

WORLD TRADE ORGANIZATION

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Council for Trade in Goods

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WAIVER CONCERNING KIMBERLEY PROCESS CERTIFICATION SCHEME FOR ROUGH DIAMONDS

Communication from Australia, Brazil, Canada, Israel, Japan, Korea, Philippines, Sierra Leone,
Thailand, United Arab Emirates and United States

Revision

The following draft waiver decision, dated 11 November 2002, has been received from the Permanent Mission of Canada on behalf of Australia, Brazil, Canada, Israel, Japan, Korea, Philippines, Sierra Leone, Thailand, United Arab Emirates and the United States.

Draft Decision of [...]

The General Council,

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

Conducting the function of the Ministerial Conference in the interval between meetings pursuant to paragraph 2 of Article IV of the WTO Agreement;

Taking note of the request of the Members listed in the Annex for a waiver from paragraphs 1 of Article XI, 1 of Article I, and 1 of Article XIII of the GATT 1994 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 waiver is granted for reasons of legal certainty;

Recognizing that the trade in conflict diamonds is a matter of serious international concern, which can be 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;

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' intent to contribute to and support the implementation of the measures provided for in those resolutions;

Further noting that the Kimberley Process Certification Scheme 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;

Further noting the United Nations Security Council resolution S/RES/1459(2003) supporting the Kimberley Process Certification Scheme;

Further 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 exist justifying a waiver from paragraphs 1 of Article XIII, 1 of Article I, and 1 of Article XI of the GATT 1994 with respect to the trade in rough diamonds;

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 2003 until 31 December 2006.
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 2003 until 31 December 2006.
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.
4. Members benefiting from this waiver should notify their measures implementing the Kimberley Process Certification Scheme to the Council for Trade in Goods.
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, Brazil, Canada, Israel, Japan, Korea, Philippines, Sierra Leone, Thailand, United Arab Emirates, United States
