



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

WAIVER DECISION OF 26 JULY 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

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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.

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;

*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; Botswana; Brazil; Cambodia; Canada; the European Union; Guyana; India; Japan; Kazakhstan; Republic of Korea; Malaysia; Mauritius; Montenegro; Namibia; Norway; Panama; Russian Federation; Sierra Leone; Singapore; South Africa; Sri Lanka; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand; Turkey; Ukraine; and the United States.

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