

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA



Seventy-eighth meeting of the Standing Committee
Geneva (Switzerland), 3-8 February 2025

Appendices to the Convention

Annotations

IMPLICATIONS OF THE TRANSFER OF A SPECIES FROM ONE APPENDIX TO ANOTHER

1. This document has been prepared by the Secretariat.
2. At its 19th meeting (CoP19; Panama City, 2022), the Conference of the Parties (CoP) revised Decision 18.151 (Rev. CoP19) on *Implications of the transfer of a species from one Appendix to another* as follows:

Directed to the Standing Committee, with the assistance of the Secretariat

18.151 (Rev. CoP19) *The Standing Committee shall, with the assistance of the Secretariat, consider whether further guidance related to the period of transition, including the period between the adoption of a proposal to transfer a species from one Appendix to another and the entry into force of the new listing, should be developed and, if so, present amendments to an existing Resolution or a new draft resolution to the 20th meeting of the Conference of the Parties. In this context, the Standing Committee shall consider, in consultation with the Plants Committee, as appropriate, whether special recommendations should apply in the case of a transfer of a tree species with annotation #5 or other annotated plant species.*

Background

3. At CoP18 (Geneva, 2019), the Secretariat presented document [CoP18 Doc. 49.1](#) on *Implications of the transfer of a species to Appendix I*. Based on the analysis developed, the Secretariat proposed that, except in situations where the exemption in Article VII, paragraph 2, applies, when a species is transferred from Appendix III or II to Appendix I, specimens concerned shall be subject to the provisions applicable to them at the time of export or import, i.e. that current rules are applied to current trade transactions. There is no “pre-Appendix I” treatment for specimens acquired while the species was included in Appendix II or Appendix III. The Secretariat further proposed that the same approach would apply when a species had been transferred from Appendix III to Appendix II.
4. The Secretariat recommended that the Conference of the Parties (CoP) amend Resolutions Conf. 12.3 (Rev. CoP17) on *Permits and certificates* and Conf. 13.6 (Rev. CoP16) on *Implementation of Article VII, paragraph 2, concerning 'pre-Convention' specimens* to ensure a consistent interpretation and application of the Convention. The Conference of the Parties agreed to the interpretation by the Secretariat and adopted by consensus the proposed amendments. The two resolutions were further revised at CoP19. The legal framework applicable to the transfer of a species from one Appendix to another has thus been clarified by the revisions made to Resolutions Conf. 12.3 (Rev. CoP19) and Conf. 13.6 (Rev. CoP19) at CoP18.
5. At the 77th meeting of the Standing Committee (SC77; Geneva, November 2023), the Secretariat proposed that the issue of the implications of the transfer of a species from one Appendix to another can be referred to as ‘periods of transition’ in the sense that there is always a period of time that passes between the decision

of the CoP on the transfer and the entry into effect of said transfer. The Secretariat noted that, beyond the transfer of a species from one Appendix to another, other situations could be considered as 'periods of transition', such as:

- the period between the adoption of the inclusion of a new species in the Convention's Appendices and the entry into force of such listings; and
- the period when the CoP agrees on a delay in the entry into effect of the listings (for instance, the delayed effect agreed at CoP19 of 12 months for *Carcharhinidae* spp., 24 months for *Handroanthus* spp., *Roseodendron* spp. and *Tabebuia* spp.).

6. All these 'periods of transition' trigger similar questions, mainly: what are the rules applicable to the export, re-export, import or introduction from the sea of a specimen of a species at a given time, especially during the period between the adoption of an amendment of the Appendices by the CoP and the entry into effect of that amendment, and what are the potential transitory measures. The Secretariat has already received such questions from Parties, especially concerning timber and sharks listings. The most frequently asked question concerns how to address situations when the applicable rules for a particular species change during transport, i.e., after the specimens have left the port of export but before they reach the port of import.

Draft guidance and best practices related to periods of transition and possible transitory measures

7. As reflected in the summary record (see [SC77 SR](#)), the Standing Committee requested the Secretariat to develop draft guidance and best practices related to periods of transition and possible transitory measures, including but not limited to the period between the adoption of a proposal to transfer a species from one Appendix to another and the entry into force of new listings.
8. A draft guidance and best practices on such situations, taking into consideration frequently asked questions from Parties referred to in paragraph 6 above, are included in the Annex to the present document.
9. The Secretariat notes that, at SC77, the Standing Committee did not consider any special recommendations that should apply in the case of a transfer of a tree species with annotation #5 or other annotated plant species. The draft guidance and best practices in Annex have therefore been developed to be considered for any CITES-listed species.

Recommendations

10. The Standing Committee is invited to:
 - a) consider the draft guidance and best practices related to periods of transition and possible transitory measures provided in Annex to this document;
 - b) request the Secretariat, taking into account any comments made by the Standing Committee, to make this initial Guidance available on the CITES website before the 20th meeting of the Conference of the Parties; and
 - c) agree that Decision 18.151 (Rev. CoP19) has been implemented and can be proposed for deletion.

DRAFT ELEMENTS FOR GUIDANCE AND BEST PRACTICES
RELATED TO PERIODS OF TRANSITION AND POSSIBLE TRANSITORY MEASURES

Introduction

1. Article II, paragraph 4, of the Convention establishes as a fundamental principle that the Parties shall not allow trade in specimens of species included in Appendices I, II and III except in accordance with the provisions of the Convention. Accordingly, it is necessary to know exactly which rules are applicable to the export, re-export, import or introduction from the sea of a specimen of a species included in the Appendices at any given time.
2. Articles III, IV and V contain the rules that apply to trade in specimens of species included in Appendix I, II or III, respectively. Article XV stipulates that an amendment to Appendices I and II enter into force 90 days after the meeting at which they have been adopted. Similarly, Article XVI stipulates that amendments to Appendix III shall take effect 90 days after they have been communicated to the Parties by the Secretariat. In case of withdrawal of a species from Appendix III, the withdrawal takes effect 30 days after the date of the communication of such withdrawal.
3. However, the Convention contains no provisions related to the situation where the export of a specimen is authorized before an amendment of the Appendices enters into effect and presented for import after the entry into effect of the amendment. Similarly, the Convention contains no provisions related to any measures to be taken during this period of transition, i.e., between the adoption of an amendment and the entry into effect of such an amendment.
4. Questions have been raised as to the applicable rules in these situations and the following is a first attempt to provide draft elements of simple guidance for such situations as well as possible transitory measures. Unless otherwise indicated, the guidance is intended to apply to the following situations:
 - Inclusion of a species that was not previously included in one of the Appendices;
 - Transfer of a species from one Appendix to another (whether uplisting or downlisting);
 - Amendment of an annotation, amending the scope of the application of the Convention for that species (e.g. inclusion of additional specimens in the annotation); and
 - Delayed entry into effect of the inclusion of a species in Appendix II.
5. Specimens that fulfil the conditions for being traded as pre-convention specimens as set out in Article VII, paragraph 2, of the Convention and Resolution Conf. 13.6 (Rev. CoP18) on *Implementation of Article VII, paragraph 2, concerning 'pre-Convention specimens'* are not covered by the guidance related to transition periods.

Background

Relevant provisions in existing Resolutions

6. Resolution Conf. 12.3 (Rev. CoP19) on *Permits and certificates*, paragraph 10, provides that:

in the case a species is transferred from one Appendix to another, specimens concerned shall be subject to the provisions applicable to them at the time of export, re-export, import or introduction from the sea;
7. Resolution Conf. 12.3 (Rev. CoP19), paragraph 11, further:

recommends that, in the case of a listing proposal adopted by the Conference of the Parties to transfer a species to Appendix I, the Management Authority ensures that any permit or certificate for trade in that species be valid only until the date that the new listing in Appendix I enters into force and that this be indicated in box 2 of the permit;

8. Resolution Conf. 13.6 (Rev. CoP19) on *Implementation of Article VII, paragraph 2, concerning 'pre-Convention' specimens*, paragraph 3:

calls on Parties to take any necessary measures in order to prevent excessive acquisition of specimens of a species between the date on which the Conference of the Parties approves the inclusion of that species in Appendix I and the date on which the inclusion takes effect;

Stricter domestic measures

9. Article XIV of the Convention provides that Parties retain the right to adopt:
- a) stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof; or
 - b) domestic measures restricting or prohibiting trade, taking, possession or transport of species not included in Appendix I, II or III.

As such, Parties may be in a position to implement an amendment to the Appendices adopted by the CoP prior to the entry into effect of this amendment, thus avoiding any period of transition. However, this might be difficult in practice and might create legal uncertainties, which would go against the Convention's objective to establish common rules.

Existing practices

Inventories

10. Some Parties, notably range States, take steps to inventory, mark and secure stockpiles of specimens of species concerned by an amendment proposal before the entry into effect of the amendment. Some Parties share their inventories with the CITES Secretariat for information, although the Secretariat currently does not have a mandate to record such information.
11. In the case of an inclusion of a new species in the Appendices of the Convention, particularly in Appendix II, such an inventory allows the Party to ascertain which specimens could be considered pre-Convention under Article VII, paragraph 2, of the Convention. In the case of a transfer from Appendix II to Appendix I, the inventory informs the Party of any stockpile available in the country and inform any economic operators holding the stock of the date of the entry into force of the amendment and the implications.

Entry into effect of an amendment to the Appendices during the transport of a specimen

12. With regard to the specific situations when the rules applicable change after specimens of a species left the port of export but before they reached the port of import, Parties have developed different practices. Mainly:
- a) Certain Parties place the acceptance of the import on hold while the Management Authorities of the country of import and the country of export consider the issuance and acceptance of a retrospective permit or certificate issued by the exporting Party;
 - b) Other Parties do not practice the retrospective issuance of CITES documents and accept to consider that if the shipment left the port of export prior to the date of entry into effect the listings, the import can be accepted based on the rules applicable at the time of export.
13. Both solutions have advantages and drawbacks. The first allows Parties to ensure that specimens are being imported in accordance with the rules applicable to the species at the time of import. However, Parties have agreed on a restrictive approach to the retrospective issuance of permits and certificates in section XIV of Resolution Conf. 12.3 (Rev. CoP19). This situation is not foreseen as a cause allowing for the retrospective issue of permits and certificates. The second solution allows for the application of the rules existing at the time of the export, without applying listings retroactively, but does not implement the rules of the Convention existing at the time of the import.
14. In the absence of a clear rule governing these situations, or of a consensus between the Parties on the best way forward, it seems that a good practice to follow is for the country of export to liaise, as early as possible, with the intended country(ies) of import in order to ensure that Parties agree on the way forward in the event that an export might reach the port of import after the entry into effect of an amendment proposal.

15. This is also important as one or more of the Parties might have stricter domestic measures in place.

Guiding principles and best practices

16. Based on the above provisions and existing practices, certain principles could be derived that Parties could consider applying to all 'periods of transition' from the adoption of an amendment proposal to the entry into effect of the proposal:

General principles

- a) The provisions applicable to trade in a specimen of a species are the provisions applicable to the species concerned at the time of export, re-export, import or introduction from the sea:
 - i) In the case of a first inclusion in the Appendices (with or without delayed entry into effect): the trade will be governed by the national legislation of the Party concerned, if any, until the date of entry into effect of the listing. From the date of the entry into effect, the trade will be governed by the relevant provisions of the Convention, Article III, IV or V;
 - ii) In the case of a transfer from an Appendix to another: the trade will be governed by the rules applying to the Appendix in which the species is listed until the date of entry into effect of the transfer to another Appendix;
 - iii) In the case of the amendment of an annotation: similar to ii), the trade will be governed by the existing annotation until the date of entry into effect of the amended annotation.
- b) In the specific situations where the rules applicable to trade in a particular species or specimen change after specimens of that species left the port of export but before they reached the port of import, the country of export should liaise, as early as possible, with the intended country(ies) of import in order for the Parties to agree on the procedure to implement concerning the trade.
- c) Pursuant to Article XIV of the Convention, Parties retain the right to adopt stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III of the Convention. As such, Parties may opt to implement the decision of the CoP approving the inclusion of a species in the Appendices or the transfer of a species from one Appendix to the other, immediately after its adoption, thus avoiding any 'period of transition'. However, such stricter domestic rules might be difficult to implement in practice.

Transitory measures

- d) In case of transfer from one Appendix to another, the Management Authority should ensure that any permit or certificate for trade in a specimen of the species subject to a transfer be valid only until the date that the new listing enters into effect and that this be indicated in box 2 of the permit or certificate.
- e) Parties should take any necessary measures in order to prevent excessive acquisition of specimens of a species between the date on which the Conference of the Parties approves the inclusion or transfer of that species in Appendix I of the Convention and the date on which the inclusion or transfer takes effect in line with the recommendation in Resolution Conf. 13.6 (Rev. CoP19), paragraph 3. Parties may wish to consider the same principle with regard to the inclusion or transfer of species in Appendix II of the Convention.
- f) Before an amendment to include a new species in the Appendices of the Convention, particularly in Appendix II, takes effect, Parties should consider taking steps to inventory stockpiles of specimens of species concerned by the amendment acquired for the purpose of export. This will help ascertain the quantity of specimens available, if any, and to determine whether such specimens would qualify as "pre-Convention" specimens under Article VII, paragraph 2, of the Convention. In some cases, the Party concerned could consider requesting the publication of a voluntary export quota for the pre-Convention stockpile in accordance with Resolution Conf. 14.7 (Rev. CoP15) on *Management of nationally established export quotas*.