



## **KPCS ANNUAL REPORT FOR 2011** **AUSTRALIA**

### **A. Institutional Framework**

The Department of Foreign Affairs and Trade (DFAT), the Australian Customs and Border Protection Service (Customs and Border Protection) and the Department of Resources, Energy and Tourism (RET) work collaboratively to ensure the Kimberley Process Certification Scheme (KPCS) is implemented efficiently and correctly. Contact details for each agency are below.

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## **B. Legal Framework**

### **Legislative Changes**

There were no legislative changes made in 2011. Australia's legal framework for implementing the KPCS is, therefore, the same as it was when the 2010 annual report was submitted.

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

### Outgoing shipments

There have been no changes in the export regime since the previous report.

### Incoming shipments

There have been no changes in the import regime since the previous report.

### **KPCs issued and received in 2011 by KP Participant**

<b>Country</b>	<b>Exports</b>	<b>Imports</b>
European Community	72	37
India	29	20
China	16	
Israel	1	
USA	1	5
South Africa	2	2
New Zealand	1	
Singapore	1	
Democratic Republic of Congo		3
Sri Lanka		1
Switzerland		1
Sierra Leone		1
<b>Totals</b>	<b>123</b>	<b>70</b>

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

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

The vast majority of Australia's rough diamond production is generated by the Argyle mine. In September 2010, Rio Tinto announced it will invest the remaining US\$803 million (of a total capital cost of US\$1.5 billion) to ramp up the underground block cave project at its Argyle mine in Western Australia. Following a transition from the current open pit operation, the underground will be fully operational in 2013. Rio Tinto indicates the project will extend the life of the mine until at least 2019.

Construction activity was continued during 2011, with full production forecast within two years. The project was slowed in 2009 due to the global financial crisis but Rio Tinto considers the diamond market continues to recover and long-term industry fundamentals remain healthy. The open cut part of the mine is almost complete, with only small amounts of ore being extracted from the lowest level of the open cut by remote controlled equipment along with low grade ore in the northern part of the open cut through to 2013. Future ore will come from underground, which is expected to commence production in second half 2012.



The Ellendale mine is owned and operated by Gem Diamonds' wholly owned subsidiary, KDC. In February 2009, the lower grade E4 operation at Ellendale was placed in care and maintenance so that the Kimberley Diamond Company could focus resources on the higher grade E9 operation. KDC was examining the economics of producing from the E4 open cut during 2011 though current rough diamond prices have delayed any decision to recommence mining at E4. The E4 open cut is currently being dewatered in the event that the economics of mining from the E4 mine improve.

Throughout 2011, the Australian KP Export Authority maintained regular contact with these companies to keep abreast of developments in rough diamond mining operations. Representatives of the KP Export Authority visited Argyle Diamonds and KDC during 2011 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 leading to a decision to commence mining expected during 2012. 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. North Australian Diamonds is also well advanced on the redevelopment of the Merlin diamond deposits located near Borroloola in the Northern Territory.

Australia is also expecting Kimberley Rough Diamonds, a private business located in Kununurra in Western Australia, to become Australia's first non-diamond producing trader in rough diamonds.

In terms of monitoring production, the KP Export Authority also works in collaboration with a number of Australian Government agencies, including geoscientific 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, Rio Tinto Ltd, which is listed on the Australian Securities Exchange, is required to comply 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 Frequent Exporters, exploration and junior companies are also monitored.

### **E. Statistics**

Australia has met its reporting obligations in full for 2011. Australia submitted trade statistical reports for Q1 2011, Q2 2011, Q3 2011, Q4 2011 and mine production reports for H1 2011, and H2 2011.



## **E. Miscellaneous**

In 2010, Australia's concern for the increase in internet sales of rough diamonds led to the creation of a Technical Expert Team on Internet Trading, which reports to the Working Group on Monitoring. This team is made up of several KP countries and NGO representatives and is chaired by a representative from Australian Customs and Border Protection.

In 2011, Australia continued its engagement as a member of the Working Group on Monitoring and the Selection Committee. Australia attended two Working Group on Monitoring meetings in Kinshasa in June and November 2011, as well as participating in various conference calls.

Australia has been undertaking and compiling results of a diamond valuation survey since 2008. This task was completed during 2011. The aim of the survey was to determine the valuation criteria used in each member country.

## **Implementation and 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. There were three very small seizures of internet-bought rough diamonds in 2011.

#### 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.

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<sup>1</sup> A penalty unit is currently equivalent to A\$110.