

WAIVER CONCERNING THE CLEAN DIAMOND TRADE
ACT

COMMUNICATION

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

NOTIFICATION OF HIS DETERMINATION THAT AN APPLICABLE
WAIVER HAS RETROACTIVE EFFECT TO JANUARY 1, 2003 AND
WILL REMAIN IN EFFECT UNTIL DECEMBER 31, 2006 AS CON-
SISTENT WITH "THE CLEAN DIAMOND TRADE ACT", PURSUANT
TO PUB. L. 108-19



SEPTEMBER 3, 2003.—Referred jointly to the Committees on Ways and
Means and International Relations, and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

THE WHITE HOUSE,
Washington, July 29, 2003.

Hon. J. DENNIS HASTERT,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: The Clean Diamond Trade Act (Public Law 108–19) (the “Act”) authorizes the President to prohibit the importation into, or exportation from, the United States of any rough diamond that has been “controlled through the Kimberly Process Certification Scheme.” Section 15 of the Act provides that the Act shall take effect on the date on which the President certifies to the Congress that (1) an applicable waiver that has been granted by the World Trade Organization (WTO) is in effect, or (2) an applicable decision in a resolution adopted by the United States Nations Security Council pursuant to Chapter VII of the Charter of the United Nations is in effect. Section 15 further provides that the Act shall thereafter remain in effect during those periods in which, as certified by the President to the Congress, such an applicable waiver or decision is in effect.

On May 15, 2003, the WTO General Council (copy attached) adopted a waiver decision pursuant to Article IX of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement) concerning the Kimberly Process Certification Scheme for rough diamonds (Certification Scheme). The decision waives the following provisions of the WTO Agreement’s General Agreement on Tariffs and Trade 1994: paragraph 1 of Article I, paragraph 1 of article XI, and paragraph 1 of Article XIII, for measures taken consistent with the Certification Scheme that are necessary to prohibit the export of rough diamonds to, or import of rough diamonds from, non-Participants in the Certification Scheme. The decision further provides that the waiver applies to the United States and other WTO members that requested the waiver and to any WTO member that notifies the WTO of its desire to be covered by the waiver. The waiver has retroactive effect to January 1, 2003, and will remain in effect until December 31, 2006.

Exercising my discretion under the Act, I hereby certify that an applicable waiver, within the meaning of section 15 of the Clean Diamond Trade Act, granted by the World Trade Organization is in effect and will remain in effect until December 31, 2006.

Sincerely,

GEORGE W. BUSH.

**WORLD TRADE
ORGANIZATION**

WT/L/518
27 May 2003

(03-2834)

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

Decision of 15 May 2003¹

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;

¹ 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)

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