

**Reprint
as at 20 November 2008**



**United Nations Sanctions
(Kimberley Process) Regulations
2004**

(SR 2004/463)

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 20th day of December 2004

Present:

Her Excellency the Governor-General in Council

Pursuant to section 2 of the United Nations Act 1946, Her Excellency the Governor-General, acting—

- (a) on the advice and with the consent of the Executive Council;
and

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

These regulations are administered by the Ministry of Foreign Affairs and Trade.

- (b) for the purpose of enabling conflict diamonds trade-ban measures to be effectively applied,—
makes the following regulations.

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Regulations

- 1 Title**
These regulations are the United Nations Sanctions (Kimberley Process) Regulations 2004.
- 2 Commencement**
These regulations come into force on 14 January 2005.
- Interpretation*
- 3 Conflict diamonds trade-ban measures, etc, defined**
In these regulations, unless the context otherwise requires,—

authorised person means an officer or employee of the Ministry of Foreign Affairs and Trade authorised in writing by the Minister for the purposes of regulation 5(1) to (5)

conflict diamonds trade-ban measures means any of the following measures that the Security Council of the United Nations has, under Article 41 of the Charter of the United Nations, called upon the Government of New Zealand and all other member States of the United Nations to apply:

- (a) the measures (to prohibit the direct or indirect import of all rough diamonds from Côte d'Ivoire) set out in paragraph 6 of resolution 1643 (2005) of that Council, adopted pursuant to that Charter on 15 December 2005; and
- (b) *[Revoked]*
- (c) other similar measures (to prevent illicit trade in rough diamonds that fuels armed conflicts that affect international peace and security) also to give effect to decisions of that Council, being measures and decisions set out in 1 or more paragraphs of other resolutions of that Council adopted pursuant to that Charter either before or after the commencement of these regulations

country includes an international organisation or a State, territory, province, or other part of a country

Customs or the Customs and Customs officer have the same meaning as in section 2(1) of the Customs and Excise Act 1996

Interlaken Declaration means the Interlaken Declaration of 5 November 2002 on the Kimberley Process Certification Scheme for Rough Diamonds

international organisation means any organisation of States or Governments of States, or any organ or agency of any organisation of that kind

Kimberley Process means the international certification arrangement for rough diamonds adopted under the Interlaken Declaration

Kimberley Process Certificate means a certificate that meets the minimum requirements for certificates set out in the Schedule (which are the requirements specified in Part A of Annex

1 of the document (which accompanied the Interlaken Declaration) called the Kimberley Process Certification Scheme)

Minister means the Minister of Foreign Affairs and Trade

New Zealand includes Tokelau

original certificate means,—

- (a) for rough diamonds that are, or are to be, imported, the certificate referred to in regulation 4(1)(b); and
- (b) for rough diamonds that are, or are to be, exported, the certificate referred to in regulation 5(2)

participant means a country that is a participant in the Kimberley Process

rough diamonds means diamonds that are—

- (a) unworked or simply sawn, cleaved or bruted; and
- (b) classified under heading 7102.10.00, 7102.21.00, or 7102.31.00 of the Standard Tariff (as defined in section 2(1) of the Tariff Act 1988).

Regulation 3 **conflict diamonds trade-ban measures** paragraph (a): substituted, on 20 November 2008, by regulation 4 of the United Nations Sanctions (Kimberley Process) Amendment Regulations 2008 (SR 2008/393).

Regulation 3 **conflict diamonds trade-ban measures** paragraph (b): revoked, on 20 November 2008, by regulation 4 of the United Nations Sanctions (Kimberley Process) Amendment Regulations 2008 (SR 2008/393).

Importation and exportation of rough diamonds

4 Importation of rough diamonds

- (1) The importation into New Zealand of rough diamonds from a country is prohibited unless—
 - (a) the country is a participant; and
 - (b) the country has issued a Kimberley Process Certificate for the rough diamonds; and
 - (c) the original certificate is produced to the Customs or a Customs officer at or before the time of importation; and
 - (d) the rough diamonds are imported in a tamper-resistant container.
- (2) The importer must—
 - (a) keep the original certificate for 3 years after the time of importation; and
 - (b) produce the original certificate to any of the following on a request for the purpose within that 3-year period:

- (i) an officer or employee of the Ministry of Foreign Affairs and Trade; and
- (ii) a person authorised in writing by the Minister for the purposes of this subclause.

5 Exportation of rough diamonds

- (1) The exportation from New Zealand of rough diamonds is prohibited unless—
 - (a) the exporter holds a permission under this regulation; and
 - (b) the original certificate is produced to the Customs or a Customs officer at or before the time of exportation; and
 - (c) the rough diamonds are exported in a tamper-resistant container.
- (2) The Minister, or an authorised person, may, on application, grant a permission for the exportation of rough diamonds to a country by issuing a Kimberley Process Certificate.
- (3) A permission may be granted only if the country is a participant, and ceases to be in force if the country ceases to be a participant.
- (4) A permission granted under this regulation is subject to the following conditions:
 - (a) any condition notified in writing to the applicant at the time the permission is granted; and
 - (b) any condition specified on the Kimberley Process Certificate.
- (5) If the holder of a permission fails to comply with a condition of the permission the Minister, or an authorised person may, in writing, revoke the permission.
- (6) The holder of a permission must—
 - (a) keep a copy of the original certificate for 3 years after the time of exportation; and
 - (b) produce a copy of the original certificate to any of the following on a request for the purpose within that 3-year period:
 - (i) an officer or employee of the Ministry of Foreign Affairs and Trade; and

- (ii) a person authorised in writing by the Minister for the purposes of this subclause.

6 Other similar prohibitions not affected

Nothing in regulation 4 or regulation 5 affects—

- (a) regulation 12A (importation of diamonds from Côte d'Ivoire prohibited) of the United Nations Sanctions (Côte d'Ivoire) Regulations 2005; or
- (b) *[Revoked]*
- (c) any other regulation made under the United Nations Act 1946 and that prohibits the importation into New Zealand, or exportation from New Zealand, of diamonds.

Regulation 6(a): substituted, on 20 November 2008, by regulation 5 of the United Nations Sanctions (Kimberley Process) Amendment Regulations 2008 (SR 2008/393).

Regulation 6(b): revoked, on 20 November 2008, by regulation 5 of the United Nations Sanctions (Kimberley Process) Amendment Regulations 2008 (SR 2008/393).

7 Application of Customs and Excise Act 1996 to prohibited imports and prohibited exports

- (1) The provisions of the Customs and Excise Act 1996 with respect to prohibited imports (except section 209) apply to diamonds whose importation is prohibited by regulation 4 in all respects as if the importation of the diamonds were prohibited under section 54 of the Customs and Excise Act 1996.
- (2) The provisions of the Customs and Excise Act 1996 with respect to prohibited exports (except section 209) apply to diamonds whose exportation is prohibited by regulation 5 in all respects as if the exportation of the diamonds were prohibited under section 56 of the Customs and Excise Act 1996.

Compare: SR 2001/134 r 14

8 Detention of prohibited diamonds

- (1) A reference in this regulation to prohibited diamonds is a reference to diamonds—
 - (a) whose importation is prohibited by regulation 4; or
 - (b) whose exportation is prohibited by regulation 5.

- (2) A Customs officer may detain any diamonds imported into New Zealand, or to be exported from New Zealand, that he or she suspects on reasonable grounds to be prohibited diamonds.
Compare: SR 2001/134 r 15(1), (2)

9 Transitional provision

Nothing in regulation 4 or regulation 5 applies to a diamond that is to be, or is being, imported into New Zealand, or exported from New Zealand, in accordance with a contract or deed entered into, or other legal obligation undertaken, before the commencement of these regulations.

Acts in contravention or failures to comply

10 Offences

Every person commits an offence against these regulations and is liable accordingly under section 3 of the United Nations Act 1946 who acts in contravention of, or fails to comply in any respect with, any provision of these regulations.

Compare: SR 2001/134 r 17

Schedule

r 3

Minimum requirements for certificates

Each certificate must—

- (a) have the title “Kimberley Process Certificate”; and
- (b) state that “The rough diamonds in this shipment have been handled in accordance with the provisions of the Kimberley Process Certification Scheme for rough diamonds.”; and
- (c) also state the following:
 - (i) the authority by which it was issued; and
 - (ii) the date on which it was issued; and
 - (iii) the date on which it expires; and
 - (iv) the number of parcels in the shipment; and
 - (v) the country of origin of every parcel in the shipment (every parcel in the shipment being of unmixed, that is, from the same, origin); and
- (d) specify the following for the rough diamonds in the shipment:

- (i) their exporter; and
- (ii) their importer; and
- (iii) their carat weight or mass; and
- (iv) their value in US\$; and
- (v) their classification (or heading) under the Harmonised Commodity Description and Coding System; and
- (e) be issued in English or, if issued in another language, incorporate an English translation; and
- (f) have unique numbering with the alpha-2 country code, according to ISO 3166-1; and
- (g) be tamper-resistant and forgery-resistant, and be validated by the relevant exporting authority.

Diane Morcom,
Clerk of the Executive Council.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 23 December 2004.

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Notes

1 *General*

This is a reprint of the United Nations Sanctions (Kimberley Process) Regulations 2004. The reprint incorporates all the amendments to the regulations as at 20 November 2008, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, *see*

<http://www.pco.parliament.govt.nz/legislation/reprints.shtml>
or Part 8 of the *Tables of Acts and Ordinances and Statutory
Regulations, and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)
- position of the date of assent (it now appears on the front page of each Act)

- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

United Nations Sanctions (Kimberley Process) Amendment Regulations 2008
(SR 2008/393)
