirements of the KPCS.

#### **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**

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

Customs and Border Protection has powers that enable it to investigate and take enforcement action following incidents involving the illegal importation or exportation of prohibited goods. The circumstances surrounding such incidents are taken into account and Customs and Border Protection 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 Customs and Border Protection. In some cases the matter may be considered through the Courts.



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.

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.

Customs and Border Protection maintains an internal website which provides its officers with procedural instructions on how to treat imports and exports of consignments of rough diamonds subject to the KPCS. In addition the website provides both electronic access to the Acts and Regulations which underpin the KP Scheme as well as an updated list of KP Participants and samples of their KP certificates.

#### KP-related infringements and breaches

Tight controls remain in place at the border by Customs and Border Protection in relation to the KPCS. As noted, there were two minor seizures of rough diamonds in 2013.

#### Fraudulent certificates

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

#### Suspicious shipments

Customs and Border Protection 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 2013, Australia continued its engagement as a member of the Working Group on Monitoring, the Selection Committee and the Working Group of Diamond Experts. Australia was an active contributor to the Kimberley Process Review through those bodies and was also an observer on the Committee for KP Review. Australia also participated in discussions on internet trading and statistics.

In November 2013, the Selection Committee and Participation Committees merged. Australia is a member of the new Committee for Participation and Chairmanship.

#### ***Responses to additional information requested by the WGM for the annual report***

- Australia has no rebel or insurgent activity.

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<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.